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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB91

Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulation which was published Wednesday, August 25, 2004 (69 FR 52157–52167). The regulation pertains to the insurance of pecans.

EFFECTIVE DATE: October 29, 2004.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Risk Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 426, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to convert the pecan revenue pilot crop insurance program to a permanent crop insurance regulation to be used in conjunction with the Common Crop Insurance Policy Basic Provisions for ease of use and consistency of terms.

Need for Correction

As published, the final regulation contained errors which may prove to be misleading and need to be clarified. In section 3 of the crop provisions, paragraph (g) did not specify the percentage amount that is considered as ''additional coverage.''

List of Subjects in 7 CFR Part 457

Crop insurance, Pecan, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 7 CFR part 457 is corrected by making the following correcting amendments:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

■ 2. Amend § 457.167 as follows:

■ a. Revise section 3(g) to read as set forth below;

■ b. In the Pecan Revenue Example in section 13, remove the dollar figure ''$17,000.00'' from the last sentence and insert ''$17,700.00'' in its place;

The revision reads as follows:

§ 457.167 Pecan revenue crop insurance provisions.

* * * * *

3. Insurance Guarantees and Coverage Levels for Determining Indemnities

* * * * *

(g) Hail and fire coverage may be excluded from the covered causes of loss for your insured crop only if you selected additional coverage of not less than 65 percent of your approved average revenue per acre, and you have purchased the same or a higher dollar amount of coverage for hail and fire from us or any other source.

* * * * *

Signed in Washington, DC, on October 25, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–24164 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB93

Common Crop Insurance Regulations; Peanut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Peanut Crop Insurance Provisions. The intended effects of this action are to provide policy changes and clarify existing policy provisions to better meet the needs of the insured and to restrict the effect of the current Peanut Crop Insurance Regulations to the 2004 and prior crop years.

EFFECTIVE DATE: November 29, 2004.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Risk Management, Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will

not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On May 17, 2004, FCIC published a notice of proposed rulemaking in the **Federal Register** at 69 FR 27864–27865 to revise 7 CFR 457.134 Peanut Crop Insurance Provisions. Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. Comments were received from reinsured companies, agents, trade associations, producers, and insurance service organization and other interested parties. The comments received and FCIC's responses are as follows:

Comment: A total of 30 commenters recommended that FCIC should allow optional units for peanuts to be established in accordance with section 34 of the Common Crop Insurance Policy Basic Provisions (Basic Provisions).

Response: FCIC agrees and has made the change accordingly.

Comment: An insurance service organization suggested that actual production history (APH) procedures should be revised in accordance with how existing units by farm serial number (FSN) can be converted to a section or section equivalent basis, in areas where that is appropriate. The commenter asks if peanut databases that still contain the ''F'' classification yield from the APH conversion process will be allowed to retain the yield in the new section databases that were part of the FSN for which that classification was established.

Response: FCIC revised the APH procedures in the Crop Insurance Handbook (CIH) effective for the 2003 crop year when peanuts were converted to a Category B APH crop. Classification ''F'' yields that were used to establish approved APH yields were removed by adding an actual or assigned yield to the affected databases for the 2003 crop year. In subsequent crop years, this process will continue until all classification yields in the database have been replaced by actual or assigned yields. Databases will be updated using acceptable production records under standard APH procedures.

Comment: An insurance service organization commented to the proposed rule that to allow optional units for peanuts in accordance with the Basic Provisions would not result in imposing optional units by section in parts of the country, such as some southeastern States. The southeastern States have optional units by FSN for other Category B crops. In those areas, the proposed rule would allow optional units by irrigated and non-irrigated practices as well as by FSN.

Response: FCIC agrees that in those states without sections, optional units will be by FSN or irrigated and non-irrigated practices.

Comment: An insurance service organization asked if FCIC has any estimates by State on how the number of optional units are affected so rates can be adjusted accordingly.

Response: An analysis of the number of potential optional units that may be generated by the proposed rule change was completed. FCIC will apply the rate surcharge for optional units as administered for other Category B crops in the applicable States. A study is being conducted regarding the premium rates for optional units to determine the appropriate rates and such rates will be applied to peanuts.

Comment: A total of 30 comments supported modifying the Peanut Crop Provisions to provide for a price election for peanuts based on a contract price for those peanuts that are grown under contract. However, an insurance service organization opposed insuring peanuts at a contract price election. The insurance service organization comment indicated many years ago a contract price was used to establish the price election for non-quota peanuts. Those contracts did not enforce delivery, which then resulted in some buying points being too generous. Peanuts do not have to be grown under contract to be insured. Allowing for a contract price would in effect establish two prices for peanuts similar to the quota/non-quota system. The pounds per acre grown under contract would have one price and those that are not grown under contract would default to the price established in the actuarial documents. Other insured crops such as corn, soybeans, and wheat can also be contracted at set prices without this type of price option available.

Response: FCIC only requested public comment regarding the feasibility and possible approaches for insuring peanuts at a contract price. FCIC will consider all the comments when it looks at the feasibility of allowing a price

election by contract price. However, until such evaluation is complete, no changes will be made to the Peanut Crop Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Peanut, reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457, Common Crop Insurance Regulations, for the 2005 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

■ 2. Amend § 457.134 as follows:

■ a. Remove and reserve section 2 under the heading ''Peanut Crop Insurance Provisions.''

■ b. Revise the introductory text to read as follows:

§ 457.134 Peanut crop insurance provisions.

* * * * *

The peanut crop insurance provisions for the 2005 and succeeding crop years are as follows:

* * * * *

Signed in Washington, DC, on October 25, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–24177 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV04–984–2 IFR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Walnut Marketing Board (Board) for the 2004–05 and subsequent marketing years from $0.0101 to $0.0094 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective October 30, 2004. Comments received by December 28, 2004, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Board for the 2004–05 and subsequent marketing years from $0.0101 to $0.0094 per kernelweight pound of assessable walnuts.

The order provides authority for the Board, with the approval of the USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0101 per

kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 10, 2004, and unanimously recommended 2004–05 expenditures of $2,749,500 and an assessment rate of $0.0094 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,863,350. The assessment rate of $0.0094 is $0.0007 lower than the $0.0101 rate currently in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 325,000 tons (292,500,000 kernelweight pounds merchantable), and the budget is about 4 percent less than last year's budget. Sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for 2004–05 include $2,037,500 for research and marketing programs ($1,393,500 for market research and development, $550,000 for production research, and $94,000 to the California Agricultural Statistics Service for a crop estimate), $332,000 for employee expenses (administrative and office salaries, payroll taxes, workers compensation, and other employee benefits), $97,000 for office expenses (rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture), $96,000 for other operating expenses (management travel, field travel, insurance, and financial audits), $5,000 for controlled (compliance check) purchases, $75,000 for a production research director, and $107,000 as a reserve for contingency. Budgeted expenses for these items in 2003–04 were $2,438,000, $334,625, $83,000, $82,000, $5,000, $73,000, and $15,725, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 292,500,000 kernelweight pounds which should provide $2,749,500 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate is effective for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2004–05 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,800 producers of walnuts in the production area and about 43 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Current industry information shows that 14 of the 43 handlers (32.5 percent) shipped over $5,000,000 of merchantable walnuts and could be considered large handlers by the Small Business Administration. Twenty-nine of the 43 walnut handlers (67.5 percent) shipped under $5,000,000 of merchantable walnuts and could be considered small handlers. An estimated 58 walnut producers, or about 1 percent of the 5,800 total producers, would be considered large producers with annual incomes over $750,000. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule decreases the assessment rate established for the Board and collected from handlers for the 2004–05 and subsequent marketing years from $0.0101 to $0.0094 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2004–05 expenditures of $2,749,500. The decreased assessment rate should generate sufficient income to meet the Board's 2004–05 anticipated expenses. The lower assessment rate is primarily due to a lower budget and based on an estimated crop of 325,000 tons for the year (292,500,000 kernelweight pounds estimated merchantable).

Major categories in the budget recommended by the Board for 2004–05 include $2,037,500 for research and marketing programs ($1,393,500 for market research and development, $550,000 for production research, and $94,000 to the California Agricultural Statistics Service for a crop estimate), $332,000 for employee expenses (administrative and office salaries, payroll taxes, workers compensation, and other employees benefits), $97,000 for office expenses (rent, office supplies, telephone, fax, postage, printing, equipment maintenance, and furniture), $96,000 for other operating expenses (management travel, field travel, Board expenses, insurance, and financial audits), $5,000 for controlled (compliance check) purchases, $75,000 for a production research director, and $107,000 as a reserve for contingency. Budgeted expenses for these items in 2003–04 were $2,438,000, $334,625, $83,000, $82,000, $5,000, $73,000, and $15,725, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups based upon the relative value of various research projects to the walnut industry. The recommended $0.0094 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 292,500,000 kernelweight pound estimate of assessable walnuts for the year. Unexpended funds may be used temporarily to defray expenses of the

subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year according to § 984.69.

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2004–05 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2004–05 marketing year as a percentage of total grower revenue could range between 1.3 and 1.9 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 10, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2004–05 marketing year began on August 1, 2004, and the order requires that the rate of assessment for each marketing year apply to all merchantable walnuts handled during the year; (2) this action decreases the assessment rate for merchantable California walnuts; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 2004, an assessment rate of $0.0094 per kernelweight pound is established for California merchantable walnuts.

Dated: October 22, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24160 Filed 10–28–04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1720

RIN 0572–AB83

Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes procedures for a guarantee program for cooperatives and other not-for-profit lenders that make loans eligible for assistance under the Rural Electrification Act of 1936 (the RE Act). Criteria for eligibility of lenders and transactions are set forth in the rule together with application procedures. Program participants are required to pay an annual fee for the guarantee. The fee will be credited to the Rural Development Subaccount to provide funds for zero-interest loans and grants pursuant to section 313 of the RE Act. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), amended the RE Act, by adding section 313A which establishes this program. In addition to providing funds to enhance rural development, this program will contribute to improving the technology and reliability of our rural electric transmission and distribution system.

DATES: This rule will become effective November 29, 2004.

FOR FURTHER INFORMATION CONTACT: Doris Nolte, Chief, Policy Analysis and Loan Management Staff, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5155, Washington, DC 20250–1560. Telephone: (202) 720–0424. Fax: (202) 690–0717. E-mail: *Doris.Nolte@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to the rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS certifies that this

rule will not have significant impact on a substantial number of small entities. No small entities meet the statutory criteria for participation in the program that is the subject of this rulemaking.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications to require preparation of a Federalism Assessment.

Information Collection and Recordkeeping Requirements

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (the ''Act''), OMB must approve all ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this rule will involve less than 10 persons and do not require approval under the provisions of the Act.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) (Pub. L. 104–4, 109—Stat. 48) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Background

On December 30, 2003, at 68 FR 75153, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Part 1720, Guarantees for Bonds and Notes issued for Electrification and Telephone Purposes. This proposed rule establishes the agency's policies and procedures for granting guarantees to eligible cooperatives and other not-for-profit lenders that make loans eligible for assistance under the Rural Electrification Act of 1936 (the RE Act). The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), amended the RE Act, by adding section 313A which establishes this program.

A total of 231 letters were received commenting on the proposed rule. Two hundred and eighteen of these letters, which were received from electric cooperatives, electric cooperative associations, rural development organizations, and local governments, all requested that the rule be altered in a way that assures funding to the Rural Economic Development Loan and Grant Fund (REDLF). Many of the comments included the identification of successful economic development projects that benefited from REDLG funds. The majority of the 218 letters identified specific aspects of the proposed rule that should be altered to make the program work. Seventy percent (70%) of the letters said the patronage capital limitations discriminate against the cooperative lenders and should be removed. Seventy percent (70%) also reported that the Federal Institutions Reform, Recovery and Enforcement Act (FIRREA) requirements, as presented in the proposed rule would make cooperative lenders ineligible for this program. Sixty-five percent (65%) requested that the 15-year bond term limit be changed to the useful life of the asset. This change in term would serve to maximize funding available to REDLG. Fifteen percent (15%) of the letters suggested that the approval process that includes Office of Management and Budget and Treasury, is complicated and inefficient and 10 percent or less critized using a bankruptcy trust fund, collateral provisions, and the requirement that bonds must be issued by Federal Financing Bank (FFB) only.

Thirteen letters were received that did not take the form of the others and either addressed the specific questions posed in the proposed rule or provided additional information for the development of the final rule.

In their comment letters, the U.S. Chamber of Commerce and Edison Electric Institute (EEI) state that Federal guarantees made to private unregulated organizations is unprecedented and bad government policy. Their position is that because of the legislative requirement to establish this program, RUS must also establish appropriate safeguards that minimize risk to American taxpayers. Four trade organizations also supported strengthening the rule requirements and characterized the program as providing an unfair advantage to cooperatives. This unfair advantage would be realized, they argue, through lower rates received in borrowing from an eligible lender that received a guarantee or by receiving REDLG funds and establishing economic development projects that attract new loads into a cooperative territory. The comments received from these groups also identified specific aspects of the proposed rule that they thought should be strengthened in order to minimize taxpayer risk.

The National Rural Electric Cooperative Association (NRECA), National Rural Utilities Cooperative Finance Corporation (CFC), National Rural Telecommunications Cooperative, an electric cooperative association, and an electric cooperative all identified aspects of the proposed rule that they said did not comport to the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (Farm Bill) legislation establishing this program. The comments claim that the proposed rule does not address the intent of the Congress, which was to create a new funding mechanism for the REDLG program. These comments addressed specific restrictions in the proposed rule and requested that they be removed because they were not consistent with the statute and prevent the lender with the largest volume of concurrent loans from participating in the program.

The two general positions taken in the letters of comment received are (1) the program does not provide enough safeguards for the American taxpayer and the provisions in the proposed rule should be strengthened and (2) the intent of Congress is not carried out with the proposed rule and changes should be made to assure that the REDLG program is funded.

CFC also provided an alternative approach to the restrictions included in the proposed rule. The alternative approach is to establish such safeguards as contemplated in the proposed rule to minimize taxpayer risk by establishing a trigger that would impose them only if the lender that qualifies and is granted a guarantee becomes ineligible (*i.e.,* no longer meets the eligibility criteria established in the legislation). CFC proposed the trigger mechanism to be when the lender's non-guaranteed debt falls below investment grade. At that point, limitations on retiring patronage capital, establishing capital adequacy tests, requiring a bankruptcy remote trust and/or collateral requirements would go into effect.

Changes Made to the Final Rule

A review of the limited legislative history that exists for this provision of the 2002 Farm Bill indicates that the intent of Congress was to establish an additional private funding mechanism for the Rural Economic Development Loan and Grant program. This flow of funds is the cost to qualified lenders for receiving a federal guarantee of bonds and notes according to the statutory criteria established in section 6101 of the Farm Bill.

RUS also agrees that appropriate safeguards must be implemented to assure risk is minimized for the American taxpayers as this program establishes a new relationship between eligible lenders and the Federal government. Furthermore, Congress has established this program by amending the RE Act, and fully expects RUS to continue its prudent guarantee and lending practices. For these reasons, RUS will provide additional requirements of the lender beyond the provisions established in section 6101 of the Farm Bill. Based upon the comments received and additional research into the requirements proposed, the final rule has been modified to maintain the safeguards envisioned in the proposed rule while establishing a program according to the provisions of section 6101 of the Farm Bill.

The statute provides some criteria for establishing lender and guarantee eligibility. The statute, however, does not address requirements to ensure the security of a government guarantee, and there is no indication that RUS should not take prudent steps to address declining credit quality. For these reasons, RUS will establish requirements of the guaranteed lender to ensure the security of the government's guarantee throughout the term of the guarantee.

Patronage Capital limitations. The proposed rule requires that the guaranteed lender not issue cash patronage refunds in excess of five percent of the total patronage refund eligible. Additionally, stock issued as part of the patronage refund shall not be redeemable in cash during the term of the guarantee, and the lender is not allowed to issue dividends on any class of stock during the term of the guarantee. Comments were received in favor of this restriction and some recommended lowering the limitation to two percent of the total patronage refund eligible. Comments were also received reporting that this limitation was not contemplated by the statute, and there is no rationale provided for this restriction. Furthermore, it is pointed out that capping patronage distributions reduces the cash flow of any RUS borrower that is also a borrower of the guaranteed lender and this reduction in cash flow may result in an increase in RUS loan security risk. One hundred and forty eight comments were received reporting that cooperatives depend upon the patronage capital distributions to keep electric rates low and to further invest in rural communities. One comment received expressed a belief that this restriction is unnecessary as capital markets already require financial targets for earnings retention.

RUS will maintain a patronage capital limitation when a guaranteed lender's credit rating on its senior secured debt, without regard to the guarantee, falls below ''A−''. Under such a scenario, the guaranteed lender will be required to limit the patronage capital refunds in excess of five percent of the patronage capital. RUS believes this requirement represents a sound approach to ensuring capital adequacy and in minimizing the risk of default.

FIRREA. The proposed rule requires each applicant to submit a review and certification of the lender's capital adequacy utilizing the capital adequacy standards of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The proposed rule also requires that during the term of the guarantee, a FIRREA review be conducted annually. Comments were received requesting that the full requirements of FIRREA be imposed. Other comments claim the FIRREA requirements as presented in the proposed rule make cooperative lenders ineligible based upon their financial structure. Cooperative lenders have forms of equity not recognized by the formulas utilized under FIRREA. One hundred and fifty comment letters were received expressing a concern that the FIRREA standards do not apply to the cooperative structure and that such a requirement would make cooperatives ineligible for the guarantee program.

RUS agrees that the FIRREA requirement would limit participation in the guarantee program. Upon further review of the FIRREA requirements, and public comment, it has become clear that definitions of liabilities, capital, and risk-based assets under FIRREA do not match the financial structures and business model used by cooperative lenders and cannot directly apply. The majority of the savings institutions subject to the requirements of FIRREA do not have publicly traded debt outstanding, and have had no formal bond ratings assigned. Accordingly, the focus of the credit review for such entities is upon the regulatory accounting standards under which those lenders obtain deposit insurance.

The statutory requirements of this guarantee program rely upon credit evaluations by the rating agencies. Their ratings reflect the ability of the lender to meet its long-term payment obligations based upon the lender's financial positions, managerial skills and other factors. RUS has considered alternative methods of establishing capital adequacy of a guaranteed lender under this program and has evaluated the benefits of establishing financial indicator ratio requirements to accomplish that goal. Based upon the comments received and further review, RUS will rely upon the credit rating agencies and the ongoing review of a lender's financial position as required in other sections of the rule to evaluate adequacy and monitor the financial condition of the program participants.

In addition, RUS will independently monitor publicly available information on a program participant as it becomes available. RUS will use this information to monitor and evaluate the adequacy of the financial condition of program participants.

Bankruptcy Remote Trust. The proposed rule requires the lender, during the term of the guarantee, to establish a bankruptcy remote trust fund capitalized at five percent of the guaranteed amount outstanding. Comments received in favor of additional restrictions favor this requirement and a few suggested increasing the capitalized percentage. Comments were also received with claims that a lender whose securities are investment grade rated is already viewed by the capital markets as adequately capitalized, with sufficient reserves and capital market liquidity. Twenty-two comment letters were received reporting that this requirement

was not contemplated in the Farm Bill and should not be implemented. CFC asserts that in capital markets, bankruptcy-remote trusts are used in non-recourse financing and that all CFC bonds are not non-recourse—any investor in CFC has the right to make a claim against CFC as a corporation.

Although a bankruptcy remote trust fund is a sound risk management tool in many situations, RUS believes that other requirements of this rule are sufficient to ensure the security of the government guarantee, and therefore this particular requirement has been removed.

Collateral Requirements. The proposed rule requires the applicant to provide a description of the specific and identifiable loans comprising the collateral or other pledge securing the guaranteed bonds. While comments were received in support for this idea claiming that this would aid in minimizing taxpayer risk, other comments were received requesting that no such requirement be imposed as it is outside of the statutory criteria. CFC asserts that a collateral requirement is duplicative of the bankruptcy-remote trust requirement.

RUS will maintain this requirement when the guaranteed lender's credit rating on its senior secured debt, without regard to the guarantee, falls below ''A−''. In such cases, collateral shall be in the form of specific and identifiable unpledged securities equal to 100% of the value of the guarantee. This requirement is viewed as an important safeguard for protecting against a call on the Federal guarantee when the lender's creditworthiness has declined.

15-year bond term. The proposed rule requires a final maturity of guaranteed bonds not to exceed 15 years. Some comment letters received claim this restriction will aid in minimizing taxpayer risk. Other comments urged RUS to continue its practice of matching terms to the useful life of an asset. One hundred and thirty-nine comment letters received urged the restriction to be lifted recognizing the normal RUS lending practice of 30–35 year terms and also stating that the longer terms would extend the funding to REDLG and maximize economic development benefits to rural America. CFC claims that the limitation on maturity of bonds is inconsistent with the intent of the statute. The limitation exposes the government to additional risks (bond term/borrowers loan maturity mismatch can create both interest rate and liquidity risk).

Based upon comment letters received and the desire to establish a bond or note guarantee term consistent with RUS lending practices, RUS will establish a term of 20 years which is the estimated average outstanding balance of concurrent loans currently eligible under this program.

FFB only funding source. The proposed rule requires that the guaranteed bonds must be issued to the FFB on terms and conditions consistent with the FFB lending policy. Nineteen comment letters were received expressing concern with this limitation. CFC argues that this is inconsistent with a provision in the statute providing that the guarantees ''shall be fully assignable and transferable'' indicating that they could be issued in the capital markets. The rule also does not require FFB to purchase the offering and it does not discuss the rates, terms, or options for the transaction between the lender and FFB. CFC requests that flexibility be provided to issue the bonds to FFB or in the capital market to maximize the benefit.

RUS understands the CFC argument that the ''best deal'' should be obtained in issuing a bond or not for a guarantee. Therefore, the final rule requires that the guaranteed bond or note be issued to FFB on terms and conditions consistent with comparable government-guaranteed bonds and satisfactory to the Secretary.

Approval requirements to include Office of Management and Budget (OMB) and U.S. Department of Treasury. The proposed rule requires an independent assessment of the application by OMB and FFB prior to a decision on the guarantee being made by the Secretary. Thirty-five (35) comments were received claiming that this is neither needed nor efficient. Other comments suggest that there is no statutory requirement for this process.

RUS is eliminating the requirement that FFB and OMB review the application. Instead, RUS is required to request that FFB review the credit rating of the bond or note to be issued. The expertise that FFB possesses will help to ensure the security of the government guarantee.

Regulatory Procedures Issues

Comments received from the U.S. Chamber of Commerce and one individual suggest that the United States Department of Agriculture did not follow the appropriate procedures in promulgated the proposed rule. RUS has considered these comments and believes they are without merit. For example, RUS has complied with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) by determining that because the procedures contained in the proposed rule apply to only two entities, neither of whom are small, the rule will have no significant impact on small businesses or other small entities. The use of the word ''determine'' in context in which it was used in the published notice that was signed by the head of the agency is synonymous with the word ''certify'' within means ''to confirm formally as true.'' Since RUS certifies that there is no substantial impact on a significant number of small entities, the balance of the comments received on the Regulatory Flexibility Act are inapposite and in any event have more to do with the effects of programs which section 313A funds and which were not the subject of the proposed rulemaking.

Commenters have not correctly applied National Environmental Protection Act (NEPA) implementation regulations of RUS. As authority for their proposition that the proposed rule was subject to a full environmental review involving the public, commenters cited 7 CFR 1794.3. That provision provides merely that the provisions of 7 CFR part 1794 apply to, inter alia, the issuance of new or revised rules. However, Title 7 part 1794 does not require environmental reviews or public participation in such reviews in all cases. The provisions of 7 CFR part 1794 identify and establish categories of actions for environmental review purposes. These categories range from actions that are categorically exempt to those normally requiring the development of an environmental impact statement. RUS regulations do not require the agency to publish a Finding of No Significant Impact (FONSI) each time RUS determines that an action will not have a significant environmental impact. RUS regulations require the publication of a FONSI only when its determination has been made on the basis of an Environmental Assessment (EA). Generally speaking, publications of regulations do not require an EA. It is only the issuance or modification of RUS regulations concerning environmental matters that are listed in 7 CFR part 1794 as normally requiring an EA (7 CFR 1794.23(a)). Accordingly, the discussion of NEPA in the proposed rule complied with NEPA and RUS regulations implementing NEPA.

RUS was not, as some commenters wrote, required to prepare a Statement of Energy Effects to comply with Executive Order (E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''. However, E.O. 13211 does not require the preparation of such statements in connection with every proposed rulemaking that is a

significant regulatory action under E.O. 12866 as the commenters seem to imply. while it is correct that in order for a proposed rule to be a ''significant energy action'' under E.O. 13211, the proposal must be a ''significant regulatory action'' under Executive Order 12866, at least one of two other requirements must be met before the obligation to prepare a statement of energy effects exists. The propose rule must either be ''likely to have significant adverse effect on the supply, distribution, or use of energy'' or it must be so ''designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' E.O. 13211 sections 2(a) and 4(b). Neither of these two factors are present here. Since E.O. 13211 does not apply to the proposed rule, there is no need to address comments about what such an analysis should provide.

Some commenters wrote that the proposed rule did not meet the requirement under Executive Order 12866, ''Regulatory Planning and Review'', requiring all ''significant regulatory actions'' by Federal agencies to undergo cost-benefit assessment by the agency and centralized review by the Office of Information and Regulatory Affairs (OIRA), an organizational subunit of the OMB. RUS did conduct the appropriate regulatory analysis required for issuing the proposed rule to establish this Guarantee of Bonds and Notes program. RUS has provided the appropriate studies and justifications to OIRA for centralized review and the necessary OMB clearances were obtained before publishing the proposed rule and this final rule in the **Federal Register.**

RUS received a few comments to the effect that RUS did not provide adequate opportunity for public participation during the development of the proposed rule and suggesting that the comment period for the proposed rule be extended. RUS believes that there has been ample opportunity for public participation and that any further delays in implementing the program cannot be justified. Section 313A amending the rural Electrification Act of 1936 (7 U.S.C. 940c–1) was signed into law on May 13, 2002. Pub. L. 107–171, Title VI, sec. 6101(a). There are directives in sec. 6101(b) of Pub. L. 107–171 requiring the promulgation of regulations within 180 days of enactment and to implement the program within 240 days. Accordingly, enactment of Section 313A gave notice that rules covering this subject matter would soon be forthcoming. Section 313A itself established many of the program requirements contained in the proposed rule and clearly signaled the principal areas that would be addressed by the program. RUS provided 60 days for comments on the proposed regulations. Perhaps the best evidence demonstrating the adequacy of the public's opportunity for participation in the proposed rulemaking is the fact that RUS received 231 written comments in response to the notice.

List of Subjects in 7 CFR Part 1720

Electric power, Electric utilities, Loan program—energy, reporting and recordkeeping requirements, Rural areas.

■ For reasons set out in the preamble, RUS amends chapter XVII of title 7 of the Code of Federal Regulations by adding a new part 1720 to read as follows:

PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES

Sec.

1720.1 Purpose.
1720.2 Background.
1720.3 Definitions.
1720.4 General standards.
1720.5 Eligibility criteria.
1720.6 Application process.
1720.7 Application evaluation.
1720.8 Issuance of the guarantee.
1720.9 Guarantee Agreement.
1720.10 Fees.
1720.11 Servicing.
1720.12 Reporting requirement.
1720.13 Limitations on guarantees.
1720.14 Nature of guarantee; acceleration of guaranteed bonds.
1720.15 Equal opportunity requirements.

Authority: 7 U.S.C. 901 *et seq.;* 7 U.S.C. 940C.

§ 1720.1 Purpose.

This part prescribes regulations implementing a guarantee program for bonds and notes issued for electrification on telephone purposes authorized by section 313A of the Rural Electrification Act of 1936 (7 U.S.C. 940c–1).

§ 1720.2 Background.

The Rural Electrification Act of 1936 (the ''RE Act'') (7 U.S.C. 901 *et seq.*) authorizes the Secretary to guarantee and make loans to persons, corporations, states, territories, municipalities, and cooperative, non-profit, or limited-dividend associations for the purpose of furnishing or improving electric and telephone service in rural areas. Responsibility for administering electrification and telecommunications loan and guarantee programs along with other functions the Secretary deemed appropriate have been assigned to RUS under the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6941 *et seq.*). The Administrator of RUS has been delegated responsibility for administering the programs and activities of RUS, see 7 CFR 1700.25. Section 6101 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (FSRIA) amended the RE Act to include a new program under section 313A entitled Guarantees for Bonds and Notes Issued for Electrification or Telephone Purposes. This measure became law on May 13, 2002, and directs the Secretary of Agriculture to promulgate regulations that carry out the Program.

§ 1720.3 Definitions.

For the purpose of this part:

Administrator means the Administrator of RUS.

Applicant means a bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis, that is applying for RUS to guarantee a bond or note under this part.

Bond Documents means the trust indenture, bond resolution, guarantee, guarantee agreement and all other instruments and documentation pertaining to the issuance of the guaranteed bonds.

Borrower means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification or rural telephone under the RE Act, or that is seeking such financing.

Concurrent Loan means a loan that a guaranteed lender extends to a borrower for up to 30 percent of the cost of an eligible electrification or telephone purpose under the RE Act, concurrently with an insured loan made by the Secretary pursuant to section 307 of the RE Act.

Federal Financing Bank (FFB) means a government corporation and instrumentality of the United States of America under the general supervision of the Secretary of the Treasury.

Guarantee means the written agreement between the Secretary and a guaranteed bondholder, pursuant to which the Secretary guarantees full repayment of the principal, interest, and call premium, if any, on the guaranteed lender's guaranteed bond.

Guarantee Agreement means the written agreement between the Secretary and the guaranteed lender which sets forth the terms and conditions of the guarantee.

Guaranteed Bond means any bond, note, debenture, or other debt obligation issued by a guaranteed lender on a fixed

or variable rate basis, and approved by the Secretary for a guarantee under this part.

Guaranteed Bondholder means any investor in a guaranteed bond.

Guaranteed Lender means an applicant that has been approved for a guarantee under this part.

Loan means any credit instrument that the guaranteed lender extends to a borrower for any electrification or telephone purpose eligible under the RE Act, including loans as set forth in section 4 of the RE Act for electricity transmission lines and distribution systems (excluding generating facilities) and as set forth in section 201 of the RE Act for telephone lines, facilities and systems.

Loan documents means the loan agreement and all other instruments and documentation between the guaranteed lender and the borrower evidencing the making, disbursing, securing, collecting, or otherwise administering of a loan.

Program means the guarantee program for bonds and notes issued for electrification or telephone purposes authorized by section 313A of the RE Act as amended.

Rating Agency means a bond rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization.

RE Act means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) as amended.

RUS means the Rural Utilities Service, a Rural Development agency of the U.S. Department of Agriculture.

Secretary means the Secretary of Agriculture acting through the Administrator of RUS.

Subsidy Amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal government of a guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on government receipts or outlays, in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et. seq.)

§ 1720.4 General standards.

(a) In accordance with section 313A of the RE Act, a guarantee will be issued by the Secretary only if the Secretary determines, in accordance with the requirements set forth in this part, that:

(1) The proceeds of the guaranteed bonds will be used by the guaranteed lender to make loans to borrowers for electrification or telephone purposes eligible for assistance under this chapter, or to refinance bonds or notes previously issued by the guaranteed lender for such purposes;

(2) At the time the guarantee is executed, the total principal amount of guaranteed bonds outstanding would not exceed the principal amount of outstanding concurrent loans previously made by the guaranteed lender;

(3) The proceeds of the guaranteed bonds will not be used directly or indirectly to fund projects for the generation of electricity; and

(4) The guaranteed lender will not use any amounts obtained from the reduction in funding costs provided by the program to reduce the interest rates borrowers are paying on new or outstanding loans, other than new concurrent loans as provided in 7 CFR part 1710, of this chapter.

(b) During the term of the guarantee, the guaranteed lender shall:

(1) Limit cash patronage refunds, for guaranteed lenders having a credit rating below ''A−'' on its senior secured debt without regard to the guarantee. For such guaranteed lenders, cash patronage refunds are limited to five percent of the total patronage refund eligible. The limit on patronage refunds must be maintained until the credit rating is restored to ''A−'' or above. For those guaranteed lenders subject to patronage limitations, equity securities issued as part of the patronage refund shall not be redeemable in cash during the term of any part of the guarantee, and the guaranteed lender shall not issue any dividends on any class of equity securities during the term of the guarantee.

(2) Maintain sufficient collateral equal to the principal amount outstanding, for guaranteed lenders having a credit rating below ''A−'' on its senior secured debt without regard to the guarantee. Collateral shall be in the form of specific and identifiable unpledged securities equal to the value of the guaranteed amount. In the case of a guaranteed lender's default, the U.S. government claim shall not be subordinated to the claims of other creditors, and the indenture must provide that in the event of default, the government has first rights on the asset. Upon application and throughout the term of the guarantee, guaranteed lenders not subject to collateral pledging requirements shall identify, with the concurrence of the Secretary, specific assets to be held as collateral should the credit rating of its senior secured debt without regard to the guarantee fall below ''A−''. The Secretary has discretion to require collateral at any time should circumstances warrant.

(c) The final maturity of the guaranteed bonds shall not exceed 20 years.

(d) The guaranteed bonds shall be issued to the Federal Financing Bank on terms and conditions consistent with comparable government-guaranteed bonds and satisfactory to the Secretary.

(e) The Secretary shall guarantee payment son guaranteed bonds in such forms and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as determined appropriate for satisfying the requirements of this part. The Secretary shall require the guaranteed lender to enter into a guarantee agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering.

§ 1720.5 Eligibility criteria.

(a) To be eligible to participate in the program, a guaranteed lender must be:

(1) A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise on a non-profit basis; and

(2) Able to demonstrate to the Secretary that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

(b) To be eligible to receive a guarantee, a guaranteed lender's bond must meet the following criteria:

(1) The guaranteed leader must furnish the Secretary with a certified list of the principal balances of concurrent loans then outstanding evidencing that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding; and

(2) The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee;

(c) A lending institution's status as an eligible applicant does not assure that the Secretary will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Secretary from declining to issue a guarantee.

§ 1720.6 Application process.

(a) Applications shall contain the following:

(1) Background and contact information on the applicant;

(2) A term sheet summarizing the proposed terms and conditions of, and the security pledged to assure the applicant's performance under, the guarantee agreement;

(3) A statement by the applicant as to how it proposes to use the proceeds of

the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program;

(4) A pro-forma cash flow projection or business plan for the next five years, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed bonds in accordance with their terms;

(5) Consolidated financial statements of the guaranteed lender for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(6) Evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee;

(7) Evidence of a credit rating, from a Rating Agency, on its senior secured debt without regard to the government guarantee and satisfactory to the Secretary.

(8) Such other application documents and submissions deemed necessary by the Secretary for the evaluation of applicants.

(b) The application process occurs as follows:

(1) The applicant submits an application to the Secretary;

(2) The application is screened by RUS pursuant to 7 CFR 1720.7(a) of this part, to ascertain its threshold eligibility for the program;

(3) RUS evaluates the application pursuant to the selection criteria set forth in 7 CFR 1720.7(b) of this part;

(4) If RUS provisionally approves the application, the applicant and RUS negotiate terms and conditions of the bond documents, and

(5) The applicant offers its guaranteed bonds, and the Secretary upon approval of the pricing, redemption provisions and other terms of the offering, executes the guarantee.

(c) If requested by the applicant at the time it files its application, the General Counsel of the Department of Agriculture shall provide the Secretary with an opinion regarding the validity and authority of a guarantee issued to the lender under section 313A of the RE Act.

§ 1720.7 Application evaluation.

(a) *Eligibility screening.* Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

(b) *Evaluation.* Pursuant to paragraph (a) of this section, applications will be subject to a substantive review, on a competitive basis, by the Secretary based upon the following evaluation factors, listed in order of importance:

(1) The extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds;

(2) The adequacy of the proposed provisions to protect the Federal government, based upon items including, but not limited to the nature of the pledged security, the priority of the lien position, if any, pledged by the applicant, and the provision for an orderly retirement of principal such as an amortizing bond structure or an internal sinking fund;

(3) The applicant's demonstrated performance of financially sound business practices;

(4) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, to generate other economic benefits, including the amount of fee income available to be deposited into the Rural Economic Development Subaccount, maintained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c–1(b)(2)(B)), after payment of the subsidy amount.

(c) *Independent Assessment.* Before a guarantee decision is made by the Secretary, the Secretary shall request that the Federal Financing Bank review the adequacy of the determination by the Rating Agency, required under § 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without the guarantee.

(d) *Decisions by the Secretary.* The Secretary shall approve or deny applications in a timely manner as such applications are received. The Secretary may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS shall notify the applicant in writing of the Secretary's approval or denial of an application. Approvals for guarantees shall be conditioned upon compliance with 7 CFR 1720.4 and 1720.6.

§ 1720.8 Issuance of the guarantee.

(a) The following requirements must be met by the applicant prior to the endorsement of a guarantee by the Secretary.

(1) A guarantee agreement suitable in form and substance to the Secretary must be delivered.

(2) Bond documents must be executed by the applicant setting forth the legal provisions relating to the guaranteed bonds, including but not limited to payment dates, interest rates, redemption features, pledged security, additional borrowing terms including an explicit agreement to make payments even if loans made using the proceeds of such bond or note is not repaid to the lender, other financial covenants, and events of default and remedies;

(3) Prior to the issuance of the guarantee, the applicant must certify to the Secretary that the proceeds from the guaranteed bonds will be applied to fund eligible new loans under the RE Act, to refinance concurrent loans, or to refinance existing debt instruments of the guaranteed lender used to fund eligible loans;

(4) The applicant provides a certified list of concurrent loans and their outstanding balances as of the date the guarantee is to be issued;

(5) Counsel to the applicant must furnish an opinion satisfactory to the Secretary as to the applicant being legally authorized to issue the guaranteed bonds and enter into the bond documents;

(6) No material adverse change occurs between the date of the application and date of execution of the guarantee;

(7) The applicant shall provide evidence of an investment grade rating from a Rating Agency for the proposed guaranteed bond without regard to the guarantee;

(8) The applicant shall provide evidence of a credit rating on its senior secured debt without regard to the guarantee and satisfactory to the Secretary; and

(9) Certification by the Chairman of the Board and the Chief Executive Officer of the applicant (or other senior management acceptable to the Secretary), acknowledging the applicant's commitment to submit to the Secretary, an annual credit assessment of the applicant by a Rating Agency, an annual review and certification of the security of the government guarantee that is audited by an independent certified public accounting firm or federal banking regulator, annual consolidated financial statements audited by an independent certified public accountant each year during which the guarantee bonds are outstanding, and other such information requested by the Secretary.

(b) The Secretary shall not issue a guarantee if the applicant is unwilling or unable to satisfy all requirements.

§ 1720.9 Guarantee Agreement.

(a) The guaranteed lender will be required to sign a guarantee agreement with the Secretary setting forth the

terms and conditions upon which the Secretary guarantees the payment of the guaranteed bonds.

(b) The guaranteed bonds shall refer to the guarantee agreement as controlling the terms of the guarantee.

(c) The guarantee agreement shall address the following matters:

(1) Definitions and principles of construction;

(2) The form of guarantee;

(3) Coverage of the guarantee;

(4) Timely demand for payment on the guarantee;

(5) Any prohibited amendments of bond documents or limitations on transfer of the guarantee;

(6) Limitation on acceleration of guaranteed bonds;

(7) Calculation and manner of paying the guarantee fee;

(8) Consequences of revocation of payment on the guaranteed bonds;

(9) Representations and warranties of the guaranteed lender;

(10) Representations and warranties for the benefit of the holder of the guaranteed bonds;

(11) Claim procedures;

(12) What constitutes a failure by the guaranteed lender to pay;

(13) Demand on RUS;

(14) Assignment to RUS;

(15) Conditions of guarantee which may include requiring the guaranteed lender to adopt measures to ensure adequate capital levels are retained to absorb losses relative to risk in the guaranteed lender's portfolio and requirements on the guaranteed lender to hold additional capital against the risk of default;

(16) Payment by RUS;

(17) RUS payment does not discharge guaranteed lender;

(18) Undertakings for the benefit of the holders of guaranteed bonds, including: notices, registration, prohibited amendments, prohibited transfers, indemnification, multiple bond issues;

(19) Governing law;

(20) Notices;

(21) Benefit of agreement;

(22) Entirety of agreement;

(23) Amendments and waivers;

(24) Counterparts;

(25) Severability, and

(26) Such other matters as the Secretary believes to be necessary or appropriate.

§ 1720.10 Fees.

(a) *Guarantee fee.* An annual fee equal to 30 basis points (0.3 percent) of the amount of the unpaid principal of the guarantee bond will be deposited into the Rural Economic Development Subaccount maintained under section 313(b)(2)(A) of the RE Act.

(b) Subject to paragraph (c) of this section, up to one-third of the 30 basis point guarantee fee may be used to fund the subsidy amount of providing guarantees, to the extent not otherwise funded through appropriation actions by Congress.

(c) Notwithstanding subsections (c) and (e)(2) of section 313A of the RE Act, the Secretary shall, with the consent of the lender and if otherwise authorized by law, adjust the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees.

§ 1720.11 Servicing.

The Secretary, or other agent of the Secretary on his or her behalf, shall have the right to service the guaranteed bond, and periodically inspect the books and accounts of the guaranteed lender to ascertain compliance with the provisions of the RE Act and the bond documents.

§ 1720.12 Reporting requirements.

(a) As long as any guaranteed bonds remain outstanding, the guaranteed lender shall provide the Secretary with the following items each year within 90 days of the guaranteed lender's fiscal year end:

(1) Consolidated financial statements and accompanying footnotes, audited by independent certified public accountants;

(2) A review and certification of the security of the government guarantee, audited by reputable, independent certified public accountants or a federal banking regulator, who in the judgment of the Secretary, has the requisite skills, knowledge, reputation, and experience to properly conduct such a review;

(3) Pro forma projection of the guaranteed lender's balance sheet, income statement, and statement of cash flows over the ensuing five years;

(4) Credit assessment issued by a Rating Agency;

(5) Credit rating, by a Rating Agency, on its senior secured debt without regard to the guarantee and satisfactory to the Secretary;

(6) Other such information requested by the Secretary.

(b) The bond documents shall specify such bond monitoring and financial reporting requirements as deemed appropriate by the Secretary.

§ 1720.13 Limitations on guarantees.

In a given year the maximum amount of guaranteed bonds that the Secretary may approve will be subject to budget authority, together with receipts authority from projected fee collections from guaranteed lenders, the principle amount of outstanding concurrent loans made by the guaranteed lender, and Congressionally-mandated ceilings on the total amount of credit. The Secretary may also impose other limitations as appropriate to administer this guarantee program.

§ 1720.14 Nature of guarantee; acceleration of guaranteed bonds.

(a) Any guarantee executed by the Secretary under this part shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation of which the guaranteed bondholder had actual knowledge at the time it purchased the guaranteed bonds.

(b) Amounts due under the guarantee shall be paid within 30 days of demand by a bondholder, certifying the amount of payment then due and payable.

(c) The guarantee shall be assignable and transferable to any purchaser of guaranteed bonds as provided in the bond documents.

(d) The following actions shall constitute events of default under the terms of the guarantee agreements:

(1) The guaranteed lender failed to make a payment of principal or interest when due on the guaranteed bonds;

(2) The guaranteed bonds were issued in violation of the terms and conditions of the bond documents;

(3) The guarantee fee required by 7 CFR 1720.10 of this part, has not been paid;

(4) The guaranteed lender made a misrepresentation to the Secretary in any material respect in connection with the application, the guaranteed bonds, or the reporting requirements listed in 7 CFR 1720.12; or

(5) The guaranteed lender failed to comply with any material covenant or provision contained in the bond documents.

(e) In the event the guaranteed lender fails to cure such defaults within the notice terms and the timeframe set forth in the bond documents, the Secretary may demand that the guaranteed lender redeem the guaranteed bonds. Such redemption amount will be in an amount equal to the outstanding principal balance, accrued interest to the date of redemption, and prepayment premium, if any. To the extent the Secretary makes any payments under the guarantee, the Secretary shall be deemed the guaranteed bondholder.

(f) To the extent the Secretary makes any payments under the guarantee, the interest rate the government will charge to the guaranteed lender for the period

of default shall accrue at an annual rate of the greater of 1.5 times the 91-day Treasury-Bill rate or 200 basis points (2.00%) above the rate on the guaranteed bonds.

(g) Upon guaranteed lender's event of default, under the bond documents, the Secretary shall be entitled to take such other action as is provided for by law or under the bond documents.

§ 1720.15 Equal opportunity requirements.

Executive Order 12898, ''Environmental Justice.'' To comply with Executive Order 12898, RUS will conduct a Civil Rights Analysis for each guarantee prior to approval. Rural Development Form 2006–28, ''Civil Rights Impact Analysis'', will be used to document compliance in regards to environmental justice. The Civil Rights Impact Analysis will be conducted prior to application approval or a conditional commitment of guarantee.

Dated: October 26, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 04–24353 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18582; Directorate Identifier 2003–NM–35–AD; Amendment 39–13831; AD 2004–22–03]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model EMB–135 and –145 series airplanes. This AD requires measuring the fillet radius dimension of the trunnion fitting webs of the wings; and reworking the fillet radius of the trunnion fitting web in order to increase the radius, doing related investigative actions, and doing applicable corrective action, if necessary. This AD is prompted by a report indicating that trunnion fittings of the wings have been manufactured with a web fillet radius smaller than the minimum required by the design data, which may induce the occurrence of fatigue cracks at the root of the trunnion fillet radius and adjacent structures (*e.g.*, spar and ribs). We are issuing this AD to detect and correct fatigue cracking of the wing trunnion fittings or adjacent structure, which could result in failure of the main landing gear, consequent damage to surrounding structure, and possible loss of control of the airplane during landing.

DATES: This AD becomes effective December 3, 2004.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the **Federal Register** as of December 3, 2004.

ADDRESSES: For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

FOR FURTHER INFORMATION CONTACT:

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

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain EMBRAER Model EMB–135 and –145 series airplanes. The proposed AD was published in the **Federal Register** on July 13, 2004 (69 FR 41994), to require measuring the fillet radius dimension of the trunnion fitting webs of the wings; and reworking the fillet radius of the trunnion fitting web in order to increase the radius, doing related investigative actions, and doing applicable corrective action, if necessary.

Comments

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

Conclusion

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

Costs of Compliance

This AD will affect about 60 airplanes of U.S. registry. The measurement will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $7,800, or $130 per airplane.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–22–03 Empresa Brasileira de Aeonautica S.A. (EMBRAER): Amendment 39–13831. Docket No. FAA–2004–18582; Directorate Identifier 2003–NM–35–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 3, 2004.

Affected ADs

(b) None.

Applicability: (c) This AD applies to EMBRAER Model EMB–135 and –145 series airplanes, as listed in EMBRAER Service Bulletin 145–57–0034, Change 01, dated January 9, 2002; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report indicating that trunnion fittings of the wings have been manufactured with a web fillet radius smaller than the minimum required by the design data, which may induce the occurrence of fatigue cracks at the root of the trunnion fillet radius and adjacent structures (*e.g.*, spar and ribs). We are issuing this AD to detect and correct fatigue cracking of the wing trunnion fittings or adjacent structure, which could result in failure of the main landing gear, consequent damage to surrounding structure, and possible loss of control of the airplane during landing.

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

Service Bulletin

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of EMBRAER Service Bulletin 145–57–0034, Change 01, dated January 9, 2002.

Measurement

(g) Before the accumulation of 2,000 total flight cycles, or within 500 flight hours after the effective date of this AD, whichever occurs later, measure the fillet radius dimension of the trunnion fitting webs of the wings in accordance with paragraph 3.(C), ''Part I,'' of the service bulletin.

(1) If the fillet radius value is equal to or greater than 0.1969 inches (5 mm), no further action is required by this AD.

(2) If a fillet radius value is less than 0.0394 inches (1 mm), before further flight, do the actions specified in paragraph (h) of this AD.

(3) If the fillet radius value is equal to or greater than 0.0394 inch (1 mm), but less than 0.1969 inch (5 mm), before the accumulation of 4,000 total flight cycles, or within 500 flight hours after the effective date of this AD, whichever occurs later, do the actions specified in paragraph (h) of this AD.

Rework and Further Corrective Actions, if Necessary

(h) Rework the fillet radius of the trunnion fitting web to increase the radius, do related investigative actions, and do applicable corrective actions by accomplishing all the actions specified in paragraph 3.(D), ''Part II,'' of the service bulletin. Do the actions in accordance with the service bulletin, except as provided by paragraph (i) of this AD. Any applicable corrective actions must be done before further flight.

(1) If the final fillet radius is less than 0.1969 inch (5 mm) and the radius limit contour is reached, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Departmento de Aviacao Civil (DAC) (or its delegated agent).

(2) If the final fillet radius is equal to or greater than 0.1969 inches (5 mm), before further flight, shot-peen the reworked area in accordance with paragraph 3.(E), ''Part III,'' of the service bulletin.

(i) If any crack is found in the structure during the related investigative action required by paragraph (h) of this AD, before further flight, repair in accordance with either the Manager, International Branch, ANM–116, Transport Airplane Directorate; or the DAC (or its delegated agent).

Credit for Previous Revisions of Service Bulletin

(j) Except as provided by paragraphs (h)(1) and (i) of this AD, measurements and rework of the fillet radius done before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–57–0034, dated October 11, 2001, are acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOC)

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

Related Information

(l) Brazilian airworthiness directive 2001–12–03R1, effective February 4, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use EMBRAER Service Bulletin 145–57–0034, Change 01, dated January 9, 2002, to perform the actions that are required by this AD, unless the AD specifies otherwise. The service bulletin contains these effective pages:

Page number	Revision level shown on page	Date shown on page
1, 2, 9, 10	01	Jan. 9, 2002.
3–8, 11–27	Original	Oct. 11, 2001.

The Director of the **Federal Register** approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building,Washington, DC.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 04–23925 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–51–AD; Amendment 39–13840; AD 2004–22–12]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for MD Helicopters, Inc. Model 600N helicopters that requires replacing the fuselage Station 75 control support bracket assembly (control support bracket), reducing the life limit, and revising the Limitations section of the applicable maintenance manual to state the reduced life limits on certain serial-numbered helicopters. This amendment is prompted by information received from the manufacturer indicating that the fatigue life of the control support bracket is shorter than the original analysis indicated. The actions specified by this AD are intended to prevent failure of the control support bracket and subsequent loss of control of the helicopter.

DATES: Effective December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model

helicopters was published in the **Federal Register** on July 29, 2004 (69 FR 45291). That action proposed to require replacing the control support bracket assembly, part number (P/N) 369N2608–11, on helicopters that have a yaw stability augmentation system (YSAS) installed, with an airworthy assembly, P/N 600N2608–1. The revised time limits are dependent upon the time the YSAS was initially installed. Also proposed was revising the applicable maintenance manual to state the reduced life limits.

The FAA has reviewed MD Helicopters, Inc. Service Bulletin No. SB600N–040, dated September 18, 2003, which describes the revised finite life for the control support bracket on certain serial-numbered helicopters, and replacing them upon reaching the revised life limit, or no later than November 30, 2005, whichever occurs first.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 13 helicopters of U.S. registry. Replacing the control support bracket will take approximately 40 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $5,617 per helicopter. Based on these figures, the total estimated cost impact of this AD on U.S. operators is $106,821 to replace the control support bracket on each helicopter in the fleet.

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2004–22–12 MD Helicopters, Inc.: Amendment 39–13840. Docket No. 2003–SW–51–AD.

Applicability: Model 600N helicopters, serial numbers with a prefix of ''RN'' and numbers 025, 029, 032, 034 through 038, 040, 041, 045, 048, or 067; or, any Model 600N helicopter with a yaw stability augmentation system (YSAS) installed, and with a control support bracket assembly, part number (P/N) 369N2608–11, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fuselage Station 75 control support bracket assembly (control support bracket) and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace the control support bracket, part number 369N2608–11, with an airworthy control support bracket assembly, P/N 600N2608–1, no later than November 30, 2005, or by the time the helicopter reaches the hours time-in-service (TIS) listed in the chart below, whichever occurs first:

Helicopter serial number	Revised finite life (TIS)
RN025	2556
RN029	2377
RN032	2498
RN034	2456
RN035	2243
RN036	2652
RN037	2544
RN038	2531
RN040	2562
RN041	2763
RN045	2015
RN048	2125
RN067	1600

Note: MD Helicopters, Inc. Service Bulletin No. SB600N–040, dated September 18, 2003, pertains to the subject of this AD.

(b) For helicopters with a YSAS installed that are not listed in the previous table, replace the control support bracket, P/N 369N2608–11, with an airworthy control support bracket, P/N 600N2608–1, no later than November 30, 2005, or by the time the helicopter reaches 1,600 hours TIS since the installation of the YSAS.

(c) For helicopters with no YSAS installed, but with a control support bracket, P/N 369N26080–11, installed, replace the control support bracket, with an airworthy control support bracket, P/N 600N2608–1, prior to the installation of a YSAS.

(d) This AD revises the Limitations section of the applicable maintenance manual by reducing the life limit of the control support bracket assembly, part number 369N2608–11, to the life limits stated in paragraph (a) of this AD or to 1,600 hours TIS, whichever occurs first.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) This amendment becomes effective on December 3, 2004.

Issued in Fort Worth, Texas, on October 22, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–24228 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18815; Airspace Docket No. 04–AWP–2]

Modification of Class D and Class E Airspace; Prescott, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D and Class E surface areas at Ernest A. Love Field (PRC) in Prescott, AZ. A review of airport operations and airspace made this action necessary. This action modifies the Prescott Class D and Class E surface areas to include airspace extending upward from the surface to and including 7,500 feet MSL within a 6-mile radius of Ernest A. Love Field.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Branch, Western Terminal Operations, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA; telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

History

On Monday, August 30, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class D and Class E airspace at Prescott, AZ. (69 FR 52839). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000 and Class E surface area airspace designations are published in paragraph 6002 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D and Class E airspace at Prescott, AZ. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP AZ D Prescott, AZ [Revised]

Prescott, Ernest A. Love Field, AZ
(Lat. 34°39′16.1″ N, long. 112°25′10.5″ W)

That airspace extending upward from the surface to and including 7,500 feet MSL within a 6-mile radius of Ernest A. Love Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

* * * * *

AWP AZ E2 Prescott, AZ [Revised]

Prescott, Ernest A. Love Field, AZ
(Lat. 34°39′16.1″ N, long. 112°25′10.5″ W)

That airspace extending upward from the surface to and including 7,500 feet MSL within a 6-mile radius of Ernest A. Love Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on October 18, 2004.

John Clandy,

Area Director, Western Terminal Operations.

[FR Doc. 04–24258 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19334; Airspace Docket No. 14–ACE–63]

Modification of Class E Airspace; Sedalia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Sedalia, MO. A review of the Class E airspace area extending upward from 700 feet above the surface at Sedalia, MO revealed it is not in compliance with established airspace criteria. This airspace area is enlarged and modified to conform to FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Sedalia Memorial Airport.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 30, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19334/Airspace Docket No. 04–ACE–63, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Sedalia, MO. An examination of controlled airspace for Sedalia, MO revealed the Class E airspace area does not comply with airspace requirements for diverse departures from Sedalia Memorial Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus

the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. Additionally, the examination revealed the description and dimensions of the south extension to the airspace area were not in compliance with FAA Orders 7400.2E and 8260.19C, Flight Procedures and Airspace and that the north extension is no longer required. This amendment expands the airspace area from a 6.7-mile radius to a 7.1-mile radius of Sedalia Memorial Airport, defines the south extension in relation to the Sedalia nondirectional radio beacon (NDB) and eliminates the north extension. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from the executing SIAPs to Sedalia Memorial Airport and bring the legal descriptions of the Sedalia, MO Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19334/Airspace Docket No. 04–ACE–63.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Sedalia, MO

Sedalia Memorial Airport, MO
(Lat. 38°42′25″ N., long. 93°10′34″ W.)
Sedalia NDB
(Lat. 38°42′16″ N., long. 93°10′36″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Sedalia Memorial Airport and within 2.5 miles each side of the 166° bearing from the Sedalia NDB extending from the 7.1-mile radius of the airport to 7 miles south of the NDB.

* * * * *

Issued in Kansas City, MO, on October 21, 2004.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–24259 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19332; Airspace Docket No. 04–ACE–61]

Modification of Class E Airspace; Hartington, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Hartington, NE. A review of the Class E airspace area extending upward from 700 feet above the surface at Hartington,

NE revealed it is not in compliance with established airspace criteria and does not reflect the current Hartington Municipal Airport airport reference point (ARP). This airspace area is modified to conform to FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Hartington Municipal Airport.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 30, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19332/ Airspace Docket No. 04–ACE–61, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Hartington, NE. An examination of controlled airspace for Hartington, NE revealed the Class E airspace area does not comply with airspace requirements for diverse departures from Hartington Municipal Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The legal description of the Class E airspace area does not reflect the correct Hartington Municipal Airport ARP. The examination also revealed compliance with airspace requirements for diverse departures eliminates the need for an extension to the airspace area.

This action enlarges the Hartington, NE Class E airspace area extending upward from 700 feet above the surface from a 6.3-mile radius to an 8.6-mile radius of Hartington Municipal Airport. It eliminates the southeast extension, deletes reference to the Yankton very high frequency omni-directional range (VOR)/distance measuring equipment (DME) in the legal description and corrects the Hartington Municipal Airport ARP in the legal description. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Hartington Municipal airport and bring the legal description of the Hartington, NE Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19332/Airspace Docket No. 04–ACE–61.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Hartington, NE

Hartington Municipal Airport, NE
(Lat. 42°36′13″ N., long. 97°15′10″ W.)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of Hartington Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 21, 2004.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–24262 Filed 10-28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19331; Airspace Docket No. 04–ACE–60]

Modification of Class E Airspace; Harvard, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Harvard, NE. A review of the Class E airspace area extending upward from 700 feet above the surface at Harvard, NE revealed it does not reflect the current Harvard State Airport airport reference point (ARP) and is not in compliance with established airspace criteria. This airspace area is modified to conform to FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 30, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19331/Airspace Docket No. 04–ACE–60, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Harvard, NE. An examination of controlled airspace for Harvard, NE revealed that the Harvard State Airport ARP used in the legal description for this Class E airspace area is incorrect. The examination also revealed that the Class E airspace area extension is no longer required in order for the airspace area to comply with airspace requirements in FAA Orders 7400.2E, Procedures for Handling Airspace Matters and 8260.19C, Flight Procedures and Airspace.

This action corrects the Harvard State Airport ARP in the legal description, deletes the airspace extension and brings the legal description of the airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

''Comments to Docket No. FAA–2004–19331/Airspace Docket No. 04–ACE–60.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Harvard, NE

Harvard State Airport, NE
(Lat. 40°39′05″ N., long. 98°04′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Harvard State Airport.

Issued in Kansas City, MO, on October 21, 2004.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–24261 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18697; Airspace Docket No. 04–AWP–4]

Establishment of Class E Airspace; Napa, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area to support instrument operations into Napa County Airport. This action will enable operations at 4000 feet above Mean Sea Level (MSL) along the Sausalito transition to the VOR RWY 6 instrument approach procedure. A review of airspace and air traffic control operations made this action necessary. The effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations.

EFFECTIVE DATE: 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Branch, Western Terminal Operations, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, August 17, 2004, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Napa, CA. (69 FR 51019). The proposal was to establish additional controlled airspace extending upward from 700 feet or more above the surface of the earth to enable Oakland Air Route Traffic Control Central to route aircraft along the Sausalito transition at 4000 feet above Mean Sea Level. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Napa, CA to accommodate aircraft executing instrument flight procedures into Napa County Airport. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Napa, CA [New]

Napa County Airport, CA
(Lat. 38°12′47″N, long. 122°16′50″ W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Napa County Airport, and that airspace bounded by a line beginning at lat. 38°02′07″ N, long. 122°39′41″ W; to lat. 37°55′05″ N, long. 122°30′56″ N; to lat. 37°51′19″ N, long. 122°30′56″ W; to lat. 37°50′26″ N, long. 122°36′17″ W; to the point of beginning.

* * * * *

Issued in Los Angeles, California, on October 18, 2004.

John Clancy,

Area Director, Western Terminal Operations.

[FR Doc. 04–24263 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19330; Airspace Docket No. 04–ACE–59]

Modification of Class E Airspace; Hastings, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at Hastings, NE. A review of the controlled airspace areas at Hastings, NE revealed noncompliance with criteria for diverse departures from Hastings Municipal Airport. The review also identified other discrepancies in the legal descriptions for the Hastings, NE Class E airspace areas. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Hastings Municipal Airport. It also corrects discrepancies in the legal descriptions of Hastings, NE Class E airspace areas and brings the airspace areas and legal descriptions into compliance with FAA Orders.

DATES: The direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 30, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19330/ Airspace Docket No. 04–ACE–59, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Hastings, NE. An examination of controlled airspace for Hastings, NE revealed that these Class E airspace areas do not comply with airspace requirements for diverse departures from Hastings Municipal Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The legal description of neither Class E airspace area reflects the correct Hastings Municipal Airport reference point (ARP). The examination also revealed the incorrect dimensions of extensions to the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface.

The dimensions of the Hastings, NE Class E airspace area designated as a surface area are modified to accommodate all SIAPs serving the airport and to provide adequate controlled airspace for diverse departures. The radius of this airspace area is increased from 4.1 to 4.7 miles. The southeast extension to the airspace area is defined in relation to the Hastings very high frequency omni-directional range (VOR)/distance measuring equipment (DME), 137° radial, increased in width from 1.8 to 2.4 miles each side of centerline and defined in length as extending 7 miles southeast of the VOR/DME. The southwest extension to the airspace area is defined in relation to the VOR/DME 219° radial, decreased in width from 2.6 to 2.4 miles each side of centerline and defined in length as extending 7 miles southwest of the VOR/DME. The northwest extension to the airspace area is defined in relation to the 330° bearing from the airport and decreased in length from 8.3 to 5.6 miles from the airport. The dimensions of the Hastings, NE Class E airspace area extending upward from 700 feet above the surface are modified to appropriate dimensions to accommodate all SIAPs serving the airport and to provide adequate controlled airspace for diverse departures. The radius of this airspace area is increased from a 6.7 to 7.2 miles and all extensions are eliminated. The Hastings VOR/DME is added to the legal description for the Class E area designated as a surface area and the Hastings Municipal Airport ARP is corrected in both legal descriptions. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Hastings Municipal Airport and bring the legal descriptions of the Hastings, NE Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C, Flight Procedures and Airspace. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments

on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19330/Airspace Docket No. 04–ACE–59.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Hastings, NE

Hastings Municipal Airport, NE
(Lat. 40°36′19″ N., long. 98°25′40″ W.)
Hastings VOR/DME
(Lat. 40°36′16″ N., long. 98°25′47″ W.)

Within a 4.7-mile radius of Hastings Municipal Airport; and within 2.4 miles each side of the Hastings VOR/DME 137° radial extending from the 4.7-mile radius of the airport to 7 miles southeast of the VOR/DME; and within 2.4 miles each side of the Hastings VOR/DME 219° radial extending from the 4.7-mile radius of the airport to 7 miles southwest of the VOR/DME; and within 1.8 miles each side of the 330° bearing from the Hastings Municipal Airport extending from the 4.7-mile radius to 5.6 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Hastings, NE

Hastings Municipal Airport, NE
(Lat. 40°36′19″ N., long. 98°25′40″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Hastings Municipal Airport.

* * * * *

Issued in Kansas City, MO on October 19, 2004.

Paul J. Sheridan,

Area Director, Western Flight Services Operations.

[FR Doc. 04–24264 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR 71

[Docket No. FAA–2004–19325; Airspace Docket No. 04–ACE–54]

Modification of Class E Airspace; Dodge City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Tuesday, October 19, 2004, (69 FR 61439) [FR Doc. 04–23387]. It corrects an error in the legal description of the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 04–23387, published on Tuesday, October 19, 2004, (69 FR 61439) modified the Class E airspace area designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS. The modification corrected discrepancies in the Dodge City Regional Airport airport reference point used in the legal descriptions, corrected the airspace dimensions to protect for diverse departures, established an extension to the airspace area extending upward from 700 feet above the surface and brought the legal descriptions of the Dodge City, KS Class E airspace areas into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. However, there was a typographical error in the legal description for the Class E airspace area extending upward from 700 feet above the surface.

■ Accordingly, pursuant to the authority delegated to me, the legal description of the Class E airspace area extending upward from 700 feet above the surface at Dodge City, KS, as published in the **Federal Register** on Tuesday, October 19, 2004, (69 FR 61439) [FR Doc. 04–23387] is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

■ On page 61440, Column 2, fourth paragraph, third line from the bottom, change ''6.8'' to read ''6.7''.

Issued in Kansas City, MO on October 19, 2004.

Paul J. Sheridan,

Area Director, Western Flight Services Operations.

[FR Doc. 04–24265 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19333; Airspace Docket No. 04–ACE–62]

Modification of Class E Airspace; Warrensburg, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Warrensburg, MO. A review of the Class E airspace area extending upward from 700 feet above the surface at Warrensburg, MO revealed it does not reflect the current Skyhaven Airport airport reference point (APR) and is not in compliance with established airspace criteria. This airspace area in enlarged and modified to conform to FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 30, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19333/ Airspace Docket No. 04–ACE–62, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Warrensburg, MO. An examination of controlled airspace for Warrensburg, MO revealed that the Skyhaven Airport ARP used in the legal description for this Class E airspace area is incorrect and that the airspace area does not comply with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also revealed that the Class E airspace area extension is no longer required in order for the airspace area to comply with airspace requirements in FAA Orders 7400.2E, and 8260.19C, Flight Procedures and Airspace. This action expands the Warrensburg, MO Class E airspace area extending upward from 700 feet above the surface from a 6-mile radius to a 7-mile radius of Skyhaven Airport, corrects the ARP in the legal description, deletes the airspace extension and brings the legal description of the airspace area into compliance with FAA Orders 7400.2E and 8620.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they made desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19333/Airspace Docket No. 04–ACE–62.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory FlexibilityAct.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Warrensburg, MO

Warrensburg, Skyhaven Airport, MO
(Lat. 38°47′03″ N., long 93°48′10″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Skyhaven Airport.

* * * * *

Issued in Kansas City, MO, on October 21, 2004.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–24260 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1910

Debarment and Suspension Procedures

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: In accordance with its statutory procurement authorities, the Central Intelligence Agency (CIA) has established a policy whereby the rights of CIA contractors in all matters involving debarment and suspension will be governed by the debarment and suspension provisions of the Federal Acquisition Regulation.

DATES: Effective October 29, 2004.

FOR FURTHER INFORMATION CONTACT: Harvy P. Cooper, Legal Staff, Office of the Chief Information Officer, Central Intelligence Agency, telephone 703–613–1287.

SUPPLEMENTARY INFORMATION: None.

List of Subjects in 32 CFR Part 1910

Debarment and suspension procedures.

■ For the reasons stated in the preamble, the Central Intelligence Agency adds 32 CFR Part 1910 as follows:

PART 1910—DEBARMENT AND SUSPENSION PROCEDURES

Sec.
1910.1 General.

Authority: 50 U.S.C. 401–442; 50 U.S.C. 403a–403u; 48 CFR ch. 1, subpart 9.4.

§ 1910.1 General.

The Central Intelligence Agency (CIA), in accordance with its authorities under the Central Intelligence Agency Act of 1949, as amended, and the National Security Act of 1947, as amended, has an established debarment and suspension process in accordance with subpart 9.402(d) of the Federal Acquisition Regulation (FAR). This process and the causes for debarment and suspension are consistent with those found in FAR 9.406 and 9.407. The rights of CIA contractors in all matters involving debarment and suspension are hereby governed by the provisions of subpart 9.4 of the FAR.

Dated: October 14, 2004.

Edmund Cohen,

Director of Information Management Services, Office of the Chief Information Officer.

[FR Doc. 04–24218 Filed 10–28–04; 8:45 am]

BILLING CODE 6310–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–052]

RIN 1625–AA09

Drawbridge Operation Regulation; Spa Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the S181 Bridge, mile 0.4, across Spa Creek, at Annapolis, Maryland. These regulations are necessary to facilitate public safety and expedite vehicular traffic from the City of Annapolis after the annual firework display. This change to the drawbridge operation schedule will allow the S181 Bridge to remain in the closed position from 8:30 p.m. to 11 p.m. on July 4th, of every year. In the event of inclement weather, the alternate date is July 5th.

DATES: This rule is effective: November 29, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket CGD05–04–052 and are available for inspection or copying at the Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 17, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Spa Creek, Annapolis, MD'' in the **Federal Register** (69 FR 27870). We received no comments on the proposed rule. No public meeting was requested or held.

Background and Purpose

The City of Annapolis Recreation and Parks Department (the Department) on behalf of Maryland Department of Transportation, who owns and operates the S181 Bridge, requested a change to the operating regulations set out in 33 CFR 117.571.

In accordance with 33 117.37(a) for reason of public safety or for public functions, the District Commander may authorize the opening and closing of a drawbridge for a specified period of time.

Due to the high volume of spectators that attend this annual event, it is necessary to close the draw span to vessels between the hours of 8:30 p.m. to 11 p.m. to help expedite exiting vehicular traffic from the City of Annapolis after the fireworks display. This will reduce vehicular traffic congestion and increase public safety.

Under this rule, the S181 Bridge will be allowed to remain in the closed position to vessels from 8:30 p.m. to 11 p.m. on July 4th, of every year. In the event of inclement weather, the alternate date is July 5th.

Since the Annapolis Fireworks Display is a well-known annual event, and it is publicly advertised, vessel operators can arrange their transits to minimize any impact caused by the closure. Vessels with a mast height less than 15 feet at high water can still

transit the bridge in the closed position during this event.

Discussion of Comments and Changes

The Coast Guard received no comments on the NPRM for the Spa Creek Bridge and no changes are being made to this final rule.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This conclusion was based on the fact that this final rule will have a very limited impact on maritime traffic transiting this area. Since Spa Creek will remain open to navigation during this event, mariners with mast height less than 15 feet may still transit through the S181 Bridge.

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 final rule will not have a significant economic impact on a substantial number of small entities because even though the rule closes the S181 Bridge to mariners, those with mast height of less than the 15 feet at high water can still transit through the bridge during the closed hours. There are no alternate routes.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), 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. No assistance was asked for, or given to assist Small Entities.

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This final rule meets applicable standards in section 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this final 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 final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499, Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Amend § 117.571 by revising paragraph (c) to read as follows:

§ 117.571 Spa Creek.

* * * * *

(c) On Saturdays, Sundays, and holidays year-round, the draw shall open on the hour and half-hour for vessels waiting to pass. Except on July 4th of every year from 8:30 p.m. to 11 p.m., the draw need not open for vessels, and in the event of inclement weather, the alternate date is July 5th.

Dated: October 18, 2004.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 04–24254 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2004–TX–0002; FRL–7830–8]

Approval and Promulgation of Implementation Plans; Texas; Memorandum of Agreement Between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the Texas Commission on Environmental Quality (TCEQ) on February 23, 2004. This revision concerns the Dallas/Fort Worth ozone nonattainment area. Specifically, EPA is approving incorporation of a Memorandum of Agreement (MOA) between the TCEQ and the North Central Texas Council of Governments (NCTCOG) into the SIP. This MOA commits the NCTCOG to provide the Dallas-Fort Worth International Airport with emissions offsets in the amount of 0.18 tons per day (tpd) of nitrogen oxides (NO_X) and 0.04 tpd of volatile organic compounds (VOCs) in 2007 and to adjust the modeled 2015 on-road emission estimates to reflect an increase of 1.17 tpd of NO_X and 0.26 tpd of VOCs, which must be accommodated in future transportation conformity determinations. This action is necessary in order for the Federal Aviation Administration (FAA) to address requirements under the general conformity regulations.

DATES: This rule is effective on December 28, 2004 without further notice, unless EPA receives adverse comment by November 29, 2004. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2004–TX–0002, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://docket.epa.gov/rempub/*. Regional Materials in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.
- EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6comment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number (214) 665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R06–OAR–2004–TX–0002. EPA's policy is that all comments received will be included in the public file without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Materials in EDocket (RME), regulations.gov or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the federal regulations.gov website are ''anonymous access'' systems, 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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 and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at *http://docket.epa.gov/rempub/*. 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 materials relevant to this rulemaking are available either electronically in RME or in the official file, which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal

holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quailty, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Peggy Wade, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7247; fax number (214) 665–7263; e-mail address *wade.peggy@epa.gov.*

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

Outline

I. What Action is EPA Taking?
II. Why Was this SIP Revision Submitted?
III. What is the Effect of this Action?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

On January 14, 2004, the TCEQ adopted a Memorandum of Agreement (MOA) between the Commission and the NCTCOG's Regional Transportation Council (RTC). At the same time, TCEQ adopted a revision to the Texas SIP to incorporate this MOA into it. This MOA commits the RTC to provide the Dallas-Fort Worth International Airport with emissions offsets in the amount of 0.18 tpd of NO_X and 0.04 tpd of VOCs in 2007 and to adjust the modeled 2015 on-road mobile source emissions estimates by an increase of 1.17 tpd and 0.26 tpd of NO_X and VOCs, respectively, in future transportation conformity demonstrations.

EPA is taking direct final action to approve the incorporation of this MOA into the DFW SIP.

II. Why Was This SIP Revision Submitted?

The Dallas-Fort Worth International Airport (DFWIA) notified the TCEQ and EPA of upcoming aviation projects which would trigger the need for a general conformity determination by the Federal Aviation Administration (FAA). These projects include construction of a new terminal (Terminal F), addition of a new cargo complex, improvement of airport parking, changes to current operating restrictions of existing terminal facilities, and other related projects included in the DFW Airport Master Plan.

The DFW area is a nonattainment area for the air pollutant ozone, and is operating under a State Implementation Plan (SIP) to control the emissions of NO_X and VOCs, which are ozone precursor pollutants. Under the Federal (40 CFR part 51) and Texas (30 TAC 101.30) general conformity rules, certain types of Federal actions require a determination as to whether the total emissions from the action conform with the applicable SIP, unless the resultant emissions are expected to be below the *de minimis* levels identified in the Clean Air Act (40 CFR 51.853(b)(1)). The *de minimis* level for the DFW one-hour nonattainment area is 50 tons per year. The applicable SIP, in this case, is the 15% ROP SIP conditionally approved by EPA on November 10, 1998 (63 FR 62943).

Based on submitted estimates of direct and indirect NO_X and VOC emissions resulting from these projects, emissions are expected to exceed the *de minimis* level of 50 tons per year during some of the project years. During the one-hour attainment year of 2007, only NO_X estimates exceed this level (0.18 NO_X tpd or 65.7 NO_X tpy), but in the peak operation year of 2015 both precursor pollutants are expected to exceed the *de minimis* level (1.16 NO_X tpd and 0.26 tpd VOC). As a result a general conformity determination by the FAA is required. The conformity regulations provide several options to meet this requirement. One option is to establish enforceable measures which offset the expected emissions from the project.

The DFWIA worked with the Regional Transportation Council in 2002 to identify emission reduction measures to be used to offset the emissions associated with these airport expansion projects. On December 12, 2002, the RTC resolved to implement emission reduction measures to provide offsets for use by the DFWIA to meet general conformity requirements for the year 2007. At a minimum, these measures will offset the 0.18 tpd of NO_X and 0.04 tpd of VOCs that are expected to be generated in 2007 by the Terminal F projects. In addition, the RTC resolved to provide emission reductions in the amount of 1.17 tpd of NO_X and 0.26 tpd of VOCs for the year 2015. This will be accomplished by incorporating these expected emissions into the Metropolitan Transportation Plan for the year 2015, for which the total estimated emissions cannot exceed the emissions cap set by the motor vehicle emissions budget for that year. These emission reduction commitments are intended to assist the FAA in making a general conformity determination for the planned airport expansion projects associated with construction of Terminal F. (Note that although the conformity analysis will be conducted for 2007, the reductions that are the source of the offsets will be continuing in nature over the relevant time period and will not be relied on for other purposes or for other years. Details on the emission reduction measures are available in the Technical Support Document associated with this action.)

III. What Is the Effect of This Action?

EPA intends to take direct final action approving this SIP revision providing emission reduction offsets for 2007 and a commitment that the NCTCOG will account for expected project emissions in 2015 as part of its Metropolitan Transportation Plan. These emission reduction commitments will assist the FAA in making a conformity determination for certain projects included in the DFW Airport Master Plan.

The general conformity rules require these measures to be enforceable under both state and Federal law (40 CFR 51.860(g)). Upon the effective date of our action, these measures will be federally enforceable. The MOA between TCEQ and the RTC was adopted by the state on January 14, 2004 and was incorporated in the State Implementation Plan for the DFW ozone nonattainment area on that same day. Thus, these measures are already enforceable by state law.

IV. Final Action

EPA is approving the revision to the DFW ozone SIP providing emission reduction offsets to DFW International Airport for the year 2007 and a commitment that the NCTCOG will account for expected emissions from certain improvement projects planned for DFWIA in 2015 as part of its Metropolitan Transportation Plan.

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act and EPA conformity regulations, and is consistent with EPA policy. Therefore, we are approving the request of TCEQ to revise the SIP for the DFW ozone nonattainment area to incorporate this MOA between TCEQ and the Regional Transportation

Council of the North Central Texas Council of Governments.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on December 28, 2004 without further notice unless we receive adverse comment by November 29, 2004. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements 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 of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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 December 28, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 19, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. In § 52.2270, the table in paragraph (e) entitled ''EPA approved nonregulatory provisions and quasi-regulatory measures'' is amended by adding one new entry to the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattaintment area	State approval/submittal date	EPA approval date	Comments
* * *	* *	*	*	*
Memorandum of Agreement between Texas Council on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Forth Worth International Airport.	Dallas-Fort Worth	01/14/04	10/29/04	

[FR Doc. 04–24127 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[R05–OAR–2004–IN–0002; FRL–7826–8]

Approval and Promulgation of Plan Revisions; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving Indiana's February 10, 2004, and April 12, 2004, submittal of a revision to its existing emission reporting rule to be consistent with the emission statement program requirements for stationary sources in the Clean Air Act (CAA). On April 12, 2004, Indiana submitted its final rule as published in the Indiana Register. Indiana held a public hearing on the submittal on December 3, 2003. The rationale for the approval and other information are provided in this rulemaking action.

DATES: This ''direct final'' rule is effective on December 28, 2004 unless EPA receives adverse written comments by November 29, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket ID No. R05–OAR–2004–IN–0002 by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/index.jsp* material in Edocket(RME), EPA's electronic public docket and connect system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

E-mail: *bortzer.jay@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

Instructions: Direct your comments to Regional Materials in Edocket (RME) ID No. R05–OAR–2004–IN–0002. EPA's policy is that all comments received will be included in the public docket without change, 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 Regional Material in Edocket (RME), regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, 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 RME or 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the Regional Materials in EDocket (RME) index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.) This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031. *hatten.charles@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information
A. Does This Action Apply to Me?
B. How Can I Get Copies of This Document and Other Related Information?
C. How and to Whom Do I Submit Comments?
II. What Is Required by the Clean Air Act and How does It Apply to Indiana?
III. What Change Is Indiana Requesting?
IV. Why Is This Request Approvable?
V. Statutory and Executive Order Review

I. General Information

A. Does This Action Apply to Me?

This rulemaking applies to stationary point sources located in areas designated nonattainment under subpart 2 of part D of Title I of the CAA. This requirement applies to all ozone nonattainment areas, regardless of classification (Marginal, Moderate, etc.). This rule requires sources to submit emission statement data to the Indiana Department of Environmental Management (IDEM) on an annual basis. This emission data collected can help the IDEM develop a complete and accurate emission inventory for air quality planning purposes at the State, and also meet emission reporting requirements to EPA.

B. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection on EDOCKET and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Regional Material in Edocket (RME) ID No. R05–OAR–2004–IN–0002. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person 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 a.m. to 4:30 p.m. excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 in Regional Material in EDocket ''R05–OAR–2004–IN–0002'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

II. What Is Required by the Clean Air Act and How Does It Apply to Indiana?

Emission Statements (Annual Reporting)

Section 182(a)(3)(B) of the CAA requires stationary sources of air pollution in ozone nonattainment areas to prepare and submit emission statement data each year, to their States, showing actual emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X). This requirement applies to all ozone nonattainment areas, regardless of classification (Marginal, Moderate, etc.). In ozone nonattainment areas, facilities which emit VOC or NO_X in amounts of 25 tons per year or more [plant-wide basis] into the ambient air must submit an emission statement to the State. Further, States with ozone nonattainment areas are required to submit a revision to their SIPs by November 15, 1992, establishing this Emission Statement Program.

Facilities are required to submit their first emission statement within three years of promulgation of the CAA of 1990, and annually thereafter. If either VOC or NO_X is emitted at or above the minimum reporting level that is established in its state Emission Statement Program, the other pollutant (NO_X or VOC) from the same facility should be included in the emission statement, even if the pollutant is emitted at levels below the minimum reporting level.

Indiana's Current SIP

On June 10, 1994, EPA approved rule 2–6 of Title 326 of the Indiana Administrative Code (IAC), as meeting the ''Emission Statement'' program requirements of section 182(a)(3)(B) of the CAA. See 59 FR 29956. Under the existing federally approved SIP for Indiana, the emission statement program requirements apply to stationary sources in ozone nonattainment areas. In Indiana, this consists of Clark, Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, and Vanderburgh counties.

III. What Change Is Indiana Requesting?

Indiana is requesting that EPA approve the revisions to the existing emission reporting rule,326 IAC 2–6, to be consistent with the current emission statement program requirements for stationary sources in section 182(a)(3)(B) of the CAA. Since the original approval of its plan, IDEM has made a number of changes to its rule, discussed more in detail below, and has resubmitted the new version of its rule for approval.

How Did IDEM Change Its Rule?

The major change deals with the applicability of the rule. In ozone nonattainment areas, facilities which emit VOC or NO_X in amounts of 25 tons per year or more into the ambient air must submit an emission statement to IDEM. Once an area meets the national ambient air quality standard and is redesignated to attainment, sources in the area are no longer subject to the emission statement requirements of the CAA. In the State of Indiana, a number of counties subject to the emission statement program have been redesignated as attainment with the one-hour ozone standards, and the State has revised regulation 326 IAC 2–6 to discontinue the requirement in these redesignated areas. Emission statements requirements originally applied to sources in Clark, Elkhart, Floyd, Lake,

Marion, Porter, St. Joseph, and Vanderburgh counties. Due to redesignations, however, they now only need apply to sources in Lake and Porter counties.

In addition, the State has required reporting of emissions from major stationary sources in the State to meet other requirements of the CAA. The EPA has long required States to provide for the submission of emission data collected for major stationary sources to EPA under 40 CFR 51. Thus, while some parts of the State sources are required to report their emissions data under section 182 of the CAA to the State, EPA is also approving this rule as it applies to all major stationary sources state-wide.

Administratively, in this SIP revision there were other changes to the emission reporting requirements of 326 IAC 2–6 not considered to be significant. The key definitions, compliance schedule, and specific reporting requirements that Indiana included in its Emission Statement Program are consistent with EPA guidance.

EPA's detailed review of Indiana's Emission Statement Program is contained in a technical support document available from EPA Region 5 according to previously described procedures in ''Section I. B.'' of this notice.

IV. Why Is the Request Approvable?

EPA has concluded that the Indiana program contains the necessary applicability, definitions, compliance schedule and specific reporting provisions to meet the requirements for an Emission Statement Program. Therefore, EPA is approving the revisions to the emission reporting requirements of 326 IAC 2–6, to satisfy the Federal requirement of section 182(a)(3)(B) of the CAA for an Emission Statement Program as part of the SIP for Indiana.

V. Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements 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 of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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. section 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 December 28, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Volatile organic compounds, Ozone.

Dated: September 24, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(166) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(166) On February 10, 2004, Indiana submitted final adopted revisions to its emission reporting rule as a requested revision to the Indiana State Implementation Plan. On April 12, 2004, Indiana submitted its final rule as published in the Indiana Register.

(i) Incorporation by reference. Indiana Administrative Code Title 326: Air Pollution Control Board, Article 2: Permit Review Rules, Rule 6: Emission Reporting. Adopted by the Air Pollution Control Board on December 3, 2003, filed with the Secretary of State on February 26, 2004 and effective on March 27, 2004. Adopted at 27 Indiana Register 2210–2215.

[FR Doc. 04–24238 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R07–OAR–2004–MO–0003; FRL–7831–1]

Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes, Iron County; Arcadia and Liberty Townships

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and notice of administrative change.

SUMMARY: EPA is announcing the redesignation of the lead nonattainment area in Iron County, Missouri, to attainment of the National Ambient Air Quality Standard (NAAQS) for lead. We are approving the maintenance plan for this area including a settlement agreement which was submitted with the redesignation request. This final rule addresses a comment submitted in response to EPA's direct final rule published previously for this action on June 30, 2004. The effect of the state implementation plan (SIP) approval is to ensure Federal enforceability of the state air program plan to provide for maintenance of the lead NAAQS. The effect of the redesignation is to recognize that the area has attained the lead NAAQS and to focus future air quality planning efforts on maintenance of the lead NAAQS in the area. EPA is also providing notice of an administrative change to a table in the Code of Federal Regulations which identifies the Missouri SIP.

DATES: This final rule will be effective November 29, 2004.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, or by going to the Regional Material in EDocket index at *http://docket.epa.gov/rmepub/* and doing a quick search on ''R07–OAR–2004–MO–0003.''

FOR FURTHER INFORMATION CONTACT: Joshua Tapp at (913) 551–7606, or by e-mail at *tapp.joshua@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 30, 2004, EPA simultaneously published a proposed rule (69 FR 39382) and a direct final rule (69 FR 39337) to approve the redesignation of the nonattainment area in Iron County, Missouri, bounded by Arcadia and Liberty Townships, to attainment for lead and to take final action to approve the submission for the Doe Run Primary Smelting Facility near Glover, Missouri, as an amendment to the SIP.

The basis for our approval of this redesignation and maintenance plan is described in more detail in the direct final rule (69 FR 39337). The Missouri Department of Natural Resources (MDNR) met the criteria under section 107(d)(3)(E) of the Clean Air Act Amendments (CAAA) for redesignation of the nonattainment area in Iron County to attainment for the lead standard as described in detail in the direct final rule.

The area was designated as nonattainment for lead in January 1992. The nonattainment area includes the portion of Iron County, Missouri, bounded by Arcadia and Liberty Townships. The major source of lead emissions in this nonattainment area is the Doe Run Primary Smelting Facility, near Glover, Missouri.

Primary smelting of lead began at this location in 1968. Currently the facility has ceased production and has been operating on a care and maintenance schedule since December 1, 2003. The state submittal provided ambient air monitor data showing that this area has consistently shown compliance with the NAAQS for lead since the first quarter of 1997, well before the recent shut-down of the facility. Ambient monitoring for lead has shown compliance with the NAAQS for 28 consecutive calendar quarters. The NAAQS for lead is 1.5 micrograms per cubic meter (1.5 $\mu g/m^3$), maximum quarterly average. A quarterly average is considered a violation of the standard if it is at least 1.6 $\mu g/m^3$ when rounded to tenths from the hundredths place when monitored.

EPA guidance provides that, for lead, attainment should be demonstrated by modeling as well as monitoring. Air dispersion modeling using the ISCST Version 3 dated February 4, 2002, was used to evaluate the concentration of lead resulting from operations at the Doe Run Primary Lead Smelting Facility. The maximum concentration predicted by the model was a value of 1.252 $\mu g/m^3$ which is in compliance with the lead standard. This maximum modeled value was obtained by incorporating the plume depletion, dry removal option in the ISCST model.

The facility is currently in a non-production mode, but attainment had been shown for several years prior to this change in operation in December 2003. EPA has determined that the improvement in air quality is due to permanent and enforceable SIP controls. EPA has also determined that the area has a fully approved SIP for the area meeting the requirements of section 110 and Part D of Title I of the CAA. The maintenance plan submitted as part of the SIP revision provides for maintenance of the relevant NAAQS in the area for at least ten years after the approval of redesignation to attainment and provides for adequate contingency measures to address any future violations. The basis for these determinations is described in detail in the direct final rule (69 FR 39337, 39339).

EPA received an adverse comment during the 30-day comment period and therefore withdrew the direct final rule on August 24, 2004 (69 FR 51956).

II. Today's Action

In this final rulemaking, EPA is responding to the adverse comment, and granting final approval to the redesignation of the lead nonattainment area in Iron County, Missouri, to attainment of the NAAQS for lead. We are also approving the maintenance plan for this area, including a state administrative settlement agreement which was submitted with the redesignation request.

III. Comment and Response

EPA received one adverse comment on EPA's June 30, 2004, rule. A summary of the adverse comment and EPA's response is provided below.

Comment: The commenter was concerned that air pollution from Missouri industrial sources effect the air quality in states to the east of Missouri, including New Jersey, and EPA should focus on protecting public health and improving air quality.

Response: The commenter did not take issue with any specific determinations made by EPA with respect to approval of the redesignation request and maintenance plan. The commenter submitted no analysis or data suggesting that lead emissions in the Glover area had any effect on other states. With respect to the commenter's concern about transported emissions, we note that the air dispersion modeling submitted by the Missouri Department of Natural Resources for the redesignation of the lead nonattainment area in the Glover, Missouri, area indicated that the NAAQS for lead had been attained and would be maintained. The Doe Run facility is located within the boundaries of the Liberty and Arcadia townships in Iron County, Missouri. There are no predicted violations of the NAAQS for lead in the ambient air in the vicinity of the Doe Run facility. The predicted lead concentrations resulting from the operation of the lead smelter decrease rapidly as the distance from the lead sources increases. The NAAQS for lead is 1.5 micrograms per cubic meter averaged over a calendar quarter. A review of the modeling indicates that lead concentrations decrease to approximately 0.01 micrograms per cubic meter at approximately 10 kilometers from the facility. The modeling predictions are supported by the measurements made in the local area. Due to the highly localized impacts of lead emissions from the facility, it is extremely unlikely that any significant lead concentrations from the smelter would reach any areas outside Missouri.

EPA also notes that this action will not result in any increases in emissions from the facility. The maintenance plan commits to continuing to implement the lead emission control measures which resulted in attainment of the lead standard and to implementing contingency measures as necessary to address exceedances of the lead NAAQS. Any significant new growth would be subject to Missouri's construction permitting program. Therefore, EPA's action will not result in any additional air quality problems with respect to lead, either locally or in other states.

IV. Final Action

Final rule. EPA is granting final approval to the redesignation of the lead nonattainment area in Iron County, Missouri, to attainment of the NAAQS for lead. We are approving the maintenance plan for this area including a settlement agreement which was submitted with the redesignation request. For the reasons stated in the direct final rule referenced previously, EPA has determined that the submission meets the criteria under section 107(d)(3)(E) of the CAAA for redesignation, and the maintenance plan requirements in section 175A of the CAAA.

Administrative change. We are also adding numbers to entries previously published in table (e) in § 52.1320. On May 13, 2004 (69 FR 26506), table (e) was amended and the entry for the ''Vehicle I/M Program'' for St. Louis is designated (47). On August 24, 2004 (69 FR 51955), table (e) was amended and the entry for the ''Revised Maintenance Plan of Doe Run Resource Recycling Facility near Buick, Mo.,'' is designated (48).

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule approves preexisting requirements under state law. In addition, the redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore because it 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 of 1995 (Pub. L. 104–4).

This rule and redesignation do not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Lead, National parks, Wilderness area.

Dated: October 8, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

■ 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 AA—Missouri

■ 2. Section 52.1320 is amended as follows:

■ a. In the table to paragraph (d) by adding entry (22) in numerical order.

■ b. In the table to paragraph (e) designating the entry for ''Vehicle I/M Program'' as (47) and designating the entry for ''Revised Maintenance Plan of Doe Run Resource Recycling Facility near Buick, MO.,'' as (48) and by adding entry (49) in numerical order.

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
*	*	*	*	*
(22) Doe Run Lead Smelter, Glover, MO.	Settlement Agreement	10/31/03	10/29/04	

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(49) Lead Maintenance Plan.	Iron County (part) within boundaries of Liberty and Arcadia Townships.	1/26/04	10/29/04	

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In § 81.326 the table entitled ''Missouri-Lead'' is amended by revising the entry for ''Iron County (part) Within boundaries of Liberty and Arcadia Townships'' to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI-LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
* *	*	* *	*	*
Iron County (part) Within boundaries of Liberty and Arcadia Townships.	October 29, 2004	Attainment.		
* *	*	* *	*	*

* * * * *

[FR Doc. 04–24134 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R03–OAR–2004–VA–0002a; FRL–7831–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Municipal Waste Combustor Emissions From Large Existing Municipal Solid Waste Combustor Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the Commonwealth of Virginia Department of Environmental Quality (DEQ) municipal waste combustor plan (the plan) for implementing emission guideline (EG) requirements promulgated under the Clean Air Act (the Act). The plan establishes emission limits, monitoring, operating, and recordkeeping requirements for existing large MWC with a unit capacity of more than 250 tons per day (TPD) of municipal solid waste (MSW). An existing MWC unit is defined as one for which construction commenced on or before September 20, 1994.

DATES: This rule is effective December 28, 2004 without further notice, unless EPA receives adverse written comment by November 29, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–VA–0002 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Agency Web Site: http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. *E-mail: http://wilkie.walter@epa.gov.*

D. *Mail: R03–OAR–2004–VA–0002,* Walter Wilkie, Chief, Air Quality Analysis, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously-listed EPA Region III address. 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 RME ID No. R03–OAR–2004–VA–0002. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 RME or 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 electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* 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 in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWC units and emission guidelines (EG) applicable to existing MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

However, on April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with combustion capacity less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended,* 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb now apply only to MWC units with individual unit combustion capacity of more than 250 tons per day of MSW (*i.e.*, large MWC units). This change was published in the **Federal Register** (62 FR 45116) on August 25, 1997. In addition, subsequent clarifying amendments were published in the **Federal Register** (66 FR 57824) on November 16, 2001.[1]

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable as a section 111(d)/129 plan upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B.

As required by section 129(b)(3) of the Act, on November 12, 1998 EPA promulgated a Federal implementation plan (FIP), amended May 24, 2000, for large MWC units that commenced construction on or before September 20, 1994. The FIP (40 CFR part 62, subpart FFF, 63 FR 63191 and 65 FR 33461) is a set of maximum achievable control technology (MACT) requirements that implement the 1995 large MWC emission guidelines for states, such as Virginia, without an approved plan. The FIP fills a Federal enforceability gap until state plans are approved and ensures that the affected MWC units stay on track to complete pollution control equipment retrofit schedules in order to meet the final statutory compliance date of December 19, 2000.

II. Review of Virginia's MWC Plan

EPA has reviewed the Virginia plan, submitted on August 18, 2003, for existing large MWC units in the context of the requirements of 40 CFR part 60, and subparts B and Cb, as amended. State plans must include the following essential elements: (1) Identification of legal authority, (2) identification of mechanism for implementation, (3) inventory of affected facilities, (4) emissions inventory, (5) emissions limits, (6) compliance schedules, (7) testing, monitoring, recordkeeping, and reporting, (8) public hearing records, and (9) annual state progress reports on facility compliance.

A. Identification of Legal Authority

Title 40 CFR 60.26 requires the plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. The DEQ has demonstrated that it has the legal authority to adopt and implement the emission standards governing large MWC units. DEQ's legal authority is provided in the Air Pollution Control Law of Virginia, Title 10.1, Chapter 13, of the Code of Virginia. This authority is discussed in the plan narrative and a July 1, 1998 letter from the Virginia Office of the Attorney General to the DEQ. This meets the requirements of 40 CFR 60.26.

B. Identification of Enforceable State Mechanisms for Implementing the Plan

The subpart B provision at 40 CFR 60.24(a) requires that state plans include emissions standards, defined in 40 CFR 60.21(f) as ''a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.'' The Commonwealth of Virginia through the DEQ, has adopted State Air Pollution Control Board Regulations (Rule 4–54 and other supporting air program rules) to control large MWC emissions. Rule 4–54, Emission Standards for Large MWC, became effective on August 4, 1999, and was subsequently amended on February 1, 2002, and July 1, 2003. Other applicable and effective supporting air program rules were identified and submitted to EPA on August 11, 2003 and April 6, 2004. These rules collectively met the requirement of 40 CFR 60.24(a) to have a legally enforceable emission standard.

C. Inventory of Affected MWC Units

Title 40 CFR 60.25(a) requires the plan to include a complete source inventory of all affected facilities (i.e., existing MWC units with a capacity greater than 250 TPD). The DEQ has identified three (3) affected facilities. Each have an MWC unit capacity greater than 250 TPD. The affected facilities are Covanta Fairfax with four units, Covanta Alexandria with three units, and the Southeastern Public Service Authority with four units.

D. Inventory of Emissions From Affected MWC Units

Title 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG. Emissions from MWC units contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). For each MWC facility, the DEQ plan contains MWC unit emissions rates estimates that are given in an acceptable format. This meets the emission inventory requirements of 40 CFR 60.25(a).

E. Emissions Limitations for MWC Units

Title 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG, except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met. However, this exception clause is superseded by section 129(b)(2) of the Act which requires that state plans be ''at least as protective'' as the EG , in this case 40 CFR part 60, subpart Cb. A review of the applicable Rule 4–54 emissions limitations shows that all are ''at least as protective'' as those in the EG, as amended. In addition to the required section 129 emissions limitations, other limitations under Rule 4–54 (i.e., 9 VAC 5–40–8080, 8100, and 8100E), relating to odors, toxic pollutants (state only requirements), and nitrogen oxides (NO_X) emissions trading, are not within the scope of section 129 requirements for plan approval. These other emissions limitations are not relevant or approvable under this plan approval action. This is discussed further in Section III, Final Action.

F. Compliance Schedules

Under 40 CFR 60.24(c) and (e), a state plan must include an expeditious compliance schedule that owners and operators of affected MWCs must meet in order to comply with the requirements of the plan. Also, Title 40 CFR 60.39b of the EG provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG requirements must be accomplished within 3 years of EPA plan approval, but in no case later than December 19, 2000. Accordingly, the DEQ determined that source compliance with the EG emissions limits must be achieved on or before December 19, 2000, as stipulated in the promulgated FIP. In order to implement this requirement, Rule 4–54, 9 VAC 5–40–8110, incorporates by reference the Federal plan compliance schedule provisions of 40 CFR 62.14108 and

[1] An additional EG amendment was promulgated in the **Federal Register** (66 FR 36473) on July 12, 2001. However, the amendment is known to impact only one affected facility in Georgia.

62.14109(e) through (m) which establish expeditious interim and final compliance dates that are consistent with the provisions of 40 CFR 60.24(c) and (e), and 40 CFR 60.39b of subparts B and Cb, respectively. The state plan meets the applicable Federal compliance schedule requirements.

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The provisions of 40 CFR 60.24(b) and 60.25(b) stipulate facility testing, monitoring recordkeeping and reporting requirements for state plans. Also, related EG provisions 40 CFR 60.38b and 60.39b cross reference applicable NSPS (subpart Eb) requirements that state plans must include. The DEQ regulation meets the subpart B requirements of 40 CFR 60.24 and 60.25; and the related subpart Cb provisions of 40 CFR 60.38b and 60.39b. However, when considering that Rule 4–54 references 40 CFR 60.11(e), which allows use of continuous opacity monitoring (COM) data, a point of clarity is in order. The opacity limitations promulgated under subparts Cb and Eb were based on stack test data using EPA Method 9. Accordingly, COM data is used only as an indicator for corrective actions, if necessary, or as the basis for a compliance retest of the MWC facility. This matter is discussed and clarified in EPA's Background Information Document (EPA–453/R–95–0136) for the MWC rules.

H. A Record of Public Hearing on the State Plan

Public hearings on the plan were held October 17, 2000 and July 23, 2003. Applicable portions of Rule 4–54 became effective initially on August 4, 1999, with subsequent amendments on February 1, 2002 and July 1, 2003. The state provided evidence of complying with public notice and other hearing requirements, including a record of public comments received. The DEQ has met the 40 CFR 60.23 requirement for a public hearing on the plan.

I. Annual State Progress Reports to EPA

The DEQ will submit to EPA on an annual basis a report which details the progress in the enforcement of the plan in accordance with 40 CFR 60.25. Accordingly, the DEQ will submit reports on progress in plan enforcement to EPA on an annual (calendar year) basis, commencing with the first full report period after plan approval.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its section 111(d)/129 program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

Based upon the rationale discussed above and in further detail in the technical support document (TSD) associated with this action, EPA is approving the Virginia plan, excluding the non-applicable rule provisions, as identified in the DEQ letters of August 11, and 18, 2003; and April 6, and August, 25, 2004 to EPA. The identified exclusions, for example, include Rule 4–54 provisions relating to odors, toxic pollutants (state only requirements), NO_X emissions trading, and MWC operator requirements under the Virginia Board for Waste Management Facility Operators. As a result of this EPA approval action, the Federal plan is no longer applicable, except for the compliance schedule provisions of 40 CFR 62.14108 and 62.14109(e) through (m) that are incorporated by reference into Rule 4–54. Also, with respect to certain plan decisions, EPA retains discretionary authority for several actions as listed in the August 18, 2003 plan narrative, paragraph H. As provided by 40 CFR 60.28(c), any revisions to the Virginia plan or supporting regulations will not be considered part of the applicable plan until submitted by the Commonwealth of Virginia in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

EPA is publishing this rule without prior proposal because the Agency

views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies and existing large MWC units that are subject to the provisions of 40 CFR part 60, subparts B, and Cb; and 40 CFR part 62, subpart FFF, as applicable. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the section 111(d)/129 plan should relevant adverse or critical comments be filed. This rule will be effective December 28, 2004 without further notice unless EPA receives adverse comments by November 29, 2004. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements 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 of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for three (3) specific facilities.

C. Petitions for Judicial Review

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 December 28, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, approving the Virginia section 111(d)/129 plan for large MWC units, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: September 27, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 is revised to read as follows:

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

Subpart VV—Virginia

■ 2. Add a center heading, and §§ 62.11640, 62.11641, and 62.11642 to subpart VV to read as follows:

EMISSIONS FROM EXISTING LARGE MUNICIPAL WASTE

COMBUSTOR (MWC) UNITS—SECTION 111(d)/129 PLAN

§ 62.11640 Identification of plan.

Section 111(d) /129 plan for large MWC units with a capacity greater than 250 tons per day (TPD) and the associated Virginia Air Pollution Control Board Regulations (Rule 4–54, and other supporting rules identified in the plan), submitted to EPA on August 18, 2003, including supplemental information submitted on August 11

and September 30, 2003; and April 6, and August 25, 2004.

§ 62.11641 Identification of sources.

The affected facility to which the plan applies is each large MWC unit for which construction commenced on or before September 20, 1994.

§ 62.11642 Effective date.

The effective date of the plan for large MWC units is December 28, 2004.

[FR Doc. 04–24240 Filed 10–28–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW–2004–0006; FRL–7825–1]

Water Quality Standards; Withdrawal of Certain Federal Water Quality Criteria Applicable to Alaska, Arkansas, and Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to amend the Federal regulations to withdraw certain water quality criteria applicable to Alaska, Arkansas, and Puerto Rico. In 1992, EPA promulgated Federal regulations, through the National Toxics Rule (''NTR''), establishing water quality criteria for toxic pollutants for 12 states and two territories, including Alaska, Arkansas, and Puerto Rico. These two states and one territory have now adopted, and EPA has approved, certain water quality criteria included in the NTR. Since Alaska, Arkansas, and Puerto Rico now have criteria, effective under the Clean Water Act, for the same priority toxic pollutants in the NTR, EPA has determined that the Federally promulgated criteria are no longer needed for these pollutants. In today's action, EPA is amending the Federal regulations to withdraw those certain criteria applicable to Alaska, Arkansas, and Puerto Rico. EPA is withdrawing its criteria without a notice and comment rulemaking because the adopted criteria are no less stringent than Federal criteria (*see* 65 FR 19659, April 12, 2000).

DATES: This final rule is effective on October 29, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OW–2004–0006. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* 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 in EDOCKET or in hard copy at the following: The administrative record for the withdrawal of Alaska's federally promulgated criteria is also available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, WA 98101, during normal business hours of 8 a.m. to 4:30 p.m. Pacific time. The administrative record for the withdrawal of Arkansas's federally promulgated criteria is also available for public inspection at EPA Region 6, Water Quality Protection Division, 1445 Ross Avenue, Dallas, TX 75202, during normal business hours of 7:30 a.m. to 11 a.m. and 1 p.m. to 4:30 p.m. central time. The administrative record for the withdrawal of Puerto Rico's Federally promulgated criteria is also available for public inspection at EPA Region 2, 290 Broadway, New York, NY 10007, during normal business hours of 9 a.m. to 4:30 p.m. eastern time Monday through Thursday, and 9 a.m.–1 p.m. eastern time on Friday.

FOR FURTHER INFORMATION CONTACT: For questions regarding this action with respect to Alaska, contact Sally Brough with EPA's Region 10 at 206–553–1295. For questions regarding this action with respect to Arkansas, contact Russell Nelson with EPA's Region 6 at 214–665–6646. For questions regarding this action with respect to Puerto Rico, contact Wayne Jackson with EPA's Region 2 at 212–637–3807. For general and administrative concerns, contact Stephanie Thornton at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (202–566–0606).

SUPPLEMENTARY INFORMATION:

I. General Information

No one is regulated by this rule. This rule withdraws certain Federal water quality criteria applicable to Alaska, Arkansas, and Puerto Rico.

II. Background

In 1992, EPA promulgated the ''National Toxics Rule'' (''NTR'') to establish numeric water quality criteria for 12 states and two Territories (hereafter ''States'') that had failed to comply fully with section 303(c)(2)(B) of the Clean Water Act (''CWA'') (57 FR 60848, December 22, 1992). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 jurisdictions for all purposes and programs under the CWA effective February 5, 1993.

As described in the preamble to the final NTR, when a State adopts, and EPA approves, water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR to withdraw the Federal criteria applicable to that State. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment because additional comment on the criteria is unnecessary (*see* 65 FR 19659, April 12, 2000). However, if a State adopts criteria that are less stringent than the Federally-promulgated criteria, but which the Agency judges to meet the requirements of the Act, EPA will seek public comment before withdrawing the Federally-promulgated criteria (*see* 57 FR 60860, December 22, 1992). Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public comment procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and opportunity for public comment.

There is good cause for making today's rule final without prior proposal and comment because, being identical or more stringent, the States' criteria are no less stringent than the Federal regulations. For the same reason, and because this rule relieves a Federal restriction, good cause exists to waive the requirement for a 30-day period before the amendment becomes effective. Therefore, the amendment is immediately effective. This rule does not remove any water quality protections. It removes a Federal regulation that duplicates State regulation.

Alaska

On March 30 and April 27, 1999, Alaska adopted revisions to its surface water quality standards (18 AAC 70). Alaska submitted the revisions to EPA for approval by letter dated May 10, 1999, and EPA received the revisions on May 13, 1999.

EPA Region 10 approved the State's freshwater and marine water aquatic life criteria for certain NTR pollutants on September 28, 2001, because they were identical to the NTR values and were consistent with both the CWA and EPA's implementing regulations at 40 CFR part 131. These pollutants are Nickel (acute), Selenium (acute and

chronic), Zinc (acute), Pentachlorophenol (acute), and Toxaphene (acute). Today, EPA is withdrawing Federal water quality criteria applicable to Alaska for the freshwater and marine aquatic life criteria.

Arkansas

On January 23,1998, Arkansas adopted revisions to its surface water quality standards (Regulation 2, Establishing Water Quality Standards for the Surface Waters of the State of Arkansas, Minute Order 98–03). Arkansas adopted acute and/or chronic freshwater aquatic life criteria as noted and conversion factors for these metals contained in the NTR:

- Cadmium (acute and chronic),
- Chromium (III) (acute and chronic),
- Chromium (VI) (acute and chronic),
- Copper (acute and chronic),
- Lead (acute and chronic),
- Mercury (acute and chronic),
- Nickel (acute and chronic),
- Selenium (acute and chronic),
- Silver (acute), and Zinc (acute and chronic).

Arkansas also adopted acute and chronic freshwater aquatic life criteria for Cyanide. EPA Region 6 approved the State's dissolved metals criteria and Cyanide criteria on May 17, 2001, because Arkansas's numeric criteria were consistent with both the CWA and EPA's implementing regulations at 40 CFR part 131. With the adoption of these numeric criteria, Arkansas complied with the requirements of section 303(c)(2)(B) of the CWA to have numeric criteria for toxic pollutants.

Today, EPA is withdrawing Arkansas from the NTR for those criteria and, as a result, completely removing Arkansas from the NTR.

Puerto Rico

On September 21, 1990, EPA Region 2 received revisions to Puerto Rico's water quality standards. The Chairman of the Puerto Rico Environmental Quality Board (PREQB) informed EPA that it may not be the final submission, since PREQB had not completed its public hearing process. Because of this caveat, and because Puerto Rico had not submitted the requisite certification from its Secretary of Justice as required by 40 CFR 131.6(e), EPA Region 2 did not act on these revisions immediately. As previously noted, EPA included Puerto Rico in the NTR in 1992, in large part because EPA did not consider Puerto Rico's 1990 revisions adopted. The Commonwealth's Secretary of Justice ultimately submitted the required certification to EPA on February 25, 2002.

EPA took final action on all new and revised provisions of the 1990 Puerto Rico Water Quality Standards Regulation (PRWQSR) on March 28, 2002, after it received the required certification. EPA Region 2 approved Puerto Rico's numeric criteria because they were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. For all of these pollutants, the criteria were no less stringent than the promulgated Federal criteria in the NTR.

Meanwhile, in October 2001, Puerto Rico began an effort to revise the PRWQSR. This effort included adopting numerous chemical-specific numeric criteria for toxic pollutants contained in the NTR. EPA Region 2 approved Puerto Rico's criteria on June 26, 2003, since the adopted numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. With few exceptions, the adopted criteria were identical to EPA's April 1999 national recommended water quality criteria. In most cases, these criteria were no less stringent than the promulgated Federal criteria in the NTR. Puerto Rico adopted several criteria that are less stringent than the promulgated Federal criteria in the NTR. Consequently, EPA is not including any of these pollutants in today's withdrawal of NTR criteria applicable to waters in Puerto Rico. The criteria adopted by Puerto Rico and approved by EPA but not included in today's rulemaking are:

- Dichlorobromomethane,
- Benzo(a)Anthracene,
- Benzo(a)Pyrene,
- Benzo(b)Flouranthene,
- Benzo(k)Flouranthene,
- Chrysene,
- Dibenzo(a,h)Anthracene,
- Indeno(1,2,3-cd)Pyrene, and
- Isophrone.

Today, EPA is removing Puerto Rico from the NTR only for those pollutants whose criteria are no less stringent than those in the NTR.

EPA is removing Puerto Rico from the NTR for the following pollutants:

- Antimony (human health—water & organism and organism only),
- Arsenic (all),
- Cadmium (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)),
- Chromium III (aquatic life—freshwater (acute and chronic)),
- Chromium VI (aquatic life—freshwater (acute and chronic)),
- Copper (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)),
- Lead (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)),
- Mercury (aquatic life—freshwater (acute), aquatic life—marine water (acute), and human health—water & organism and organism only),
- Nickel (all),
- Selenium (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)),
- Silver (aquatic life—freshwater (acute) and aquatic life—marine water (acute)),
- Zinc (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)),
- Cyanide (all),
- Asbestos (human health—water & organism),
- Acrolein (human health—water & organism and organism only),
- Acrylonitrile (human health—water & organism and organism only),
- Benzene (human health—water & organism and organism only),
- Bromoform (human health—water & organism and organism only),
- Carbon Tetrachloride (human health—water & organism and organism only),
- Chlorobenzene (human health—water & organism and organism only),
- Chlorodibromomethane (human health—water & organism and organism only),

regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

- Chloroform (human health—water & organism and organism only),
- 1,2-Dichloroethane (human health—water & organism and organism only),
- 1,1-Dichloroethylene (human health—water & organism and organism only),
- 1,3-Dichloropropylene (human health—water & organism and organism only),
- Ethylbenene (human health—water & organism and organism only),
- Methyl Bromide (human health—water & organism and organism only),
- Methylene Chloride (human health—water & organism and organism only),
- 1,1,2,2-Tetrachloroethane (human health—water & organism and organism only),
- Tetrachloroethylene (human health—water & organism and organism only),
- Toluene (human health—water & organism and organism only),
- 1,1,2-Trichloroethane (human health—water & organism and organism only),

• Trichloroethylene (human health—water & organism and organism only),
• Vinyl Chloride (human health—water & organism and organism only),
• 2,4-Dichlorophenol (human health—water & organism and organism only),
• 2-Methyl-4,6-Dinitrophenol (human health—water & organism and organism only),
• Pentachlorophenol (human health—water & organism and organism only),
• Phenol (human health—water & organism and organism only),
• 2,4,6-Trichlorohenol (human health—water & organism and organism only),
• Anthracene (human health—water & organism and organism only),
• Benzidene (human health—water & organism and organism only),
• Bis (2-Chloroethyl) Ether (human health—water & organism and organism only),
• Bis (2-Chloroisopropyl) Ether (human health—water & organism and organism only),
• Bis (2-Ethylhexyl) Phthalate (human health—water & organism and organism only),
• 1,2-Dichlorobenzene (human health—water & organism and organism only),
• 1,3-Dichlorobenzene (human health—water & organism and organism only),
• 1,4-Dichlorobenzene (human health—water & organism and organism only),
• 3,3-Dichlorobenzidene (human health—water & organism and organism only),
• Diethyl Phthalate (human health—water & organism and organism only),
• Dimethyl Phthalate (human health—water & organism and organism only),
• Di-n-Butyl-Phthalate (human health—water & organism and organism only),
• 2,4-Dinitrotoluene (human health—water & organism and organism only),
• 1,2-Diphenylhydrazine (human health—water & organism and organism only),
• Fluoranthene (human health—water & organism and organism only),
• Fluorene (human health (water & organism)),
• Hexachlorobenzene (human health—water & organism and organism only),
• Hexachlorbutadiene (human health—water & organism and organism only),
• Hexachlorocyclopentadiene (human health—water & organism and organism only),
• Hexachloroethane (human health—water & organism and organism only),
• Nitrobenzene (human health—water & organism and organism only),
• N-Nitroso-dimethylamine (human health—water & organism and organism only),
• N-Nitrosodiphenylamine (human health—water & organism and organism only),
• Pyrene (human health—water & organism and organism only),
• Aldrin (aquatic life—freshwater (acute), aquatic life—marine water (acute), and human health—water & organism and organism only),
• gamma-BHC (aquatic life—freshwater (acute), aquatic life—marine water (acute), and human health—water & organism and organism only),
• Chlordane,
• 4,4-DDT, 4,4-DDE (human health—water & organism and organism only),
• 4,4-DDD (human health—water & organism and organism only),
• Dieldrin (all),
• a-Endosulfan (aquatic life—freshwater (acute and chronic) and human health—water & organism and organism only),
• b-Endosulfan (aquatic life—freshwater (acute and chronic) and human health—water & organism and organism only),
• Endrin (aquatic life—freshwater (acute), aquatic life—marine (acute and chronic), and human health—water & organism and organism only),
• Heptachlor (all), and
• Toxaphene (all).

III. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

This action withdraws Federal requirements applicable to Alaska, Arkansas, and Puerto Rico, and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule 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 the Office of Management and Budget (OMB) review.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 because it is administratively withdrawing Federal requirements that no longer need to apply to Alaska, Arkansas, and Puerto Rico.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Public Law 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments. This rule imposes no regulatory requirements or costs on any State or local governments; therefore, it does not have Federalism implications under Executive Order 13132.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, 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, as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 6, 2000).

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule does not involve technical standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including reasons therefore, and established an effective date of October 29, 2004. EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 30, 2004.

Michael O. Leavitt,

Administrator.

■ For reasons set out in the preamble of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

■ 2. Section 131.36 is amended as follows:

■ a. Revising the table in paragraph (d)(4)(ii),

■ b. Revising the table in paragraph (d)(12)(ii), and

■ c. Removing and reserving paragraph (d)(8).

§ 131.36 Toxics criteria for those states not complying with Clean Water Act section 303(c)(2)(B).

* * * * *

(d) * * *

(4) * * *

(ii) * * *

Use classification	Applicable criteria
Class SD	Column B1—# 118. Column B2—#s 8, 105, 115, 118, 119, 120, 121, 122, 123,124, 125a, 125b. Column D1—#s 12, 16, 27, 60, 61, 62, 64, 73, 74, 92,93, 103, 104, 114, 116, 118, 119, 120, 121, 122, 123,124, 125a, 125b.
Class SB, Class SC	Column C1—#s 5b, 112, 113, 118. Column C2—#s 5b, 8, 112, 113, 118, 119, 120, 121, 122,123, 124, 125a, 125b. Column D2—#s 12, 16, 27, 60, 61, 62, 64, 73, 74, 87,92, 93, 103, 104, 114, 116, 118, 119, 120, 121, 122,123, 124, 125a, 125b.

* * * * *

(12) * * *

(ii) * * *

Use classification	Applicable criteria
(1)(A)(i)	Column D1—#s 16, 18–21, 23, 26, 27, 29, 30, 32, 37, 38, 42–44, 53, 55, 59–62, 64, 66, 68, 73, 74, 78, 82, 85, 88, 89, 91–93, 96, 98, 102–105, 107–111, 117–126.
(1)(A)(iii)	Column D2—#s 14, 16, 18–21, 22, 23, 26, 27, 29, 30, 32, 37, 38, 42–44, 46, 53, 54, 55, 59–62, 64, 66, 68, 73, 74, 78, 82, 85, 88–93, 95, 96, 98, 102–105, 107–111, 115–126.
(1)(B)(i), (1)(B)(ii), (1)(C)	Column D2—#s 14, 16, 18–21, 22, 23, 26, 27, 29, 30, 32, 37, 38, 42–44, 46, 53, 54, 55, 59–62, 64, 66, 68, 73, 74, 78, 82, 85, 88–93, 95, 96, 98, 102–105, 107–111, 115–126.

Use classification	Applicable criteria
(2)(A)(i), (2)(B)(i), and (2)(B)ii, (2)(C), (2)(D)	Column D2—#s 14, 16, 18–21, 22, 23, 26, 27, 29, 30, 32, 37, 38, 42–44, 46, 53, 54, 55, 59–62, 64, 66, 68, 73, 74, 78, 82, 85, 88–93, 95, 96, 98, 102–105, 107–111, 115–126.

* * * * *

[FR Doc. 04–24242 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0325; FRL–7681–9]

Pyraclostrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the combined residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate), expressed as parent compound in or on apple, wet pomace; brassica, head and stem, subgroup; brassica, leafy greens, subgroup; corn, field, grain; corn, field, forage; corn, field, stover; corn, field, refined oil; corn, pop, grain; corn, pop, stover; corn, sweet, kernel plus cob with husks removed; corn, sweet, forage; corn, sweet, stover; fruit, pome, group; hop, dried cones; legume, forage, except peanut and soybean; pea, succulent; pea and bean, dried shelled, except soybean, subgroup; peppermint; soybean, forage; soybean, hay; soybean, hulls; soybean, seed; spearmint; sunflower; vegetable, leafy, except brassica, group; vegetable, leaves of root and tuber, except sugar beet; and vegetable, legume, edible podded, subgroup. This regulation also increases the tolerances for citrus, dried pulp; citrus, oil; fruit, citrus, group; and strawberry and removes the currently existing tolerance for bean, dry, seed. The latter tolerance is superseded by the tolerance for pea and bean, dried shelled, except soybean, subgroup. BASF Corporation and Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective October 29, 2004. Objections and requests for hearings must be received on or before December 28, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0325. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–6742; e-mail address: *mcneilly.dennis@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; commercial applicators; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., food manufacturing plant employees; produce truck drivers; waste disposal truck drivers; consumers.
- Pesticide manufacturing (NAICS 32532), e.g., pesticide manufacturing plant employees; pesticide distribution employees; agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/.*

II. Background and Statutory Findings

In the **Federal Register** of August 13, 2003 (68 FR 48367) (FRL–7320–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of three pesticide petitions (PP 2E6473, 3E6548, and 3E6553) by Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The petitions requested that 40 CFR 180.582 be amended by establishing tolerances for the combined residues of the fungicide carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester], pyraclostrobin, and methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate, the desmethoxy metabolite of pyraclostrobin, expressed as parent compound], in or on brassica, head and stem, subgroup at 5 ppm (PP 3E6553); lettuce, head at 22 ppm (PP 2E6473); lettuce, leafy at 22 ppm (PP

2E6473); and vegetable, leaves of root and tuber, group at 16 ppm (PP 3E6548).

In the **Federal Register** of August 27, 2004 (69 FR 52670) (FRL–7676–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of three pesticide petitions (PP 0F6139, 2F6431, and 3F6581) by BASF Corporation, Research Triangle Park, NC 27709 and one pesticide petition (PP 3E6774) by Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The petitions requested that 40 CFR 180.582 be amended by establishing tolerances for the combined residues of the fungicide carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester, pyraclostrobin, and methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate, the desmethoxy metabolite of pyraclostrobin, expressed as parent compound, in or on apple, wet pomace at 8.0 ppm (PP 2F6431); brassica, leafy greens, subgroup at 16.0 ppm (PP 3F6581); corn, field, grain at 0.1 ppm (PP 2F6431); corn, field, forage at 5.0 ppm (2F6431); corn, field, stover at 17.0 ppm (PP 2F6431); corn, field, refined oil at 0.2 ppm (PP 2F6431); corn, pop, grain at 0.1 ppm (PP 2F6431); corn, pop, stover at 17.0 ppm (PP 2F6431); corn, sweet, kernel plus cob with husks removed at 0.04 ppm (PP 2F6431); corn, sweet, forage at 5.0 ppm (PP 2F6431); corn, sweet, stover at 23.0 ppm (PP 2F6431); fruit, pome, group 11 at 1.5 ppm (PP 2F6431); hop, dried, cones at 23.0 ppm (PP 2F6431); legume, forage, except peanut and soybean at 25.0 ppm (PP 2F6431); pea, succulent at 0.2 ppm (PP 2F6431); pea and bean, dried shelled, except soybean, subgroup at 0.3 ppm (PP 0F6139); peppermint at 8.0 ppm (PP2F6431); soybean, forage at 5.0 ppm (PP 3F6581); soybean, hay at 7.0 ppm (PP 3F6581); soybean, hulls at 0.06 ppm (PP 3F6581); soybean, seed at 0.04 ppm (PP 3F6581); spearmint at 8.0 ppm (PP 2F6431); sunflower at 0.3 ppm (PP 2F6431); vegetable, leafy, except brassica, group at 29.0 ppm (PP 3E6774); and vegetable, legume, edible podded, subgroup at 0.5 ppm (PP 2F6431). Tolerance petition 3F6581 also requests that 40 CFR 180.582 be amended by increasing the tolerances for the combined residues of pyraclostrobin and the desmethoxy metabolite of pyraclostrobin, expressed as parent compound, in or on citrus, dried pulp to 12.5 ppm (PP 3F6581); citrus, oil to 9.0 ppm (PP 3F6581); and fruit, citrus, group to 2.0 ppm (PP 3F6581). Tolerance petition 0F6139 also requests that 40 CFR 180.582 be amended by removing the tolerance for the combined residues of pyraclostrobin and the desmethoxy metabolite of pyraclostrobin, expressed as parent compound, in or on bean, dry, seed at 0.3 ppm. The latter tolerance has been superseded by the tolerance for pea and bean, dried shelled, except soybean, subgroup at 0.3 ppm.

In the **Federal Register** of August 30, 2004 (68 FR 52891) (FRL–7676–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F6850) by BASF Corporation, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.582 be amended by increasing the tolerance for the combined residues of the fungicide carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-,methyl ester, pyraclostrobin, and methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate, the desmethoxy metabolite of pyraclostrobin, expressed as parent compound, in or on strawberry to 1.5 ppm.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, to establish (or increase) tolerances for the combined residues of carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester, pyraclostrobin, and methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate, the desmethoxy metabolite of pyraclostrobin, expressed as parent compound in or on apple, wet pomace 8.0 ppm; brassica, head and stem, subgroup at 5.0 ppm; brassica, leafy greens, subgroup at 16.0 ppm; citrus, dried pulp at 12.5 ppm (increased from 5.5 ppm); citrus, oil at 9.0 ppm (increased from 4.0 ppm); corn, field, grain at 0.1 ppm; corn, field, forage at 5.0 ppm; corn, field, stover at 17.0 ppm; corn, field, refined oil at 0.2 ppm; corn, pop, grain at 0.1 ppm; corn, pop, stover at 17.0 ppm; corn, sweet, kernel plus cob with husks removed at 0.04 ppm; corn, sweet, forage at 5.0 ppm; corn, sweet, stover at 23.0 ppm; fruit, citrus, group at 2.0 ppm (increased from 0.7 ppm); fruit, pome, group at 1.5 ppm; hop, dried cones at 23.0 ppm; legume, forage, except peanut and soybean at 25.0 ppm; pea, succulent at 0.2 ppm; pea and bean, dried shelled, except soybean, subgroup at 0.3 ppm; peppermint at 8.0 ppm; soybean, forage at 5.0 ppm; soybean, hay at 7.0 ppm; soybean, hulls at 0.06 ppm; soybean, seed at 0.04 ppm; spearmint at 8.0 ppm; strawberry at 1.5 ppm (a temporary increased tolerance with an expiration date of December 31, 2005); sunflower at 0.3 ppm; vegetable, legume, edible podded, subgroup at 0.5 ppm; vegetable, leafy, except brassica, group at 29.0 ppm; and vegetable, leaves of root and tuber, except sugar beet at 16.0 ppm ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyraclostrobin are discussed in Table 1 of this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY PROFILE

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity-rat	The study is acceptable/guideline. Dosing levels were 0, 50, 150, 500, 1,000, and 1,500 ppm (males: 0, 3.5, 10.7, 34.7, 68.8, and 105.8 mg/kg/day; females: 0, 4.2, 12.6, 40.8, 79.7, and 118.9 mg/kg/day). The NOAEL was 10.7 mg/kg/day. The LOAEL was 34.7 mg/kg/day based on reduced body weight and weight gain in males, reduced food intake in both sexes, increased relative liver weight and spleen weight in females, the histopathology of the duodenum and liver in males, and the histopathology of the spleen in both sexes.
870.3100	90-Day oral toxicity-mouse	The study is acceptable/guideline. Dosing levels were 0, 50, 150, 500, 1,000, and 1,500 ppm (males: 0, 9.2, 30.4, 119.4, 274.4, and 475.5 mg/kg/day; females: 0, 12.9, 40.4, 162.0, 374.1, and 634.8 mg/kg/day). The NOAEL was 9.2 mg/kg/day. The LOAEL was 30.4 mg/kg/day based on reduced body weight and body weight gain in males, changes in clinical chemistry (increased urea and decreased triglycerides) in both sexes, and increased incidences in females of lymph node apoptosis, thymus atrophy, and ulceration and erosion in the glandular stomach.
870.3150	90-Day oral toxicity-dog	The study is acceptable/guideline. The dosing levels were 0, 100, 200, and 450 ppm (males: 0, 2.8, 5.8, and 12.9 mg/kg/day; females: 0, 3.0, 6.2, and 13.6 mg/kg/day). The NOAEL was 5.8 mg/kg/day. The LOAEL was 12.9 mg/kg/day based on increased diarrhea, clinical chemistry changes, and increased incidence of thickening and mucosal hypertrophy of the duodenum in both sexes; and body weight loss, reduced food intake, and reduced food efficiency in females.
870.3050	28-Day oral toxicity-rat	The study is acceptable/guideline. The dosing levels were 0, 20, 100, 500, and 1,500 ppm (males: 0, 1.8, 9.0, 42.3, and 120.2 mg/kg/day; females: 0, 2.0, 9.6, 46.6, and 126.3 mg/kg/day. The NOAEL was 9.0 mg/kg/day. The LOAEL was 42.3 mg/kg/day based on changes in hematology parameters, increased absolute and relative spleen weight, histopathology in spleen and liver, and increased duodenal mucosal hyperplasia in both sexes.
870.3200	28-Day dermal toxicity-rat	This study was judged to be unacceptable/guideline because a higher dose could have been tolerated and the limit dose is 1,000 mg/kg/day. The dosing levels were 0, 40, 100, 250 mg/kg for 5 days/wk The dermal NOAEL was 40 mg/kg/day. The dermal LOAEL was 100 mg/kg/day based on scale formation, hyperkeratosis, and epidermal thickening.
870.3465	28-Day inhalation toxicity-rat	Study pending. Required due to the potential for occupational/residential exposure via this route.
870.3700	Prenatal development-rat	The study is acceptable/guideline. The dosing levels were 0, 10, 25, 50 mg/kg/day. The maternal NOAEL was 10 mg/kg/day; the maternal LOAEL was 25 mg/kg/day based on reduced body weight, body weight gain, food intake, and food efficiency. The developmental NOAEL was 25 mg/kg/day; the developmental LOAEL was 50 mg/kg/day based on increased incidences of dilated renal pelvis and cervical ribs with no cartilage.
870.3700	Prenatal development-rabbit	This study is acceptable/guideline. The dosing levels were 0, 1, 3, 5, 10, and 20 mg/kg/day. The maternal NOAEL was 5 mg/kg/day The maternal LOAEL was 10 mg/kg/day based on reduced body weight gain, reduced food intake, and reduced food efficiency. The developmental NOAEL was 5 mg/kg/day; the developmental LOAEL was 10 mg/kg/day based on increased resorption and post-implantation loss.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY PROFILE—Continued

Guideline No.	Study Type	Results
870.3800	Two generation reproduction study-rat	This study is acceptable/guideline when combined with the one generation preliminary study (below). The dosing levels were 0, 25, 75, and 300 ppm (F0 males: 0, 2.5, 7.4, and 29.0 mg/kg/day; F0 females 0, 2.6, 7.8, and 30.4 mg/kg/day; F1 males: 0, 2.8, 8.6, and 35.0 mg/kg/day; F1 females: 0, 3.0, 9.0, and 36.0 mg/kg/day. The parental/systemic NOAEL was 29 mg/kg/day. The parental/systemic LOAEL was greater than 29 mg/kg/day based on no observed effects. The reproductive NOAEL was 29 mg/kg/day. The reproductive LOAEL was greater than 29 mg/kg/day based on no observed effects. The offspring NOAEL was 29 mg/kg/day. The offspring LOAEL was greater than 29 mg/kg/day based on no observed effects.
870.3800	One-generation reproduction study-rat	The dosing levels were 0, 200, 400, and 600 ppm (F0 males: 0, 20.5, 39.9, and 59.1 mg/kg/day; F0 females: 0, 21.3, 42.5, and 60.4 mg/kg/day). The offspring NOAEL was less than 20.5 mg/kg/day. The offspring LOAEL was 20.5 mg/kg/day based on decreased pup body weight and body weight gain on and after post-natal day 7.
870.4100	Chronic toxicity-rat	This study was judged to be unacceptable/guideline. The dosing levels were 0, 25, 75, and 200 ppm (males: 0, 1.1, 3.4, and 9.0 mg/kg/day; females: 0, 1.5, 4.6, and 12.3 mg/kg/day. The NOAEL was 9.0 mg/kg/day and the LOAEL was greater than 9.0 mg/kg/day, so the Agency judged the study to be unacceptable because the highest dosing level was insufficient to produce a significant toxicological response.
870.4100	Chronic toxicity-dog	This study is acceptable/guideline. The dosing levels were 0, 100, 200, and 400 ppm (males: 0, 2.7, 5.4, and 10.8 mg/kg/day; female: 0, 2.7, 5.4, and 11.2 mg/kg/day. The NOAEL was 5.4 mg/kg/day. The LOAEL was 10.8 mg/kg/day based on increased diarrhea and clinical chemistry changes in both sexes (decreased cholesterol, protein, albumin, and globulin); and reduced body weight gain and food intake and efficiency in females.
870.4200	Carcinogenicity-rat	This study is acceptable/guideline. The dosing levels were 0, 25, 75, and 200 ppm (males: 0, 1.2, 3.4, and 9.2 mg/kg/day; females: 0, 1.5, 4.7, and 12.6 mg/kg/day). The NOAEL was 3.4 mg/kg/day. The LOAEL was 9.2 mg/kg/day based on reduced body weight and body weight gain, kidney atrophy and tubular casts in both sexes, and hepatic necrosis plus gross and microscopic ulcerations and lesions in the glandular and fore-stomachs in males. There was no evidence of carcinogenicity.
870.4300	Carcinogenicity-mouse	This study was judged to be unacceptable/guideline. The dosing levels for males were 0, 10, 30, and 120 ppm (0, 1.4, 4.1, and 17.2 mg/kg/day). The dosing levels for females were 0, 10, 30, 120, and 180 ppm (0, 1.6, 4.8, 20.5, and 32.8 mg/kg/day). The NOAEL for males was 4.1 mg/kg/day and for females was 32.8 mg/kg/day. The LOAEL for males was 17.1 mg/kg/day based on decrease of 20% in body weight gain at 13 weeks that was supported by the results of a 90-day study. The LOAEL for females was greater than 32.8 mg/kg/day. The Agency judged the highest dosing level to be inadequate in females because it did not produce a significant toxicological response. There was no evidence of carcinogenicity
870.5100	Gene mutation: Bacterial reverse mutation assay	This study is acceptable/guideline. The results were negative ± S9 up to 5,000 μg/plate by standard plate and tube preincubation. There was no cytotoxicity at any dose but there was precipitation at ≥2,500 μg/plate.
870.5300	Gene mutation: Mammalian cell culture	This study is acceptable/guideline. The results were negative ± S9 up to cytotoxic and precipitating concentration of 20 μg/mL.
870.5375	Cytogenetics (*in vitro*): Chromosomal aberrations	This study is acceptable/guideline. The results were negative ± S9 for clastogenic/aneugenic activity up to 25 μg/mL. Precipitation and cytotoxicity (reduced cell attachment and poor quality of metaphases) were seen at concentrations ≥+50 μg/mL.

TABLE 1.—SUBCHRONIC, CHRONIC AND OTHER TOXICITY PROFILE—Continued

Guideline No.	Study Type	Results
870.5395	Cytogenetics: Micronucleus test in mouse	This study is acceptable/guideline. The results were negative for clastogenic/aneugenic activity up to the highest dose tested (HDT) (300 mg/kg). In a preliminary study, doses ≥400 mg/kg caused death.
870.5550	Unscheduled DNA synthesis: Rat hepatocyte culture	This study is acceptable/guideline. The results were negative up to a cytotoxic concentration of 1.0 μg/mL.
870.6200	Acute neurotoxicity screening-rat	This study is acceptable/guideline. The dosing levels were 0, 100, 300, and 1,000 mg/kg. The neurotoxicity NOAELs were 1000 mg/kg and the LOAELS were greater than 1,000 mg/kg for both males and females. The systemic NOAEL was 300 mg/kg for males and 1,000 mg/kg for females. The systemic LOAEL was greater than 1,000 mg/kg for females; it was 1,000 mg/kg for males based on reduced body weight gain in males.
870.6200	Subchronic neurotoxicity screening-rat	This study is acceptable/guideline. The dosing levels were 0, 50, 250, and 750 (males)/1500 (females) ppm (males: 0, 3.5, 16.9, 49.9 mg/kg/day; females: 0, 4.0, 20.4, 111.9 mg/kg/day). The neurotoxicity NOAEL for males was 49.9/111.9 mg/kg/day and for females was 111.9 mg/kg/day. The neurotoxicity LOAEL for males was greater than 49.9 mg/kg/day and for females was greater than 111.9 mg/kg/day. The systemic NOAEL for males was 16.9 mg/kg/day and for females was 20.4 mg/kg/day. The systemic LOAEL for males was 49.9 mg/kg/day and for females was 111.9 mg/kg/day based on reduced body weight gain, food intake and food efficiency.
870.7485	Metabolism and pharmacokinetics-rat	This study is acceptable/guideline. Nearly 35% of an oral dose of pyraclostrobin is absorbed, with urinary and fecal excretion accounting for about 15% and 85% of excretion, respectively. Bile elimination accounted for about 30%. Two peak plasma concentrations were reached at 0.5 - 1 and at 8 hours with 16 to 38% lower plasma concentrations in males than females during the early peak phase. Elimination was biphasic at a low dose with plasma half lives of nearly 10 and 35 hours and monophasic at a high dose with a half-life of nearly 20 hours. Tissue distribution was fast, peaking at 0.5 hours, and was slightly higher among females. Some of the highest concentrations were found in the liver, thyroid, kidney, lung, adrenal glands, and pancreas but all levels dropped by more than 20-fold within 72 hours. About 33 metabolites were identified in urine, feces, and bile with no sex- or dose-related differences but the position of the label seemed to alter the profile, particularly in the urine. Desmethoxy pyraclostrobin is one of the major metabolites (labeled 500M07) in rat and is also found in large amounts in plants (labeled BF 500-3) and livestock (also labeled 500M07). The rat metabolic pathway included phase I reactions such as N-demethoxylation, various hydroxylations, and cleavage of the ether bond with subsequent oxidation; these reactions were followed by phase II glucuronidation and sulfation.
870.7600	Dermal penetration-rat	This study was judged to be unacceptable/guideline because most of the test material was retained on the dressing and was therefore unavailable for absorption. This makes it very difficult to determine the actual dose. However, the Agency was able to calculate a maximum possible dermal penetration rate of 14%.

Notes: Mg/kg = milligram(s) per kilogram; mg/kg/day = milligram(s) per kilogram per day; mL = milliliter(s); days/wk = days per week; μg = microgram(s)

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants

and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). Examples of how such a probability risk is expressed are description of the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for pyraclostrobin that were used for human risk assessment is shown in Table 2 below.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYRACLOSTROBIN

Exposure Scenario	Dose Used in Risk Assessment; Inter- species, Intraspecies, and UF; RfD	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	NOAEL= 5 mg/kg/day UF = 100 Acute RfD = 0.05 mg/kg/day	FQPA SF = 1X aPAD = 0.05 mg/kg/day	Rabbit prenatal developmental toxicity study. LOAEL = 10 mg/kg/day based on developmental toxicity findings of increased resorptions per litter and increased total resorptions (i.e., dams with complete litter loss).
Acute Dietary (General population including infants and children)	NOAEL = 300 mg/kg UF = 100 Acute RfD = 3.0 mg/kg/day	FQPA SF = 1X aPAD = 3.0 mg/kg/day	Rat acute oral neurotoxicity study. LOAEL = 1000 mg/kg/day based on decreased body weight gain in males.
Chronic Dietary (All populations)	NOAEL= 3.4 mg/kg/day UF = 100 Chronic RfD = 0.034 mg/kg/day	FQPA SF = 1X cPAD = 0.034 mg/kg/day	Rat oral carcinogenicity study. LOAEL = 9.2 mg/kg/day based on decreased body weight and body weight gain, and kidney tubular casts and atrophy in both sexes, increased incidence of liver necrosis and erosion/ulceration of the glandular stomach and forestomach in males, plus hemolymphoreticular tumors in males and mammary adenocarcinoma in females.
Short-Term Incidental Oral (1-30 days)	NOAEL= 5.8 mg/kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = NA	13-Week dog feeding study. LOAEL = 12.9 mg/kg/day based on increased incidence of diarrhea, clinical chemistry changes, duodenum mucosal hypertrophy, and decreased body weight, food intake, and food efficiency.
Intermediate-Term Incidental Oral (1- 6 months)	NOAEL= 5.8 mg/kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = NA	13-Week dog feeding study. LOAEL = 12.9 mg/kg/day based on increased incidence of diarrhea, clinical chemistry changes, duodenum mucosal hypertrophy, and decreased body weight, food intake, and food efficiency.
Short-Term Dermal (1 to 30 days)	Oral study NOAEL = 5.0 mg/kg/day (dermal absorption rate = 14 %)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Rabbit prenatal developmental toxicity study. LOAEL = 10.0 mg/kg/day based on developmental toxicity findings of increased resorptions per litter and increased total resorptions (i.e., dams with complete litter loss).

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PYRACLOSTROBIN—Continued

Exposure Scenario	Dose Used in Risk Assessment; Inter- species, Intraspecies, and UF; RfD	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Intermediate-Term Dermal (1 to 6 months)	Oral study NOAEL = 5.0 mg/kg/day (dermal absorption rate = 14 %)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Rabbit prenatal developmental toxicity study. LOAEL = 10.0 mg/kg/day based on developmental toxicity findings of increased resorptions per litter and increased total resorptions (i.e., dams with complete litter loss).
Long-Term Dermal (>6 months)	Oral study NOAEL = 3.4 mg/kg/day (dermal absorption rate = 14 %)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Rat oral carcinogenicity study. LOAEL = 9.2 mg/kg/day based in males on decreased body weight and body weight gain, and kidney tubular casts and atrophy in both sexes, increased incidence of liver necrosis, and erosion and ulceration of the glandular stomach and forestomach in males, plus hemolymphoreticular tumors in males and mammary adenocarcinoma in females.
Short-Term Inhalation (1 to 30 days)	Oral study NOAEL = 5.0 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Rabbit prenatal developmental toxicity study. LOAEL = 10.0 mg/kg/day based on developmental toxicity findings of increased resorptions per litter and increased total resorptions (i.e., dams with complete litter loss).
Intermediate-Term Inhalation (1 to 6 months)	Oral study NOAEL = 5.0 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Rabbit prenatal developmental toxicity study. LOAEL = mg/kg/day based on developmental toxicity findings of increased resorptions per litter and increased total resorptions (i.e., dams with complete litter loss).
Long-Term Inhalation(>6 months)	Oral study NOAEL = 3.4 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Rat oral carcinogenicity study. LOAEL = 9.2 mg/kg/day based in both sexes on decreased body weight and body weight gain, and kidney tubular casts and atrophy in both sexes, increased incidence of liver necrosis and erosion and ulceration of the glandular stomach and forestomach in males, plus hemolymphoreticular tumors in males and mammary adenocarcinoma in females.
Cancer (MOE Approach)	NOAEL = 32.8		Mouse oral carcinogenicity study. Results were that mortality, clinical signs, body weight, body weight gain, food consumption, food efficiency, hematology, organ weights, and gross and microscopic findings for both sexes at all doses were unaffected by treatment. The HDT was 32.8 mg/kg/day in females.

Note: NA = Not Applicable

The Agency has concluded that the rat carcinogenicity study is acceptable for both sexes and did not show either a significant increasing tumor trend or a significant difference in tumor incidence in the pair-wise comparison of the dosed groups with the controls. The Agency has also concluded that the mouse carcinogenicity study was acceptable for males, in which there was no evidence of carcinogenicity. In general, acceptable study results indicate that pyraclostrobin is unlikely to be a carcinogen. However, the Agency has also concluded that the carcinogenicity data available for pyraclostrobin are inadequate to allow full assessment of the human carcinogenic potential of this pesticide because the highest dosing levels for females in the mouse carcinogenicity study were not great enough to produce significant toxicological effects (that is, the HDT is the NOAEL for female mice in this study). The company is performing an additional carcinogenicity study in female mice to remedy this deficiency. Because neither of the cancer studies show any evidence of carcinogenicity, a non-threshold (Q-star) approach cannot be used to estimate cancer risk. Instead, a regulatory MOE has been chosen as a tool for bounding any potential chronic dietary cancer risk from pyraclostrobin that may exist. The regulatory MOE is derived from the HDT in female mice (a NOAEL of 32.8 mg/kg/day) and is 10 times higher than the NOAEL used for chronic non-cancer risk. This is not the traditional MOE approach used to assess the risks of using threshold carcinogens but is believed by the Agency to be appropriate in this situation for the following reasons:

- The genotoxicity data indicate that pyraclostrobin is not mutagenic,

- Both sex groups in the rat study and the male group in the mouse study showed no treatment-related increase in tumors, and
- Two structural analogs of pyraclostrobin have been found ''not likely to be carcinogenic to humans.'' It is, as well, commonly accepted that developing cancers which have been triggered by non-genotoxic substances are reversible if exposure is discontinued prior to complete propagation of the pre-neoplastic lesions or the full expression of cancer.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have previously been established (see 40 CFR 180.582) for the combined residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate), expressed as parent compound, in or on a variety of raw agricultural commodities, including barley, grain; beet, sugar, roots; berry, group; fruit, citrus, group; fruit, stone, group; nut, tree, group; peanut; rye, grain; vegetable, bulb, group; vegetable, cucurbit, group; vegetable, fruiting, group; vegetable, root, except sugar beet, subgroup; vegetable, tuberous and corm, subgroup; and wheat, grain. Tolerances have also been established for the combined residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its metabolites convertible to 1-(4-chlorophenyl)-1H-pyrazol-3-ol and 1-(4-chloro-2-hydroxyphenyl)-1H-pyrazol-3-ol, expressed as parent compound, in or on the fat, liver, meat, and meat byproducts except liver of cattle, goat, hog, horse, and sheep, and in milk. Risk assessments to assess dietary exposures from pyraclostrobin in food were conducted by EPA as follows.

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

In conducting the acute dietary risk assessments EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™, Version 2.0), which accumulates food consumption (exposure) data directly from reports by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. EPA also used the Lifeline™, Version 2.0 model to conduct the acute dietary risk assessments. Lifeline™ also uses the CSFII, 1994–1996 and 1998 food consumption database but accumulates exposure data using statistical and random samplings of the database. The following assumptions were made for the acute exposure assessments. Tolerance level pyraclostrobin residues, default processing factors, and a 100% crop treated assumption were used for all commodities, as appropriate, except as follows. The highest average field trial residue data were used for leafy vegetables. Mango and papaya, on which no action has yet been taken, were also included in this analysis.

ii. *Chronic exposure.* Chronic dietary risk assessments are performed for a food-use pesticide if a toxicological study and the use pattern of the pesticide have indicated the possibility of an effect of concern occurring as a result of a long-term exposure.

In conducting the chronic dietary risk assessment EPA used the DEEM-FCID™ model, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 CSFII and accumulated exposure to the chemical for each commodity. EPA also used the Lifeline™, Version 2.0 model to conduct the chronic dietary risk assessments. Lifeline™ also uses the CSFII, 1994–1996 and 1998 food consumption database but accumulates exposure data using statistical and random sampling of the database. The following assumptions were made for the chronic exposure assessments. Tolerance level pyraclostrobin residues and default processing factors were used for raw and processed agricultural commodities, as appropriate, except as detailed below. Percent crop treated (PCT) data were used for most crop plant commodities but 100% crop treated values were assumed for banana commodities, mango and papaya (on which no action has been taken yet) commodities, and all animal commodities. The highest average field trial residue data (instead of tolerance level residues) were used for vegetables, leafy, except brassica, group. A proposed tolerance level residue value of 1.5 ppm was used for strawberries instead of the current tolerance level value of 0.4 ppm because BASF Corporation has petitioned for an increase in the pyraclostrobin tolerance in or on strawberries based on additional field trial data. No action has been taken on this petition yet but inclusion of the higher value adds to the conservatism of the exposure estimate. Finally, as noted above, mango and papaya, for which no action has yet been taken on proposed tolerances, were also included in this analysis.

iii. *Cancer.* The chronic dietary risk assessment for cancer utilized the same models, food consumption data, and PCT and residue assumptions as the chronic dietary risk assessment.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated pesticide residue levels in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, that the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

Below is a description of how the Agency used PCT information, including a list of the PCT data used in the chronic cancer and noncancer PCT values. The value for each crop or crop group also applies to all raw or processed agricultural commodities that are encompassed by that crop or crop group. For example, the value for fruit, pome, group applies to such commodities as apple fruit, dried apples, apple juice and sauce, pear fruit, and pear juice.

Barley— 2%
Beet, sugar—55%
Berry group—2%
Brassica, head and stem, subgroup—1%
Brassica, leafy greens, subgroup—2%

Cherry, sweet—53%
Cherry, tart—53%
Corn, field—1%
Corn, pop—1%
Corn, sweet—1%
Fruit, citrus, group—6%
Fruit, pome, group—7%
Fruit, stone, group—28%
Grape—16%
Hop, dried cones—2%
Nut, tree, group—1%
Pea and bean, dried shelled, except soybean, subgroup—1%
Pea, succulent—1%
Peanut—19%
Peppermint—2%
Pistachio—6%
Rye— 2%
Soybean—1%
Spearmint—2%
Strawberry—80%
Sunflower—1%
Vegetable, bulb, group—17%
Vegetable, cucurbit, group—37%
Vegetable, fruiting, group—18%
Vegetable, leafy, except brassica, group—5%
Vegetable, leaves of root and tuber, except sugar beet—2%
Vegetable, root, except sugar beet, subgroup—6%
Vegetable, tuberous and corm, subgroup—25%
Wheat— 2%

The PCT data that were used in the chronic cancer and noncancer dietary risk analyses were derived as follows. (Note: For the acute analysis the Agency used 100% crop treated.) For crops that were already registered, the Agency used current usage data. These data were determined to be the best data available and were found to be reliable by the Agency.

For crops pending registration, the Agency generally uses projected PCTs based on the highest or second highest current PCT of relatively new fungicide alternatives that target the same diseases as pyraclostrobin, while also taking into account the corresponding market projections for the new pyraclostrobin uses. For corn, the Agency notes that the use of fungicides is negligible. Even the commodity sweet corn, with has the highest use rate of the alternative strobilurin, has a percent crop treated of only 2%. Therefore, the Agency believe for use on corn and sweet corn a 1% estimate is conservative. The use of fungicides on soybean and sunflower is also negligible. The highest use for any alternative is only <1% and therefore, the Agency used 1%. For Pome fruit, the Agency used an estimated percent crop treated of 7%, there are two alternative one with a percent crop treated of <1% and another with a percent crop treated of 15%. The Agency used 7% which is the Agency's estimate of the likely maximum percent crop treated for pyraclostrobin on Pome fruit. It is possible that use could increase beyond this estimated percentage; however, the Agency is requiring annual reports that would detect this increase. For leafy vegetable, the two major alternatives attained a 5% crop treated; therefore, the Agency used a 5% crop treated estimate for leafy vegetables. For Brassica, head and stem, one alternative had a percent crop treated of 2% for broccoli, cabbage and cauliflower and therefore a 2% crop treated estimate was used. For Vegetables, leaves of root and tubers, the best alternative had a maximum percent treated of 3% and the Agency used 2%. There are a few instances where the Agency did not use the maximum percent crop treated of any alternative, such as Vegetables, leaves of root and tubers. In these few instances (Sweet corn, Tree Nuts, Pome Fruit and Vegetables, leaves of roots and tubers) it is because in the past the Agency has found the registrants estimates of percent crop treated to be very reliable, more reliable that estimates based on the maximum percent crop treated of an alternative. The Agency conducted this same analysis of the major alternatives for all the other crops/crop groups to derive these estimates.

As indicated above, for existing uses 2003 PCT data provided by the registrant were accepted as provided for use in the dietary analysis. The 2003 data provided by the registrant were the only actual data available for the registered crops and the registrant best knew, based on its product sales during 2003, how pyraclostrobin was allocated across those crops. Usage data for 2003 from USDA/NASS (National Agricultural Statistics Service), the Agency's proprietary source, and the California Department of Pesticide Regulation were not available to the Agency at the time of analysis. These 2003 data from the registrant were initially presented as market share data—the shares of acre-treatments of pyraclostrobin in total fungicide treatments for each crop—as a check on the registrant's previous projections of the same prior to registration of these crops. These 2003 market shares were based on actual sales of pyraclostrobin allocated to registered crops during eleven months of 2003. Since dietary analysis requires PCTs, not market shares, the Agency converted these 2003 market shares to 2003 PCTs by taking into account the numbers of applications and the total fungicide treatments to acres planted ratio for each crop. At about the same time the registrant did the same conversions. Each of the two sets of 2003 PCTs converted from 2003 market shares were almost identical, with small differences mainly due to different numbers of applications used in their calculations by each party. Since the registrant's 2003 PCT data used numbers of applications that were consistent with those used in its corresponding 2003 market shares data, the registrant's PCTs were considered to be the more consistent of the two and thus were used for the dietary analysis. As a condition of registration, the registrant also will provide corresponding market share or PCT data for 2004 based on sales of its products during 2004 (and, similarly, for following years) for these same registered crops. Generally, chronic dietary analysis utilizes actual PCT data, based on either usage data sources and/or registrant product sales, for registered uses and projected PCT data for pending uses.

The Agency believes that the three conditions previously discussed for PCT data have been met. With respect to Condition 1, EPA finds that the PCT data that are listed above for pyraclostrobin use on a number of agricultural crops are reliable and have a valid basis. Since initial registration of this pesticide the Agency has required annual data submissions concerning the PCT of crops pyraclostrobin is registered for use on and the same requirement will be a condition of registration for crops for which tolerances are being established by this rule.

As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of the consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which pyraclostrobin may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency currently lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyraclostrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates

are made by reliance on simulation or modeling taking into account data on the physical characteristics of pyraclostrobin.

The Agency used the Pesticide Root Zone Model/Exposure Analysis Modeling System model (PRZM/EXAMS) to estimate pesticide concentrations in surface water and the Screening Concentration in Groundwater (SCI-GROW) model to predict pesticide concentrations in ground water. PRZM/EXAMS incorporates an index reservoir environment in its analysis and includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin. The SCI-GROW model estimates pesticide concentrations in shallow groundwater.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health LOCs.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated drinking water concentrations (EDWCs), which are the model estimates of a pesticide's concentration in water. EDWCs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and from residential uses. Since DWLOCs address total aggregate exposure to pyraclostrobin they are further discussed in the aggregate risk sections in Unit E.

Based on the (Tier II) PRZM/EXAMS and SCI-GROW models, the peak EDWCs of pyraclostrobin for acute exposures are estimated to be 22.6 parts per billion (ppb) in surface water and 0.02 ppb in shallow ground water. The peak EDWCs for chronic exposures are estimated to be 1.9 ppb in surface water and 0.2 ppb in shallow ground water. The 36-year average concentration of pyraclostrobin in surface water that was estimated by PRZM-EXAMS for use in the chronic/cancer risk assessment is 1.2 ppb. These concentrations are based on maximum applications to turf, which has the highest labeled application rate of any pyraclostrobin use.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Pyraclostrobin is proposed for application to residential turfgrass and recreational sites. The risk assessment was conducted using the following residential exposure assumptions. Turf applications will be made by professional pest control operators (PCOs) only, so residential handler exposure is not expected and was not evaluated. Postapplication scenarios evaluated assumed that exposure via the dermal route is likely for both adults and children entering treated lawns. Toddlers may also experience exposure via hand-to-mouth contact, object-to-mouth contact, and soil ingestion. The postapplication risk assessment is based on generic assumptions specified in the Recommended Revisions to the Residential SOPs (Standard Operating Procedures) and recommended approaches by an EPA science advisory council. It is also assumed that postapplication turf exposure can occur over periods of from one day to multiple weeks because of pyraclostrobin residue decline times and multiple treatments being made in a season. Thus, these exposures are classified as short-term (one day to one month) and intermediate-term (one to six months).

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to pyraclostrobin and any other substances. Pyraclostrobin also does not appear to produce a toxic metabolite that is produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyraclostrobin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* There was no substantial evidence of increased prenatal or postnatal susceptibility following *in utero* exposure to rats. That is, the lowest-dose adverse developmental effects were seen at a higher dose than that which caused maternal toxicity. However, in the rabbit developmental toxicity study there was qualitative evidence of higher prenatal susceptibility: Increases in resorptions per litter and post-implantation losses were seen in the presence of maternal toxicity (decreases in body weight gain and food consumption). In the 2–generation reproduction study the HDT did not elicit maternal systemic, reproductive, or offspring toxicity. In the 1-generation toxicity study there was an apparent quantitative susceptibility in pups (not seen in the 2–generation reproduction study) that is based on a possible marginal decline (threshold effect) in body weight and body weight gain at the lowest dose level of 21 mg/kg/day (developmental LOAEL) while the parental systemic toxicity NOAEL and LOAEL were 40 and 60 mg/kg/day, respectively, based

on decreased body weight and body weight gain.

3. *Conclusion*. There is an adequate toxicity data base for the selection of doses and endpoints for use in risk assessment for pyraclostrobin. Exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA has evaluated and reevaluated the potential for increased susceptibility of infants and children to pyraclostrobin and has concluded that the special FQPA safety factor (FQPA SF) should be reduced to 1X for all potential pyraclostrobin exposure scenarios because there are no residual uncertainties for pre- or post-natal toxicity and no substantial evidence of increased sensitivity of infants and children to pyraclostrobin. There is low concern for the qualitative susceptibility seen in the rabbit prenatal development study and no residual uncertainties because the developmental effects were seen in the presence of maternal toxicity and there are no clear NOAELs for maternal and developmental toxicities. There is also low concern for the quantitative susceptibility seen in the one-generation rat reproduction study and no residual uncertainties because:

i. The offspring effects seen in this study were not repeated in the two-generation reproduction study.

ii. The marginal increase in pup weights seen at or after post-natal day 7 may be due to higher exposure via their diet.

iii. The dose used for risk assessment would address the effects of concern seen in the offspring.

iv. Even though the mouse cancer study must be repeated, the MOE approach used for cancer risk assessment provides an adequate margin of safety because a NOAEL was established. The repeated study will be done at higher doses.

The Agency therefore concludes that the dietary (food and drinking water) and residential exposure assessments will not underestimate the potential exposure of infants, children, or women of childbearing age.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EDWCs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EDWCs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) will not result in unacceptable levels of aggregate human health risk. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to pyraclostrobin is estimated to occupy 2% of the aPAD for the U.S. population in the DEEM-FCID™ model run and 1% of the aPAD for the U.S. population in the Lifeline™ model run; 74% of the aPAD for females 13 - 49 years old in the DEEM-FCID™ model run and 85% of the aPAD for females 13 - 49 years old in the Lifeline™ model run; 3% of the aPAD for all infants (less than one year old) in the DEEM-FCID™ model run and 3% of the aPAD for all infants (less than one year old) in the Lifeline™ model run; and 4% of the aPAD for children 1-2 years old in the DEEM-FCID™ model run and 3% of the aPAD for children 1-2 years old in the Lifeline™ model run. In addition, there is the potential for acute dietary exposure to pyraclostrobin in drinking water. After calculating DWLOCs and comparing them to the EDWCs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 3 below.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO PYRACLOSTROBIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)*	Surface Water EDWC (ppb)	Ground Water EDWC (ppb)	Acute DWLOC (ppb)
U.S. population	3.0	1	22.6	0.02	1.0×10^5
All Infants (less than 1 year old)	3.0	3	22.6	0.02	2.9×10^4
Children 1-2 years old	3.0	3	22.6	0.02	2.9×10^4
Children 3-5 years old	3.0	3	22.6	0.02	2.9×10^4
Children 6-12 years old	3.0	1	22.6	0.02	3.0×10^4
Youths 13-19 years old	3.0	1	22.6	0.02	8.9×10^4
Females 13-49 years old	0.05	85	22.6	0.02	230

The Lifeline™ model results

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure and the Lifeline™ model, EPA has concluded that exposure to pyraclostrobin from food will utilize 6% of the cPAD for the U.S. population, 10% of the cPAD for the subgroup all infants (less than 1 year old), 16% of the cPAD for the subgroup children 3-5 years old, and 5% of the cPAD for the subgroup females 13-49 years old. Based on the use pattern, chronic residential exposure to residues of pyraclostrobin is not expected. In addition, there is the potential for chronic dietary exposure to pyraclostrobin in drinking water. After calculating DWLOCs and comparing them to the EDWCs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as Table 4 demonstrates.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRACLOSTROBIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)*	Surface Water EDWC (ppb)	Ground Water EDWC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.034	6	1.9	0.02	1100
All Infants (less than 1 year old)	0.034	10	1.9	0.02	310
Children 1-2 years old	0.034	21	1.9	0.02	270
Children 3-5 years old	0.034	16	1.9	0.02	290
Children 6-12 years old	0.034	9	1.9	0.02	310
Youths 13-19 years old	0.034	4	1.9	0.02	980
Females 13-49 years old	0.034	5	1.9	0.02	970

* The Lifeline™ model results

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyraclostrobin is proposed to be registered for application, by professional pest control operators only, to residential and recreational turfgrass sites that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for pyraclostrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that aggregated food and residential exposures result in aggregate MOEs of 230 for the U.S. population as a whole and 130 for the subgroup children 1-2 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EDWCs for chronic exposure of pyraclostrobin in ground and surface water. After calculating DWLOCs and comparing them to- the EDWCs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 5 below.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PYRACLOSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Target MOE	Surface Water EDWC (ppb)	Ground Water EDWC (ppb)	Short-Term DWLOC (ppb)
U.S. population	230	100	22.6	0.02	980
Children 1-2 years old	130	100	22.6	0.02	110

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Pyraclostrobin is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for pyraclostrobin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 230 for the U.S. population as a whole and 130 for the subgroup children 1-2 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EDWCs for chronic exposure of pyraclostrobin in ground and surface water. After calculating DWLOCs and comparing them to the EDWCs for surface and ground water, EPA does not expect (see Table 6) intermediate-term aggregate exposure to exceed the Agency's level of concern.

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO PYRACLOSTROBIN

Population Subgroup	Aggregate MOE (Food + Residential)	Target MOE	Surface Water EDWC (ppb)	Ground Water EDWC (ppb)	Intermediate-Term DWLOC (ppb)
U.S. population	230	100	22.6	0.02	980
Children 1-2 years old	130	100	22.6	0.02	110

5. *Aggregate cancer risk for U.S. population*. The Agency has calculated aggregate MOEs (food and drinking water exposure) for pyraclostrobin. The SCI-GROW model estimates that the chronic concentration of pyraclostrobin in shallow ground water from the proposed use on turf grasses is 0.2 ppb. The PRZM/EXAMS model estimates that the 36-year average chronic/cancer concentration is 1.2 ppb. The aggregate regulatory bounded MOE for food plus drinking water is therefore estimated to be 17,000, as detailed in Table 7 below.

TABLE 7.— MARGINS OF EXPOSURE (MOES) FOR CANCER BASED UPON CHRONIC AGGREGATE EXPOSURE (FOOD PLUS WATER) TO PYRACLOSTROBIN FOR THE U.S. POPULATION

NOAEL (mg/kg/day)	Exposure from Food (mg/kg/day)	MOE (food)	Exposure from Water (mg/kg/day)	MOE (water)	Total MOE (food + water)
32.8	0.00198	17,000	3.5×10^{-5}	950,000	17,000

6. *Determination of safety*. Based on these risk assessments, EPA therefore concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to pyraclostrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

1. *Enforcement methods for plant commodities*. The petitioner has proposed two tolerance enforcement methods for the determination of residues of pyraclostrobin and its desmethoxy metabolite (BF 500-3) in/on plant commodities: Liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) method D9808 and high pressure liquid chromatography/ultraviolet (HPLC/UV) method D9904. The validated method levels of quantitation (LOQs) for pyraclostrobin and BF 500-3 for both the LC/MS/MS and HPLC/UV methods are 0.02 ppm for each analyte in plant matrices. Adequate independent method validation and radiovalidation data have been submitted for both methods.

2. *Enforcement methods for livestock commodities*. The proposed enforcement methods were used for data collection in the ruminant and poultry feeding studies. The concurrent method validation recoveries demonstrate that the methods are adequate for data collection. The petitioner has proposed two tolerance enforcement methods for ruminant commodities: HPLC/UV method 439/0 and Method 446, consisting of gas chromatography/mass spectrometry (GC/MS) method 446/0 and LC/MS/MS method 446/1. Radiovalidation data submitted for the GC/MS and LC/MS/MS methods are adequate for liver, milk, and muscle. The HPLC/UV method determines residues of pyraclostrobin per se. Method 446 has a hydrolysis step and determines residues of pyraclostrobin and its metabolites as BF 500-5 and BF 500-8. Independent method validation data for the HPLC/UV and LC/MS/MS methods are acceptable.

3. *Multiresidue methods*. Pyraclostrobin was successfully evaluated through several of the FDA protocols, while recovery of BF 500-3 was unsuccessful in all protocols. Pyraclostrobin was completely recovered through Protocol D (in grape) and E (in grape), and partially recovered through Protocol F (in peanut). Metabolite BF 500-3 had poor peak shape and inadequate sensitivity with Protocol C columns and therefore was not further analyzed under Protocols D, E, and F. The results of the multiresidue testing for pyraclostrobin have been forwarded to FDA for inclusion in PAM (Pesticide Analytical Methods) Volume I.

Adequate enforcement methodology (such as gas chromatography) is therefore available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No Codex or Mexican maximum residue limits (MRLs) have been proposed or are established for residues of pyraclostrobin. It appears that Canadian MRLs for pyraclostrobin have not yet been published.

C. Conditions

The following conditions are placed upon the initial registration of the uses that are the subject of this rule.

1. *Additional data requirements*.

i. A 28-day inhalation toxicity study that follows the 90-day inhalation toxicity protocol is required due to the potential occupational exposure via this route.

ii. A new carcinogenicity study in female mice, using higher dosing, because no systemic toxicity was seen in the initial study at the HDT.

iii. To support the tolerance for vegetable, leafy, except brassica, group, six additional analyses of residue samples of head lettuce with wrapper leaves are required from the submitted field trials and one additional field trial from either Region 1 or 2 is required for leaf lettuce.

iv. To support the tolerance for brassica, head and stem, subgroup, analyses of four more samples of cabbage with wrapper leaves are required from the submitted field trials.

v. To support the tolerance for brassica, leafy greens, subgroup, three additional field trials on mustard greens

are required, one each from Regions 2, 3, and 10.

vi. To support the tolerance for pea and bean, dried shelled, subgroup, one additional field trial is required from Region 11.

vii. To support the tolerances for soybean, forage and soybean, hay, two additional field trials from Region 5 and one more from Region 4 are required.

viii. To support the increased tolerance for strawberry, one final study of residues from field trials in California is required.

ix. Percent crop treated data will be required at the end of each year for 5 years after registration of the new crop uses for which tolerances are established in this final rule.

2. *Other*.

A reasonable amount of new analytical standard for pyraclostrobin (BAS 500 F) and the desmethoxy metabolite of pyraclostrobin (BF 500-3) must be submitted to the Agency.

V. Comments

Two communications were received from B. Sachau of New Jersey in response to the notices of filing. The communications objected to establishment of the proposed tolerances for several reasons and mostly involve generalized and unsubstantiated disagreement with EPA's risk assessment methodologies or safety findings. Each comment is listed below, followed by the Agency response.

1. Ms. Sachau feels that establishment of these tolerances would add to the pesticide body load that is already carried by the human population.

Agency response: When new or amended tolerances are requested for the presence of the residues of a pesticide and its toxicologically significant metabolite(s) in food or feed, the Agency, as is required by Section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), estimates the risk of the potential exposure to these residues by performing an aggregate risk assessment. Such a risk assessment integrates the individual assessments that are conducted for food, drinking water, and residential exposures. Additionally, the Agency, as is further required by Section 408 of the FFDCA, considers available information concerning what are termed the cumulative toxicological effects of the residues of that pesticide and of other substances having a common mechanism of toxicity with it. The Agency has concluded after this assessment that there is a reasonable certainty that no harm will result from exposure to the residues of interest. Therefore, the proposed tolerance(s) are found to be acceptable. These assessments consider body residue loads of the pesticide, as well as available information concerning the potential that other substances have a common mechanism of toxicity, in reaching a conclusion as to whether or not the reasonable certainty of no harm decision can be made.

2. Ms. Sachau does not want American universities to use tax dollars to promote pesticides (Interregional Research Project Number 4 is affiliated with Rutgers University).

Agency response: Although Ms. Sachau's concerns regarding use of tax dollars to seek pesticide tolerances and registrations are not germane to EPA's statutory basis for acting on the pyraclostrobin tolerance petitions, and thus technically no response is required to this comment, EPA can provide the following information regarding the Interregional Research Project Number4 (IR-4). The Interregional Research Project Number 4 (IR-4) Program was created by Congress in 1963 to assist the growers of minor crops in obtaining registration of pesticides for those uses that might otherwise be uneconomic for pesticide companies to pursue. The IR-4 National Coordinating Headquarters is located at Rutgers University in New Jersey and receives the majority (90%) of its funding from the U.S. Department of Agriculture (USDA). It is the only publicly funded program that conducts research, submits petitions for tolerances, and operates in collaboration with USDA, the Land Grant University System, the agrochemical industry, commodity associations, and the EPA. The IR-4 program takes the lead in identifying and prioritizing minor crop pesticide needs, and in conducting the research needed to obtain the tolerances for use on these crops. Under the Pesticide Registration Improvement Act (PRIA), IR-4 works in cooperation with the pesticide registrant to request a waiver of the fees that are charged for the registration services provided by EPA. The waiver will be granted if the labeling containing the use(s) of interest is closely associated with submission of a tolerance petition by IR-4 and if it is in the public interest. This fee waiver serves as an incentive to the IR-4 program to pursue registration of minor uses. In addition to the work performed for minor use crop pesticide registration, IR-4 also develops risk mitigation measures for existing registered products.

3. Ms. Sachau feels that animal testing is cruel to the animals, is inaccurate, and is potentially even irrelevant to the issue being researched.

Agency response: Animal testing is used because it is currently the only reasonably accurate and acceptable way in which the potential impacts of the use of new chemicals (including pesticides) on humans can be determined. The EPA Test Guidelines recommend the types of animals to be used as test animals in acute irritation studies as well as in longer term, subchronic and chronic, studies such as developmental toxicity, reproduction, and carcinogenicity studies. Results obtained from these animal studies are generally felt by the scientific community to be relevant to humans because the cells and molecules of the selected test species are very similar to those of humans. Therefore, if a pesticide causes toxicity in the test animals, it is likely to do so in humans as well. That said, EPA supports efforts to use the least possible number of animals in the studies that are required to support pesticide registration actions. Concerning alternatives, the use of humans as test subjects is widely felt to be morally unacceptable and there are no *in vitro* type studies that can adequately address the concerns the animal studies satisfy. The EPA is currently working with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) to investigate *in vitro* methods that can acceptably investigate the toxicological concerns associated with the use of pesticides but the use of animal tests is still necessary if the Agency is to make the reasonable certainty of no harm decisions that it is legally required to make.

4. Ms. Sachau feels that the end point effects noted for pyraclostrobin are, by themselves, sufficient that the Agency should reject use of pyraclostrobin for any pesticidal purpose in the U.S.

Agency response: As is the case with almost all conventional pesticides, numerous tests have been performed to study the toxicological effects of pyraclostrobin. The various tests use doses that range from quite low to many times higher than virtually any member of the population of the U.S. could ever be exposed to. The highest doses are, in fact, deliberately chosen to try to elicit toxicological symptoms because a description of these symptoms and the dose levels at which they occur is one of the desired outcomes of the studies. Virtually any chemical (vitamins, for example) is toxic if taken in excessively large doses. Risk, however, is a function of the exposure levels that actually occur in the population in comparison to the threshold exposure level at which

adverse symptoms begin to be elicited . For a toxicologically average person, if actual exposure is less than the adverse symptom exposure threshold, no such symptoms are expected to be seen. However, in order to make the reasonable certainty of no harm determination the Agency requires more assurance than this that the use of animals (instead of humans) for testing, variations in susceptibility among members of the U.S. population, greater sensitivity of infants and children, etc., has been accounted for in the risk assessment process. Therefore, safety factors are used in conjunction with dosing levels at which no or only the first symptoms of exposure to the pesticide were seen to provide a substantial additional margin of safety. This mechanism helps assure that toxicological symptoms will not be elicited in members of the U.S. population by beneficial, labeled uses of the pesticide. The fact that very high doses of a pesticide cause toxicological symptoms is not, by itself, enough to make approval of uses of that pesticide unreasonable.

5. Ms. Sachau feels that if all data are not available, the Agency should not proceed with establishment of the tolerances.

Agency response: The studies the Agency still requires for reasonably complete data support of the currently registered uses and the additional uses that will be enabled by the establishment of the tolerances in this rule are as follow, along with the reasons why they do not interfere with the completion of this rule. It should also be noted that there are always more data that could theoretically be required, and that data requirements do change through time. Data gaps such as those discussed below are, in general, considered to simply be supplementary or confirmatory to the large body of acceptable data that has already been submitted to the Agency in support of the tolerances and uses that are contemplated by this rule.

- A 28-day inhalation toxicity study. - This study has been required so that the Agency can confirm that repeated exposure of the lungs to pyraclostrobin, an irritating chemical, is reasonably safe. Since no incidents are known to the Agency, after two years of registration, where exposure to pyraclostrobin has lead to lung damage, continued use of this fungicide while this study is being completed does not seem unreasonable.
- A new carcinogenicity study of female mice. - Two carcinogenicity studies of pyraclostrobin have been completed. One, testing both sexes of rats, was acceptable for both sexes and produced no evidence of carcinogenicity. The other, testing both sexes of mice, was acceptable for males and produced no evidence of carcinogenicity. It was unacceptable for females because there was no evidence of carcinogenicity and no significant evidence of toxicity even at the highest dose. Because of this, and despite the lack of evidence of carcinogenicity to date, the Agency wants confirmation that pyraclostrobin is not a carcinogen. Despite the lack of carcinogenicity in the acceptable carcinogenicity studies to date, the Agency performed an MOE threshold-type analysis based on the NOAEL for female mice to produce a worst-case cancer risk assessment and found there to be no risk of concern.
- Six more residue samples from previous studies of head lettuce with wrapper leaves, one more residue field trial on head lettuce, and one more residue field trial on leaf lettuce. - A total of 6 acceptable head lettuce and 6 acceptable leaf lettuce residue field trials were submitted and, along with 12 acceptable celery and 8 acceptable spinach residue field trials, provide strong support for establishment of a pyraclostrobin tolerance of 29 ppm on leafy vegetables (except brassica). The Agency therefore believes that the additional studies, while required by our standard operating procedure, will simply serve to confirm the results of the acceptable data we have already evaluated.
- Four more treated samples of cabbage with wrapper leaves. - A total of 8 acceptable residue field trials on cabbage have already been submitted and, together with 7 broccoli field trials, provide strong support for establishment of pyraclostrobin tolerances of 16 ppm in/on brassica head and stem vegetables. The Agency therefore believes that the additional studies, while required by our standard operating procedure, will simply serve to confirm the results of the acceptable data we have already evaluated.
- Three more residue field trial on mustard greens. - A total of 5 acceptable residue field trials on mustard greens have already been submitted and provide strong support for establishment of pyraclostrobin tolerances of 16 ppm in/on brassica leafy greens. The Agency therefore believes that the additional studies, while required by our standard operating procedure, will simply serve to confirm the results of the acceptable data we have already evaluated.
- One more residue field trial on dried shelled peas. - A total of 9 acceptable residue field trials on dried shelled peas have already been submitted and, along with acceptable residue data previously submitted for dried shelled beans, provide substantial support for establishment of a pyraclostrobin tolerance of 0.3 ppm in/on dried shelled peas and beans. The Agency therefore believes that the additional study, while required by our standard operating procedure, will simply serve to confirm the results of the acceptable data we have already evaluated.
- Three more residue field trials on soybean forage and hay. - A total of 17 acceptable residue field trials on soybean forage and hay have already been submitted and provide strong support for establishment of pyraclostrobin tolerances of 5 ppm in/on soybean forage and 7 ppm in/on soybean hay. The Agency therefore believes that the additional studies, while required by our standard operating procedure, will simply serve to confirm the results of the acceptable data we have already evaluated.

6. Ms. Sachau feels that the lack of data on endocrine disruption show that the ''product'' is not ready to be used in the U.S.

Agency response: EPA is required by the FFDCA, as amended by the Food Quality Protection Act (FQPA), to develop a screening program to determine whether certain substances (including all pesticide product active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the [EPA] Administrator may designate.'' Following the recommendations of its Endocrine Disruptor and Testing Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects on wildlife. For pesticide chemicals EPA will use Federal Fungicide, Insecticide and Rodenticide Act (FIFRA) and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). In the available toxicity studies on pyraclostrobin, there was no estrogen, androgen, and/or thyroid mediated toxicity. When additional appropriate

screening and/or testing protocols being considered under the Agency's EDSP have been developed, pyraclostrobin may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption. The Agency will respond to new information in such a way as is appropriate at that time, but currently has no evidence that pyraclostrobin is an endocrine disruptor.

Furthermore and in conclusion, Ms. Sachau's comments contained no scientific data or other substantive evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to pyraclostrobin from the establishment of these tolerances.

VI. Conclusion

Therefore, tolerances are established for the combined residues of carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester, pyraclostrobin, and methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate, the desmethoxy metabolite of pyraclostrobin, expressed as parent compound, in or on apple, wet pomace at 8.0 parts per million (ppm); brassica, head and stem, subgroup at 5.0 ppm; brassica, leafy greens, subgroup at 16.0 ppm; corn, field, grain at 0.1 ppm; corn, field, forage at 5.0 ppm; corn, field, stover at 17.0 ppm; corn, field, refined oil at 0.2 ppm; corn, pop, grain at 0.1 ppm; corn, pop, stover at 17.0 ppm; corn, sweet, kernel plus cob with husks removed at 0.04 ppm; corn, sweet, forage at 5.0 ppm; corn, sweet, stover at 23.0 ppm; fruit, pome, group at 1.5 ppm; hop, dried cones at 23.0 ppm; legume, forage, except peanut and soybean at 25.0 ppm; pea, succulent at 0.2 ppm; pea and bean, dried shelled, except soybean, subgroup at 0.3 ppm; peppermint at 8.0 ppm; soybean, forage at 5.0 ppm; soybean, hay at 7.0 ppm; soybean, hulls at 0.06 ppm; soybean, seed at 0.04 ppm; spearmint at 8.0 ppm; sunflower at 0.3 ppm; vegetable, leafy, except brassica, group at 29.0 ppm; vegetable, leaves of root and tuber, except sugar beet at 16.0; and vegetable, legume, edible podded, subgroup at 0.5 ppm. Tolerances are increased for the combined residues of carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester, pyraclostrobin, and methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate, the desmethoxy metabolite of pyraclostrobin, expressed as parent compound, in or on citrus, dried pulp to 12.5 ppm; citrus, oil to 9.0 ppm; and fruit, citrus, group to 2.0 ppm, and deletes the currently existing tolerance in 40 CFR 180.582 for the combined residues of pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate), expressed as parent compound in or on bean, dry, seed at 0.3 ppm. The latter tolerance is superseded by the tolerance for pea and bean, dried shelled, except soybean, subgroup at 0.3 ppm. A temporary tolerance is established for the combined residues of (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester), pyraclostrobin, and methyl-N-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate, the desmethoxy metabolite of pyraclostrobin, expressed as parent compound, in or on strawberry at 1.5 ppm, the increased tolerance expiring on December 31, 2005.

VII. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0325 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 28, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0325, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 30, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.582 is amended as follows:

i. In paragraph (a)(1) by alphabetically adding commodities to the table; by revising the tolerance levels for ''Citrus, dried pulp, '' ''Citrus, oil'' and ''Fruit, citrus, group'', and by removing the commodity ''Bean, dry, seed''.

ii. By adding paragraph (a)(3).

The amendments to paragraph (a) read as follows:

§ 180.582 Pyraclostrobin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * *	* *
Apple, wet pomace	8.0
* * *	* *
Brassica, head and stem, subgroup	5.0
Brassica, leafy greens, subgroup	16.0
Citrus, dried pulp	12.5
Citrus, oil	9.0
Corn, field, forage	5.0
Corn, field, grain	0.1
Corn, field, refined oil	0.2
Corn, field, stover	17.0
Corn, pop, grain	0.1
Corn, pop, stover	17.0
Corn, sweet, forage	5.0
Corn, sweet, kernel plus cob with husks removed	0.04
Corn, sweet, stover	23.0
Fruit, citrus, group	2.0
Fruit, pome, group	1.5
* * *	* *
Hop, dried cones	23.0
Legume, forage, except peanut and soybean, subgroup	25.0
* * *	* *
Pea, succulent	0.2
Pea and bean, dried shelled, except soybean, subgroup	0.3
* * *	* *
Peppermint	8.0
* * *	* *
Soybean, forage	5.0
Soybean, hay	7.0
Soybean, hulls	0.06
Soybean, seed	0.04
Spearmint	8.0
* * *	* *
Sunflower	0.3
* * *	* *
Vegetable, leafy, except brassica, group	29.0
Vegetable, leaves of root and tuber, except sugar beet	16.0
Vegetable, legume, edible podded, subgroup	0.5
* * *	* *

* * * * *

(3) Tolerances are established for combined residues of the fungicide pyraclostrobin (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite methyl 2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl carbamate, expressed as parent compound, in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration/Revocation Date
Strawberry	1.5	12/31/05

* * * * *

[FR Doc. 04–24247 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7832–2]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Indiana final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Agency published a proposed rule on April 20, 2004 and provided for public comment. The public comment period ended on May 20, 2004. We received no comments. No further opportunity for comment will be provided. EPA has determined that Indiana's revisions satisfy all the requirements needed to qualify for final authorization, and is authorizing the State's changes through this final action.

DATES: This final authorization will be effective on October 29, 2004.

ADDRESSES: You can view and copy Indiana's application from 9 a.m. to 4 p.m. at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, (mailing address P.O. Box 6015, Indianapolis, Indiana 46206) contact Steve Mojonnier (317) 233–1655, or Lynn West (317) 232–3593, and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION: On April 20, 2004, U.S. EPA published a proposed rule (69 FR 21077) proposing to grant Indiana authorization for changes to its Resource Conservation and Recovery Act program, listed in section F of that notice, which was subject to public comment. No comments were received. We hereby determine that Indiana's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization.

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Indiana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Indiana Final authorization to operate its hazardous waste program with the

changes described in the authorization application. Indiana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Indiana, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Indiana subject to RCRA will now have to comply with the authorized State requirements (listed in section F of this notice) instead of the equivalent Federal requirements in order to comply with RCRA. Indiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits;
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Indiana is being authorized by today's action are already effective, and are not changed by today's action.

D. Proposed Rule

On April 20, 2004 (69 FR 21077), EPA published a proposed rule. In that rule we proposed granting authorization of changes to Indiana's hazardous waste program and opened our decision to public comment. The Agency received no comments on this proposal. EPA found Indiana's RCRA program to be satisfactory.

E. What Has Indiana Previously Been Authorized for?

Indiana initially received Final authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 31, 1986, effective December 31, 1986 (51 FR 39752); January 5, 1988, effective January 19, 1988 (53 FR 128); July 13, 1989, effective September 11, 1989 (54 FR 29557); July 23, 1991, effective September 23, 1991 (56 FR 33717); July 24, 1991, effective September 23, 1991 (56 FR 33866); July 29, 1991, effective September 27, 1991 (56 FR 35831); July 30, 1991, effective September 30, 1991 (56 FR 36010); August 20, 1996, effective October 21, 1996 (61 FR 43018); September 1, 1999, effective November 30, 1999 (64 FR 47692), January 4, 2001 effective January 4, 2001 (66 FR 733), and December 6, 2001 effective December 6, 2001 (66 FR 63331).

F. What Changes Are We Authorizing With Today's Action?

On March 26, 2003, Indiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Indiana Final authorization for the following program changes:

Description of federal requirement (include checklist #, if relevant)	**Federal Register** (date and page (and/or RCRA statutory authority)	Analogous state authority
Mineral Processing Secondary Materials Exclusion Checklist 167D.	May 26, 1998, 63 FR 28556	329 IAC 3.1–6–1; 3.1–6–2 (2); Effective May 4, 2001.
Land Disposal Restrictions Phase IV: Treatment Standards For Wood Preserving Wastes, Treatment Standards for Metal Wastes, Zinc Micronutrient Fertilizers, Carbamate Treatment Standards, and K088 Treatment Standards Checklist 179.	May 11, 1999, 64 FR 25408	329 IAC 3.1–6–1; 3.1–6-2(2); 3.1–7–1; 3.1–12–1; 3.1–12–2(5),(7); Effective May 4, 2001.
Guidelines Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and the Resource Conservation and Recovery Act Checklist 180.	May 14, 1999, 64 FR 26315	329 IAC 3.1–1–7; Effective May 4, 2001.
Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps Checklist 181.	July 6, 1999, 64 FR 36466	329 IAC 3.1–4–1; 3.1–4–1(b); 3.1–6–1; 3.1–9–1; 3.1–9–2(1); 3.1–10–1; 3.1–10–2(1),(2),(3); 3.1–12–1; 3.1–12–2(4); 3.1–13–1; 3.1–13–2(1),(2),(3); 3.1–13–3 through 3.1–13–17; 3.1–16–1; 3.1–16–2(a)(1); 3.1–16–2(a)(4); 3.1–16–2(a)(5); 3.1–16–2(a)(8); 3.1–16–2(b); Effective May 4, 2001.
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. Checklist 182 as amended.	September 30, 1999, 64 FR 52827	329 IAC 3.1–4–1; 3.1–4–(b); 3.1–6–1; 3.1–9–1; 3.1–10-1; 3.1–11–1; 3.1–13–1; Effective May 4, 2001.
Checklist 182.1	November 19, 1999, 64 FR 63209.	
Land Disposal Restrictions Phase IV; Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters; Technical Correction Checklist 183.	October 20, 1999, 64 FR 56469	329 IAC 3.1–6–1; 3.1–6–2(17); 3.1–7–1; 3.1–12–1; Effective May 4, 2001.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** (date and page (and/or RCRA statutory authority)	Analogous state authority
180 Day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry Checklist 184.	March 8, 2000, 65 FR 12378	329 IAC 3.1–7–1; Effective May 4, 2001.
Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities Checklist 185.	March 17, 2000; 65 FR 14472	329 IAC 3.1–6–1; 3.1–6–2(17),(18),(19); 3.1–12–1; 3.1–12–2(10); Effective May 4, 2001.
Organobromine Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Final Rule and Correcting Amendments Checklist 187.	June 8, 2000; 65 FR 36365	329 IAC 3.1–6–1; 3.1–12–1; Effective May 4, 2001.
NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Final Rule, Technical Correction Checklist 188 as amended.	July 10, 2000; 65 FR 42292	329 IAC 3.1–6–1; 3.1–9–1; 3.1–13–1; Effective July 3, 2002.
Checklist 188.1	May 14, 2001, 66 FR 24270.	
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Alphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities Checklist 189.	November 8, 2000, 65 FR 67068	329 IAC 3.1–6–1; 3.1–6–2(17); 3.1–6–2(19), (20); 3.1–12–1; Effective July 3, 2002.
Deferral of Phase IV Standards for PCBs as a Constituent Subject to Treatment in Soil Checklist 190.	December 26, 2000; 65 FR 81373	329 IAC 3.1–12–1; Effective July 3, 2002.
Storage, Treatment, Transportation, and Disposal of Mixed Waste Checklist 191.	May 16, 2001, 66 FR 27218	329 IAC 3.1–11–1; Effective July 3, 2002.
Hazardous Waste Identification Rule (HWIR) Revisions to the Mixture and Derived-From Rules Checklist 192A.	May 16, 2001, 66 FR 27266	329 IAC 3.1–6–1; Effective July 3, 2002.
Land Disposal Restrictions Correction Checklist 192B.	May 16, 2001, 66 FR 27266	329 IAC 3.1–12–1; Effective July 3, 2002.
Change of Official EPA Mailing Address; Additional Technical Amendments and Corrections Checklist 193.	June 28, 2001, 66 FR 34374	329 IAC 3.1–1–7; Effective July 3, 2002.

G. Where Are the Revised State Rules Different From the Federal Rules?

Indiana has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3 in their Incorporation by Reference at 3.1–12–2 and 3.1–13–2(4). EPA will continue to implement those requirements.

H. Who Handles Permits After the Authorization Takes Effect?

Indiana will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Indiana is not yet authorized.

I. How does Today's Action Affect Indian Country (18 U.S.C. 1151) in Indiana?

Indiana is not authorized to carry out its hazardous waste program in ''Indian Country'', as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Indiana;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country. Therefore, this action has no effect on Indian Country. EPA retains the authority to implement and administer the RCRA program in Indian Country. However, at this time, there is no Indian Country within the State of Indiana.

J. What is Codification and is EPA Codifying Indiana's Hazardous Waste Program as Authorized in this Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Indiana's rules, up to and including those revised January 4, 2001, have previously been codified through the incorporation-by-reference effective December 24, 2001 (66 FR 53728, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart P for the codification of Indiana's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements 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 of 1995 (Public Law 104–4). This action does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 19, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 04–24243 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 69, No. 209
Friday, October 29, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18024; Directorate Identifier 2003–NE–39–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce (1971) Limited, Bristol Engine Division Model Viper Mk.601–22 Turbojet Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Rolls-Royce (1971) Limited, Bristol Engine Division (RR) model Viper Mk.601–22 turbojet engines. That AD currently requires reducing the life of certain 1st stage turbine rotor blades from 7,000 hours time-in-service (TIS) to 4,600 hours TIS, and provides a drawdown schedule for blades that have already exceeded the new reduced life limit. This proposed AD would require the same actions but changes certain compliance times to be in agreement with RR Alert Service Bulletin (ASB) No. 72–A184, dated January 2001. This proposed AD results from comments received on AD 2004–13–03, that the AD is unnecessarily more restrictive than the requirements in the associated RR ASB No. 72–A184. We are proposing this AD to prevent multiple failures of 1st stage turbine rotor blades that could result in a dual-engine shutdown.

DATES: We must receive any comments on this proposed AD by December 28, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to 1*http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You can get the service information identified in this proposed AD from Rolls-Royce Limited, Bristol Engines Division, Technical Publications Department CLS–4, P.O. Box 3, Filton, Bristol, BS34 7QE England; telephone 117–979–1234, fax 117–979–7575.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we posted new AD actions on the DMS and assigned a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form ''Docket No. FAA–200X–XXXXX.'' Each DMS docket also lists the Directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18024; Directorate Identifier 2003-NE–39-AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On June 16, 2004, the FAA issued AD 2004–13–03, Amendment 39–13684 (69 FR 34563, June 22, 2004). That AD requires reducing the life of certain 1st stage turbine rotor blades from 7,000 hours TIS to 4,600 hours TIS, and provides a drawdown schedule for blades that have already exceeded the new reduced life limit. That AD was the result of the manufacturer's investigations into failures of 1st stage turbine rotor blades. That condition, if not corrected, could result in multiple failures of 1st stage turbine rotor blades that could result in a dual-engine shutdown.

Comments Received Since AD 2004–13–03 Was Issued

Since we issued final rule; request for comments AD 2004–13–03, we have considered the comments received.

Paragraph (g)(4) in Table 1 Is More Restrictive Than the SB

One commenter requests that we revise paragraph (g)(4) in Table 1 so that

the limits are only applicable to engines with 5,800 hours TIS or more. As currently written, that paragraph is more restrictive than RR ASB No. 72-A184, dated January 2001, and not consistent with it.

We agree. Based on paragraph (g)(4) of AD 2004–13–03, it is possible that an engine with fewer than 5,800 hours TIS, but exceeding either the 200-hour or 6-month limit from the effective date of the AD, would have to be removed from service. The intent was that after 6 months from the effective date of the AD and up to 3 years from the effective date of the AD, engines be allowed to operate up to a maximum of 5,800 hours TIS. We have rewritten the second column for paragraph (g)(4) in Table 1 of this proposal as follows:

''Replace the engine that has the higher blade life at 5,800 hours TIS or 6 months after the effective date of this AD, whichever occurs later.''

We have also added a new paragraph (h) to this proposal as follows:

''(h) No engine may operate with a blade life exceeding 5,800 hours TIS, applicable beginning 6 months after the effective date of this AD.''

Paragraph (h) Is More Restrictive Than the SB

One commenter requests that we revise paragraph (h) of AD 2004–13–03, so that it is not more restrictive than RR ASB No. 72-A184, dated January 2001, and is consistent with it.

We agree. The intent of paragraph (h) of AD 2004–13–03 was to remove all engines with blades exceeding 4,600 hours TIS, applicable within 3 years after the effective date of the AD. This wording is not clear and could apply to an engine, for example, with 1,000 hours TIS. This would force the engine off wing after 3 years while the engine may have only accumulated an additional 1,000 hours TIS, which is far short of the intended life limit. It is important to delineate between the near term ''drawdown'' schedule which limits blade life to 5,800 hours TIS per Table 1, beginning at 6 months and continuing up to 3 years from the effective date of the AD, and the ''objective'' life limit of 4,600 hours TIS which begins at 3 years from the effective date of this AD. We have removed the existing paragraph (h) from this proposal and recodified the paragraphs. We have added a new paragraph (i) to this proposal as follows:

''(i) No engine may operate with a blade life exceeding 4,600 hours TIS, applicable beginning 3 years after the effective date of this AD.''

Relevant Service Information

We have reviewed and approved the technical contents of RR Alert Service Bulletin (ASB) 72-A184, dated January 2001, that describes procedures for managing engine configurations to reduce the risk of dual-engine shutdowns. The CAA classified this service bulletin as mandatory and issued AD 004–01–2001 in order to ensure the airworthiness of these RR engines in the UK.

Differences Between This Proposed AD and the Service Information

RR ASB 72-A184, dated January 2001, specifies the date of receipt of the ASB as the baseline for the compliance time. This proposed AD specifies the effective date of the AD as the baseline for the compliance time.

Bilateral Agreement Information

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

The unsafe condition described previously is likely to exist or develop on other RR Viper Mk.601–22 turbojet engines of the same type design. We are issuing this AD to prevent multiple failures of 1st stage turbine rotor blades that could result in a dual-engine shutdown. We are proposing this AD which would:

- Reduce the recommended class B life of certain 1st stage turbine blades, P/Ns V926000, V926293 and V926319, from 7,000 hours TIS to a mandatory life limit of 4,600 hours TIS, and
- Provide a drawdown schedule for engines with blades that have already exceeded the new reduced life limit.

Costs of Compliance

We estimate that 84 RR model Viper Mk.601–22 turbojet engines installed on airplanes of U.S. registry would be affected by this proposed AD. We estimate that no additional labor cost will be incurred to replace 1st stage turbine rotor blades when done at time of engine overhaul. A replacement set 1st stage turbine rotor blades costs about $166,987. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $14,026,950.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13684 (69 FR 34563, June 22, 2004) and by adding a new airworthiness directive, to read as follows:

Rolls-Royce (1971) Limited, Bristol Engine Division: Docket No. FAA–2004–18024; Directorate Identifier 2003-NE–39-AD. Supersedes AD 2004–13–03, Amendment 39–13684.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 28, 2004.

Affected ADs

(b) This AD supersedes AD 2004–13–03, Amendment 39–13684.

Applicability

(c) This AD applies to Rolls-Royce (1971) Limited, Bristol Engine Division (RR) Model Viper Mk.601–22 turbojet engines. These engines are installed on, but not limited to, Raytheon HS.125 Series 600 and BH.125 Series 600 airplanes.

Unsafe Condition

(d) This AD results from comments received on AD 2004–13–03, that the AD is unnecessarily more restrictive than the requirements in the associated RR Alert Service Bulletin (ASB) No. 72-A184. We are proposing this AD to prevent multiple failures of 1st stage turbine rotor blades that could result in a dual-engine shutdown. The actions specified in this AD are intended to prevent multiple failures of 1st stage turbine rotor blades that could result in a dual-engine shutdown.

Compliance

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

New Reduced Life Limit

(f) Change the RR Time Limits Manual life limit for the 1st stage turbine rotor blades, P/Ns V926000, V926293, and V926319, from 7,000 hours time-in-service (TIS) to 4,600 hours TIS.

(g) Limit the number of installed engines with 1st stage turbine rotor blades that exceed 4,600 hours TIS on the effective date of this AD as specified in the following Table 1:

TABLE 1.—INSTALLED ENGINES

On the effective date of this AD, if	Then:
(1) Both engines installed on the airplane have 1st stage turbine rotor blades that exceed 5,800 hours TIS.	Replace the 1st stage turbine rotor blades in the engine that has the higher blade life within 50 hours TIS or 6 weeks after the effective date of this AD, whichever occurs first.
(2) One engine installed on the airplane has 1st stage turbine rotor blades that exceed turbine 5,800 hours TIS, and the other engine has 1st stage turbine rotor blades that exceed 4,600 hours TIS.	Replace the 1st stage turbine rotor blades in the engine that has the higher blade life within 100 hours TIS or 4 months after the effective date of this AD, whichever occurs first.
(3) One engine installed on the airplane has 1st stage turbine rotor blades that exceed 5,800 hours TIS, and the other engine has 1st stage turbine rotor blades with fewer than 4,600 hours TIS.	Replace the 1st stage turbine rotor blades in the engine that has the higher blade life within 200 hours TIS or 6 months after the effective date of this AD, whichever occurs first.
(4) One engine installed on the airplane has 1st stage turbine rotor blades that exceed 4,600 hours TIS, but have fewer than 5,800 hours TIS, and the other engine has 1st turbine stage turbine rotor blades with fewer than 4,600 hours TIS.	Replace the 1st stage rotor blades in the engine that has the higher blade life at 5,800 hours TIS or 6 months after the effective date of this AD, whichever occurs later.

(h) No engine may operate with a blade life exceeding 5,800 hours TIS, applicable beginning 6 months from the effective date of this AD.

(i) No engine may operate with a blade life exceeding 4,600 hours TIS, applicable beginning 3 years from the effective date of this AD.

Installation of Engines After the Effective Date of This AD

(j) After the effective date of this AD, do not install any engine that has 1st stage turbine rotor blades, P/Ns V926000, V926293, and V926319, that exceed 4,600 hours TIS, except as allowed in Table 1 of this AD.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19

Material Incorporated by Reference

(l) None.

Related Information

(m) Civil Aviation Authority airworthiness directive AD 004–01–2001, dated January 2001, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 25, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–24230 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19470; Directorate Identifier 2003–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100B SUD, –300, –400, and –400D Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100B SUD, –300, –400, and –400D series airplanes. This proposed AD would require a one-time inspection for discrepancies of the fuselage frame to tension tie joints at body stations (BS) 1120 through 1220 and to determine if steel splice plates are installed on the fuselage frames, and related investigative and corrective actions. This proposed AD is prompted by reports indicating that severed tension ties were found at the fuselage frame joints at BS 1120 and 1140. We are proposing this AD to prevent fatigue cracking of the fuselage frame to tension tie joints, which could result in severing of the tension ties and consequent rapid decompression of the airplane fuselage.

DATES: We must receive comments on this proposed AD by December 13, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19470; Directorate Identifier 2003–NM–268–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that severed tension ties at the fuselage frame joints at body stations (BS) 1120 and 1140 were found on a Model 747–400 series airplane. The cause of the severed ties was fatigue cracking due to incorrect splice plate installation during the manufacturing process. The splice plates that were installed were made of aluminum instead of steel. When the severed tension ties were found, the airplane had accumulated approximately 6,505 total flight cycles and 52,334 total flight hours. Inspection of another Model 747–400 series airplane revealed loose fasteners at the frame to tension tie joints. Loose fasteners in the joints increase the potential for fatigue cracking. That airplane had accumulated approximately 5,875 total flight cycles and 49,426 total flight hours. Inadequate installation procedures have been determined as the root cause of these incidents. Fatigue cracking of the fuselage frame to tension tie joints, if not found and fixed, could result in severing of the tension ties and consequent rapid decompression of the airplane fuselage.

The fuselage frame to tension tie joints on certain Model 747–100B SUD, –300, and –400D series airplanes are identical to those on the affected Model 747–400 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003. The service bulletin describes procedures for a one-time detailed visual inspection for discrepancies (cracks; loose, missing, or damaged fasteners or collars) of the fuselage frame to tension tie joints at BS 1120 through 1220, and to determine if steel splice plates are installed on the fuselage frame, and related investigative and corrective actions. The investigative and corrective actions include performing an open-hole eddy current inspection of the fastener holes if loose, missing, or damaged fasteners or collars are found, and installing new fasteners if necessary.

The service bulletin also specifies that operators may contact the manufacturer for disposition of certain repair instructions, and recommends that the manufacturer be contacted if an aluminum splice plate is installed.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require you to use the service information described previously to perform the actions, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.''

Differences Between the Proposed AD and Service Bulletin

The service bulletin provides the following information in Note 5 of the Accomplishment Instructions: ''For the purposes of this service bulletin, do not count flight-cycles with a cabin pressure differential of 2.0 [pounds per square inch (psi)] or less. However, any flight-cycle with momentary spikes in cabin pressure differential above 2.0 psi must be included as a full-pressure flight-cycle. Cabin pressure records must be maintained for each airplane. Fleet averaging of cabin pressure is not allowed.'' We have determined that an adjustment of flight cycles due to a lower cabin differential pressure is not substantiated and will not be allowed

for use in determining the flight cycle threshold for this proposed AD.

The service bulletin also specifies that, if repair requirements exceed allowable repair criteria, operators may contact the manufacturer for disposition of repair instructions. This proposed AD would require operators to repair these conditions in accordance with a method approved by the FAA or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

The service bulletin also recommends that the manufacturer be contacted for repair instructions if an aluminum splice plate is installed, but this proposed AD would require replacement of the plate with a new plate in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make those findings.

The service bulletin specifies to submit certain information to the manufacturer, but this proposed AD does not include that requirement.

Although the service bulletin defines a ''detailed visual'' inspection for discrepancies, we have determined that the procedures in the service bulletin should be described as a ''detailed inspection.'' A note has been added to define that type of inspection.

Costs of Compliance

This proposed AD would affect about 67 airplanes of U.S. registry and 537 airplanes worldwide. The proposed inspection would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $8,710, or $130 per airplane.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2004–19470; Directorate Identifier 2003–NM–268–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by December 13, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 747–100B SUD, –300, –400, and –400D series airplanes; certificated in any category; as listed in Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003.

Unsafe Condition

(d) This AD was prompted by reports indicating that severed tension ties were found at the fuselage frame joints at body stations (BS) 1120 and 1140. We are issuing this AD to prevent fatigue cracking of the fuselage frame to tension tie joints, which could result in severing of the tension ties and consequent rapid decompression of the airplane fuselage.

Compliance

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

One-Time Inspection/Investigative and Corrective Actions

(f) Before the accumulation of 4,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever is later: Perform a detailed inspection for discrepancies of the fuselage frame to tension tie joints at BS 1120 through BS 1220, and to determine if steel splice plates are installed on the fuselage frames. Do the inspection in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003. Do any applicable investigative and corrective actions before further flight in accordance with the service bulletin, except as provided by paragraph (h) of this AD.

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

Determining Number of Flight Cycles for Compliance Time

(g) For the purposes of calculating the compliance threshold for the actions required by paragraph (f) of this AD, all pressurized flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less, must be counted when determining the number of flight cycles that have occurred on the airplane. Where the service bulletin and this AD differ, the AD prevails..

Repair Requirements

(h) For any repairs outside the limits of Boeing Special Attention Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003, or if any aluminum splice plate is installed on the fuselage frames: Repair or replace, as applicable, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair or replacement method to be approved, as required by this paragraph, the approval must specifically reference this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(i) Inspections and corrective actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 747–53–2483, dated October 24, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

No Reporting Requirements

(j) Although the Accomplishment Instructions of Boeing Special Attention

Service Bulletin 747–53–2483, Revision 1, dated August 28, 2003; describe procedures for submitting certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24220 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13247; Airspace Docket No. 02–AAL–5]

RIN 2120–AA66

Proposed Modification and Revocation of Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 7, 2002. In that action, the FAA proposed to modify one jet route (J–133); and revoke one jet route 711 (J–711) in Alaska. The FAA has decided to withdraw the proposed rule since the Hinchinbrook Nondirectional Radio Beacon (NDB) is being decommissioned. The replacement of the Hinchinbrook NDB and the revision of several airways in Alaska will be reflected in a subsequent NPRM.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On November 7, 2002, an NPRM was published in the **Federal Register** proposing to amend 14 Code of Federal Regulations (14 CFR) part 73 (part 73) to revise J–133 between the Sitka, AK, NDB, and the Hinchinbrook, AK, NDB (67 FR 67800). The Hinchinbrook NDB will be decommissioned and replaced with the Orca Bay NDB. The replacement of the Hinchinbrook NDB and the revision of several airways in Alaska will be reflected in a subsequent NPRM.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the NPRM for FAA Docket No. FAA–2002–13247 and Airspace Docket No. 02–AAL–5, as published in the **Federal Register** on November 7, 2002 (67 FR 67800), is hereby withdrawn.

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

Issued in Washington, DC, on October 21, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–24145 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–169]

RIN 1625–AA09

Drawbridge Operation Regulations: New Jersey Intracoastal Waterway, Point Pleasant Canal, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Route 13/Lovelandtown Bridge across Point Pleasant Canal, at New Jersey Intracoastal Waterway (NJICW) mile 3.9, in Point Pleasant, NJ. The bridge will be closed to navigation beginning 8 a.m. on January 3, 2005, through 5 p.m. on March 31, 2005. This closure is necessary to facilitate extensive mechanical rehabilitation and to maintain the bridge's operational integrity.

DATES: Comments and related material must reach the Coast Guard on or before December 28, 2004.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Commander (obr), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–04–169, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like confirmation to know if they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of those comments.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time at a place announced by a later notice in the **Federal Register**.

Background and Purpose

The New Jersey Department of Transportation (NJDOT) owns and operates the vertical-lift span of the Route 13/Lovelandtown Bridge across Point Pleasant Canal, in Point Pleasant, New Jersey. The bridge has a vertical clearance in the closed and full open position of 30 feet and 65 feet, at mean high water, respectively. The current regulations are outlined under the general regulations at 33 CFR 117.5,

which require the bridge to open on signal.

Carr & Duff, Inc., (the contractor), on behalf of NJDOT, has requested a change to the existing regulations for the Route 13/Lovelandtown Bridge to facilitate necessary repairs. The repairs consist of the reinstallation of the motor, brakes and new electrical gear and control systems of the bridge. To facilitate the repairs, the vertical-lift span of the drawbridge will be locked in the closed-to-navigation position from 8 a.m. on January 3, 2005, through 5 p.m. on March 31, 2005.

The Coast Guard reviewed the bridge logs. The logs revealed for the months of January, February and March 2004, the bridge opened for vessels 5, 2, and 9 times, respectively. Vessel operators with mast height lower than 30 feet still can transit thorough the drawbridge across Point Pleasant Canal during the rehabilitation. With 24 hours advance notice, the contractor will provide a bridge opening between the hours of 9 a.m. and 2 p.m. Monday through Friday for vessels with mast height greater than 30 feet requiring an opening of draw span during the proposed closure period. Calling the Bridge Operations Office at (732) 528–9494 or the contractor at (215) 416–1235 will provide for advance opening requests. Also, the Atlantic Ocean is an alternate route for vessels with a mast height greater than 30 feet. Therefore, vessels should not be negatively impacted by this proposal.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations governing the Route 13/Lovelandtown Bridge across Point Pleasant Canal, ICW mile 3.9, which currently opens on signal. The Coast Guard proposes to temporarily amend 33 CFR 117.733 by adding a new paragraph (c) which would contain the operating schedule for the Route 13/Lovelandtown Bridge across Point Pleasant Canal, ICW mile 3.9, in Point Pleasant. This proposed rule would allow the bridge to remain closed to navigation from 8 a.m. on January 5, 2005, to 5 p.m. on March 31, 2005, and the advance notice condition for opening the bridge. Upon completion of the repairs, the bridge would return to the current operating schedule.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Vessel operators with mast height lower than 30 feet still can transit thorough the drawbridge across Point Pleasant Canal during the rehabilitation. For vessels with mast height greater than 30 feet requiring an opening of draw span during the proposed closure period, the contractor will provide a bridge opening between the hours of 9 a.m. and 2 p.m. Monday through Friday if requested 24 hours in advance. Also, the Atlantic Ocean is an alternate route for vessels with a mast height greater than 30 feet.

Small Entities

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

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

This proposed rule would not have a significant economic impact on a substantial number of small entities because vessels with mast height greater than 30 feet requiring an opening of draw span during the proposed closure period, the contractor will provide a bridge opening between the hours of 9 a.m. and 2 p.m. Monday through Friday if requested with 24 hours in advance. This should not prove to be problematic to commercial operations because they normally schedule the movement of their equipment well in advance. Vessel operators with mast height lower than 30 feet still can transit thorough the drawbridge. Also, the Atlantic Ocean is an alternate route for vessels with a mast height greater than 30 feet.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice

Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to temporarily amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of P.L. 102–587, 106 Stat. 5039.

2. From 8 a.m. on January 3, 2005, through 5 p.m. on March 31, 2005, add a new temporary paragraph (l) to § 117.733 to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(l) The draw of the Route 13/Lovelandtown Bridge across Point Pleasant Canal, at mile 3.9, at Point Pleasant, need not be opened for the passage of vessels from 8 a.m. on January 3, 2005, through 5 p.m. on March 31, 2005. However, between 9 a.m. to 2 p.m. Monday to Friday, the draw shall open on signal if at least 24 hours advance notice is given by calling (732) 528–9494 or (215) 416–1235.

Dated: October 19, 2004.

Sally Brice-O'Hara,

Rear Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 04–24255 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–7831–3]

Air Quality Criteria for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Final Document.

SUMMARY: This notice announces the availability of a final document, Air Quality Criteria for Particulate Matter (EPA/600/P–99/002aF, EPA/600/P–99/002bF) that was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

DATES: This document will be available the week of October 25, 2004.

ADDRESSES: The document will be made available electronically through the NCEA Web site (*http://www.epa.gov/ncea/publications*). A limited number of paper or CD–ROM copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1 (800) 490–9198 or (513) 489–8190; facsimile: (513) 489–8695. Please provide your name, your mailing address, the title and the EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: For questions on availability of the document, contact Diane Ray, NCEA, telephone: (919) 541–3789, fax: (919) 541–1818, or email *ray.diane@epa.gov.* For technical information, contact Robert Elias, Ph.D., NCEA, fax: (919) 541–1818 or email: *elias.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 108 (a) of the Clean Air Act directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. * * *'' EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109 (d) of the Act requires ''thorough'' periodic review and, if appropriate, revision of

existing air quality criteria to reflect the latest scientific data on all identifiable effects on public health and welfare of the pollutant. EPA is also to revise the NAAQS, if appropriate, based on the revised criteria.

Particulate matter (PM) is one of six ''criteria'' pollutants for which EPA has established air quality criteria and NAAQS. EPA initially announced details of its plans for the review of the criteria and NAAQS for PM in an October 23, 1997 **Federal Register** notice (62 FR 55201). As part of its current review cycle of the PM criteria and NAAQS, EPA has revised the existing Criteria Document for PM. The revised Criteria Document will be publicly available on or about October 29, 2004, as described above.

Dated: October 25, 2004.

George Alapas,

Director, National Center for Environmental Assessment.

[FR Doc. 04–24232 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2004–TX–0002; FRL–7830–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Memorandum of Agreement Between Texas Commission on Environmental Quality and the North Central Texas Council of Governments Providing Emissions Offsets to Dallas Fort Worth International Airport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Texas Commission on Environmental Quality (TCEQ) on February 23, 2004. This revision concerns the Dallas/Fort Worth ozone nonattainment area. Specifically, EPA is proposing to approve the incorporation of a Memorandum of Agreement (MOA) between the TCEQ and the North Central Texas Council of Governments (NCTCOG) into the SIP. This MOA commits the NCTCOG to provide the Dallas-Fort Worth International Airport with emissions offsets in the amount of 0.18 tons per day (tpd) of nitrogen oxides (NO_X) and 0.04 tpd of volatile organic compounds (VOCs) in 2007 and to adjust the modeled 2015 on-road emission estimates to reflect an increase of 1.17 tpd of NO_X and 0.26 tpd of VOCs, which must be accommodated in future transportation conformity determinations. This action is necessary in order for the Federal Aviation Administration (FAA) to address requirements under the general conformity regulations.

DATES: Written comments should be received on or before November 29, 2004.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Peggy Wade, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7247; fax number 214–665–7263; e-mail address *wade.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: October 19, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–24128 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0002; FRL–7826–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve Indiana's February 10, 2004, and April 12, 2004, submittal of a revision to its existing emission reporting rule to be consistent with the emission statement program requirements for stationary sources in the Clean Air Act (CAA). On April 12, 2004, Indiana submitted its final rule as published in the Indiana Register. Indiana held a public hearing on the submittal on December 3, 2003. EPA is approving the revision to the emission reporting rule to satisfy the emission statement program requirements in the CAA.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before November 29, 2004.

ADDRESSES: Submit comments, identified by Regional Material in EDocket ID No. R05–OAR–2004–IN–0002 by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/index.jsp* material in Edocket (RME), EPA's electronic public docket and connect system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search'' then key in the appropriate RME Docket

identification number. Follow the on-line instructions for submitting comments. E-mail: *bortzer.jay@epa.gov.* Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket ID No. R05–OAR–2004–IN–0002. EPA's policy is that all comments received will be included in the public docket without change, 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 Regional Material in Edocket, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, 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 RME or 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the Regional Material in Edocket (RME) index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031. *hatten.charles@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This rulemaking is intended to ensure that rule 326 IAC 2–6, emission reporting, satisfies the Federal requirements of section 182(a)(3)(B) for an emission statement program in Indiana.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Additional Information

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at EDOCKET or in hard copy at the above address. (Please telephone Charles Hatten at (312) 886–6031 before visiting the Region 5 Office.)

Dated: September 24, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 04–24239 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R03–OAR–2004–VA–0002b; FRL–7831–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Municipal Waste Combustor Emissions from Large Existing Municipal Solid Waste Combustor Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Commonwealth of Virginia Department of Environmental Quality (DEQ) large municipal waste combustor plan (the plan) for implementing emission guideline (EG) requirements promulgated under the Clean Air Act (the Act). In the Final Rules section of this **Federal Register**, EPA is approving the plan, under the provisions of

sections 111 and 129 of the Act, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 29, 2004.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–VA–0002 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Agency Web Site: http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. *E-mail: http://wilkie.walter@epa.gov.*

D. *Mail:* R03–OAR–2004–VA–0002, Walter Wilkie, Chief, Air Quality Analysis, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously-listed EPA Region III address. 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 RME ID No. R03–OAR–2004–VA–0002. 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.docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 RME or 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 electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* 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 in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 27, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–24241 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 011011247-4249-02; I.D. 082701E]

RIN 0648-AP62

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches From Kodiak Island, AK

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the Alaska Aerospace Development Corporation (AADC) for Authorization to take by harassment small numbers of pinnipeds incidental to rocket launches from the Kodiak Launch Complex (KLC) on Kodiak Island, AK. By this document, NMFS is proposing regulations to govern that take. NMFS also makes a preliminary determination that the total taking will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS proposes reporting and monitoring requirements, and invites comment on the application and proposed regulations.

DATES: Comments and information must be received no later than December 13, 2004.

ADDRESSES: You may submit comments on the application and proposed rule, using the identifier 082701E, by any of the following methods:

• E-mail: *PR1.082701E@noaa.gov.* You must include the identifier 082701E in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

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

• Hand-delivery or mailing of paper, disk, or CD-ROM comments: Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

To help us process and review your comments more efficiently, please use

only one method. A copy of the application containing a list of references used in this document may be obtained by writing to the address above or by telephoning the contacts listed under **FOR FURTHER INFORMATION CONTACT**.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to NFMS via the means stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, (301) 713-2322 ext 117, or Brad Smith, (907) 271-3023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA)(16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of five years or less if the Secretary finds that the total taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking, other means of affecting the least practicable adverse impact on the affected species or stocks and their habitats, and the requirements pertaining to the monitoring and reporting of such taking.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except for categories of activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On July 26, 2001, NMFS received an application from the AADC under section 101(a)(5)(A) of the MMPA for authorization to take, by harassment, Steller sea lions (*Eumetopias jubatus*) incidental to rocket launches from KLC on Kodiak Island, Alaska. NMFS proposes this rule and regulations to govern these authorizations to be effective for a period of five years from December 1, 2004, through November 30, 2009. These regulations, if implemented, would allow NMFS to issue Letters Of Authorization to the AADC. A full description of the operations is contained in the AADC application (AADC, 2001) which is available upon request (see **ADDRESSES**).

The KLC is a commercial rocket launch complex owned and operated by the State of Alaska through the AADC. Located wholly on state-owned lands, KLC occupies 43 acres (0.174 km^2) within a 3,100 acre (12.545 km^2) parcel on the eastern side of Kodiak Island on the Narrow Cape peninsula. The KLC was designed to accommodate a variety of small, solid rockets including such vehicles as the Minuteman II, Taurus, Conestoga, and Athena (Lockheed Martin Launch Vehicle). The largest vehicle that can be launched from KLC is the Athena-2 (Lockheed Martin Vehicle-2).

Launch operations at the KLC are authorized under license from the Federal Aviation Administration (FAA), Office of Associate Administrator for Commercial Space Transportation (AST) in accordance with the facility's Environmental Assessment (EA) and stipulations in the EA's Finding of No Significant Impact (FONSI) (see 61 FR 32884, June 25, 1996). These stipulations included a requirement to develop a Natural Resource Management Plan (NRMP) to address monitoring and mitigation activities for protected species in the area. This plan was developed in coordination with NMFS utilizing comparison of anticipated sound pressure levels from rocket motors to be launched from the KLC with documented marine mammal disturbance responses to such noise.

Measurement of Airborne Sound Levels

The following section is provided to facilitate an understanding of airborne and impulsive noise characteristics. Amplitude is a measure of the pressure of a sound wave that is usually expressed on a logarithmic scale with units of sound level or intensity called the decibel (dB). Sound pressure level (SPL) is described in units of dB re micro-Pascal (micro-Pa, or μPa); for energy, the sound exposure level (SEL), a measure of the cumulative energy in a noise event, is described in terms of dB re micro-Pa^2 -second; and frequency, often referred to as pitch, is described in units of cycles per second or Hertz (Hz). In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound.

For airborne noise measurements the convention is to use 20 micro-Pa as the reference pressure, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa and is the approximate threshold of human hearing. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html*.

Airborne sounds are also often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. When frequency levels are made to correspond to human hearing, they are referred to as being A-weighted or A-filtered. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting is often used in the analysis of high-amplitude noises like explosions, and corresponds to the relative response to the human ear to sound levels above 85 dB. C-weighting de-emphasizes ear frequency components of less than about 50 Hz. C-weight scaling is also useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms. For continuous noise like rocket launches, the important variables relevant to assessing auditory impacts or behavioral responses are intensity, frequency spectrum, and duration. In this document, whenever possible sound levels have been provided with A-weighting.

Description of the Activity

To date there have been six rocket launches from the KLC; however, the KLC facility is licensed to launch up to nine rockets per year. The first two launches used composite vehicles built from several stages taken from a decommissioned USAF Minuteman II launch vehicle, and were part of the U.S. Air Force (USAF) atmospheric interceptor technology (ait) program. The third and the sixth launches (March 2001 and April 2002) were part of the USAF Quick Reaction Launch Vehicle

(QRLV) program, and comprised of single stage M-56 motors taken from a decommissioned USAF Minuteman II launch vehicle. The fourth launch (September 2001) was a commercial Lockheed/Martin Athena rocket, which is the largest vehicle to be launched from KLC, and it placed four satellites into polar orbit. The fifth launch (November 2001) was a Department of Defense (DoD) Strategic Target System (STARS) vehicle.

Launches from the KLC are expected to be high inclination with launch azimuths ranging from 125 to 225 degrees in direction (AADC and AST, 1996). At the easternmost azimuth launch vehicle paths would pass over the eastern edge of Ugak Island; at the westernmost azimuth the vehicle would pass along the southeastern edge of the Kodiak Archipelago. Approximately 70 seconds after launch, a typical launch vehicle would be more than 8 miles high. Spent first-stage rocket motors and fuel casings would impact the ocean's surface from 11 to 314 nautical miles downrange, depending on the launch vehicle (AADC and AST 1996). Rocket motor sonic booms are predicted to reach the ocean surface over 20 miles downrange beyond the outer continental shelf over deep ocean.

Launch operations are a major source of noise on Kodiak Island, as the operation of launch vehicle engines produces significant sound levels. Generally, four types of noise occur during a launch. They are: (1) combustion noise from launch vehicle chambers; (2) jet noise generated by the interaction of the exhaust jet and the atmosphere; (3) combustion noise from the post-burning of combustion products; and (4) sonic booms. The principal objective of the KLC rocket motor noise monitoring task within the NRMP was to measure SPLs at the Ugak Island Steller sea lion haulout. A secondary objective was to monitor sound levels on Narrow Cape close to bald eagle and/or Steller's eider nests when present. SPLs were successfully recorded for the first four launches from KLC at the Ugak Island Steller sea lion haulout and on Narrow Cape by the University of Alaska Anchorage's Environment and Natural Resources Institute (ENRI). The Ugak Island haulout is located approximately 2 miles (3.2 km) from Narrow Cape and about 3.5 miles (5.6 km) from the KLC launch pad on a narrow sand spit on the north side of the Island. The data gathered were weighted toward lower frequencies and showed a wide variation in sound pressures among rocket motors, with the highest levels being associated with the largest launch vehicle flown. Variations in the KLC sound pressure record are likely due to such variables as engine size, engine bell shape, and local atmospheric conditions. Summaries of the findings for each of the rockets launched to date are described below.

ait-1

The first launch from KLC occurred in November 1998, and was the first of the USAF ait program. Sound measurements from the ait-1 launch were collected using two sound level monitors (SLMs) that were deployed 26 hours before launch on Ugak Island at the base of the spit used as a haulout by Steller sea lions. The SLMs were set to highlight sounds exceeding 65 dB, which was done after checking real-time sound levels in the field at each site prior to setting them to record data. If the exceedance levels were set too low, the SLMs would be deluged with data, and if they were set too high the SLMs would miss the event of interest. A digital audio tape (DAT) recorder was used to provide redundancy in recording noise frequencies and was placed about 0.75 mi (1.2 km) from the KLC launch pad.

Recorded maximum SPLs of rocket motor noise for the ait-1 at the Ugak Island haulout site were 78.2 dB re 20 μPa with a peak level of 97 dB. The SEL at the Ugak Island haulout site was 88.4 dB. In addition, the SEL at the nearest location measured by the DAT recorder was 110 dB for a duration of 59 seconds. The bulk of the sound energy was at low frequencies and generally less than 4000 Hz. Most of the energy was from 100 to 500 Hz.

Of the eight noise events recorded above 65 dB at Ugak Island, ENRI determined that two are attributable to helicopter noise and one to the firing of the ait-1 rocket motor. Sounds at the Ugak Island site were above 65 dB for a total of 33 seconds at the time the rocket motor was firing. Due to the isolation of this site, the remainder of the events are most likely attributable to surf or wind action.

ait-2

USAF launched a second rocket from KLC on September 15, 1999. Based on experience from the first launch, ENRI set the SLMs to highlight sounds exceeding 70 dB and deployed them about 19 hours before the launch. Sound pressures at Ugak Island were slightly higher for the second launch than for the first launch. Recorded maximum SPLs of rocket motor noise for the ait-2 at the Ugak Island haulout site were 81.5 dB, with a peak level of 101.5 dB, and a corresponding SEL of 92.2 dB. The bulk of the sound energy was at low frequencies and generally less than 2500 Hz. Most of the energy was from 25 to 1000 Hz.

There were 15 noise events above 70 dB within the 19 hours of recording at Ugak Island, all of which can be attributed to helicopter, airplane, or rocket noise; none coincides with the stampede of Steller sea lions off the Ugak Island haulout 3.5 hours previous to the rocket launch. Sounds at the Ugak Island site were above 70 dB for a total of 30 seconds at the time the rocket motor was firing. Natural background noise levels above 70 dB were almost nonexistent during this launch.

QRLV-1

On March 22, 2001, the USAF conducted the third launch from KLC. SLMs set to highlight sounds exceeding 70 dB at the base of the Ugak Island sea lion haulout were again used by ENRI to record sound frequency and intensity, and were deployed 22 hours before the launch. The recorded sound levels at Ugak Island were significantly lower for the QRLV-1 launch than for either of the ait launches. This is likely due to the vehicle being smaller, and possibly to a different trajectory and local atmospheric condition. Recorded maximum SPLs resulting from QRLV rocket motor noise at the Ugak Island haulout site were 73.3 dB, with a peak level of 87.2 dB, and a corresponding SEL of 80.3 dB. The bulk of the sound energy was at low frequencies and generally less than 2500 Hz. Most of the energy was from 16 to 2000 Hz.

There were 17 noise events above 70 dB at Ugak Island. With the exception of the rocket launch, all can be related to helicopter noise. Sounds at the Ugak Island site were above 70 dB for a total of 10.9 seconds at the time the rocket motor was firing. Natural background noise levels above 70 dB were almost nonexistent during this launch. Rocket noise measurements for the QRLV-2 rocket launch on April 24, 2002, the sixth rocket launched from KLC, were not recorded.

Athena

The fourth launch from KLC occurred on September 29, 2001, and involved a commercial Lockheed/Martin Athena, which is the largest vehicle to be launched from KLC. SLMs were again set to highlight sounds exceeding 70 dB and were deployed by ENRI at the Ugak Island haulout four hours before the launch. The recorded sound levels at Ugak Island were significantly higher for the Athena launch than for previous launches, which is likely due to the size of the vehicle. Recorded maximum SPLs

resulting from Athena rocket motor noise at the Ugak Island haulout site were 90.8 dB, with a peak level of 115.9 dB, and a corresponding SEL of 101.4 dB. The bulk of the sound energy was at low frequencies and generally less than 2000 Hz.

There were three exceedance events above 70 dB at Ugak Island and Narrow Cape within the four hours of recording, two of which can be attributed to helicopter noise and the other to the rocket launch. Sounds at the Ugak Island site were above 70 dB for 49.6 seconds at the time the rocket motor was firing. Natural background noise levels above 70 dB were nonexistent during this launch.

STARS

On November 9, 2001, the Department of Defense launched a STARS vehicle from KLC; however, the rocket was deliberately destroyed over open ocean almost immediately because it lost communication with KLC. The STARS program provides ballistic missile targets to test various sensors and ground-based interceptors. STARS vehicles will include first- and second-stage Polaris A3 boosters and a third-stage Orbus-1 booster. The range of this system is 620 to 3,418 miles (998 to 5500 km). SLMs were set to record noise events above 70 dB and were to be deployed four hours prior to launch, but safety concerns associated with inclement weather on the day of the launch precluded the helicopter from being flown from the Kodiak airport to the launch facility. Consequently, ENRI was unable to set up the SLMs prior to the rocket launch and no sound data were collected for this launch. Sound levels from this type of rocket motor would likely be similar to those recorded for the ait and ARLV missions given the size and thrust characteristics of these vehicles. Accordingly, it is expected that sound exposure levels at Ugak Island would have likely ranged from 80 to 90 dB. Sound pressure levels from future launch operations from KLC are expected to be in the range of those recorded during the first four launches.

Description of Habitat and Marine Mammals Affected by the Activity

Narrow Cape, Ugak Island, and the adjacent waters within the primary KLC study area provide habitat for sea otters (*Enhydra lutris*), harbor seals (*Phoca vitulina*), Steller sea lions (*Eumetopias jubatus*, listed as endangered), gray whales (*Eschrichtius robustus*), humpback whales (*Megaptera novaeangliae*, listed as endangered), northern fur seals (*Callorhinus ursinus*), Northern Right whales (*Eubalaena glacialis*), and minke whales (*Balaenoptera acutorostrata*). Harbor seals and sea otters are common year-round, as are killer whales (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), and harbor porpoise (*Phocoena phocoena*). Other species of cetaceans that may occur in the area, such as Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Risso's dolphins (*Grampus griseus*), northern right whale dolphins (*Lissodelphis borealis*), pilot whales (*Globicephala macrorhynchus*), Cuvier's beaked whales (*Ziphius cavirostris*), Baird's beaked whale (*Berardius bairdii*), Stegneger's beaked whale (*Mesoplodon stejnegeri*), sperm whales (*Physeter macrocephalus*), fin whales (*Balaenoptera physalus*), sei whales (*Balaenoptera borealis*) and blue whales (*Balaenoptera musculus*) are rare as they are primarily pelagic (ENRI, 1995-98). General information on harbor seals and other marine mammal species can be found in Caretta et al. (2001, 2002), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*. Sea otters are managed by the U.S. Fish and Wildlife Service. Information on this species may be found at *www.fws.gov*. Please refer to those documents and the application for further information on these species.

Potential Effects of Rocket Launches on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al., 1995):

(1) The noise may be too weak to be heard at the location of the pinniped (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the pinniped; these can range from temporary alert responses to active avoidance reactions such as stampedes into the sea from terrestrial haulout sites;

(4) Upon repeated exposure, pinnipeds may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that the pinniped perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of pinnipeds to hear natural sounds at similar frequencies, including calls from conspecifics, and environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might (in turn) have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

Solid rocket boosters from KLC launches will fall into the ocean away from any known or potential haul-out sites and do not pose any threat to Ugak Island. Launch noise is expected to occur over the coastal habitats of Narrow Cape and Ugak Island during every launch, while sonic booms will occur approximately 40 nautical miles (74 km) downrange over open ocean, beyond the outer continental shelf and are unlikely to affect marine mammals. Airborne launch sounds will mostly reflect or refract from the water surface and, except for sounds within a diameter of approximately 30 degrees directly below the launch vehicle, will not penetrate into the water column. The sounds that do penetrate will not persist in the water for more than a few seconds.

The Ugak Island Steller sea lion haulout is the only haul-out site within the Narrow Cape region that has the potential to be impacted by the sights and sounds of rocket launches from KLC. Harbor seals haul out on the southeast side of Ugak Island, but this area is sheltered from direct sight of and sound from KLC by a 300 ft (91.44 m) island cliff and because it receives heavy surf, it already has high ambient noise levels. Because background ambient noise often interferes with or masks the ability of an animal to detect a sound even when that sound is above

its absolute hearing threshold (Richardson et al., 1995), it seems unlikely that animals hauled out at this location would hear noise associated with rocket launches from KLC. In contrast, the sea lion haulout on Ugak Island is on a spit facing KLC and animals at this location would likely hear a rocket launch. Steller sea lions generally occupy this haulout from late summer to the early fall post-breeding period (late June to early October) by up to several hundred sea lions.

ENRI was tasked under contract to the AADC to conduct environmental monitoring studies for each rocket launch from KLC. In addition to collecting rocket noise data, ENRI conducted aerial surveys over and collected real-time video footage at the seasonally occupied Ugak Island haulout site in conjunction with the three KLC launches when Steller sea lions might have been present at the haulout: ait-1 on November 5, 1998; ait-2 on September 15, 1999; and Athena on September 29, 2001. The only time Steller sea lions were observed occupying the haulout was during the ait-2 launch monitoring period. Sixty to seventy animals were on the haulout about five hours pre-launch. Due to below freezing temperatures, the video system shut off about four hours prior to the ait-2 launch. The video data show Steller sea lions fighting or sleeping on the haulout just minutes before the system stopped recording. The animals are then seen stampeding into the water and milling about immediately offshore. The cause of the stampede is not apparent in the video and no stimulus could be linked to the response. When, or if, any of the Steller sea lions returned to the haulout before the ait-2 launch is unknown. Although rocket noise might have caused the sea lions to flee the haulout, a clear-cut stimulus response of sea lion behavior to rocket noise cannot be postulated without video data from the time of the launch. Approximately one hour after the rocket was launched, no sea lions were seen hauled out and fifty to sixty sea lions were observed in the water immediately offshore. The day after the launch, sixty to seventy animals were seen hauled out, indicating that sea lions were not significantly affected by the launch. This finding parallels that from other spaceports, where sea lions have been shown to accommodate to disturbance from rocket launches (Thorson and Francine, 1997).

Because no Steller sea lions were present at the Ugak Island haulout during the ait-1 and Athena launches, it is not possible to relate any behavioral responses to the recorded noise levels. For all launches, however, launch noises recorded at the haulout site were within the audible ranges of pinnipeds (Richardson et al., 1995) and Steller sea lions would have heard them had they been present. Further, recorded sound pressures were at, and sometimes above, levels known to occasionally induce startle responses in pinnipeds (Richardson et al., 1995). Rocket launches will present Steller sea lions with novel visual and possibly tactile stimuli as well as unusually loud sounds and bright lights from the burning rocket and white exhaust flume. This potential for startle responses and stampede/evacuation of the haulout led the AADC to submit a request to NMFS for authorization for the incidental take of Steller sea lions during launches from KLC. The AADC recognizes in their application that despite the lack of direct stimulus-response data tying sea lion behavior to rocket launches from KLC, the unusual, high-intensity stimuli resulting from brief launch-related sights and sounds means that evacuation of the Ugak haul-out site by sea lions could reasonably be expected.

The behavioral data record for Steller sea lions is small throughout the North Pacific range and typically is focused on reproductive behaviors. In general, studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Porter (1997) observed Steller sea lions fleeing into the water for a wide variety of reasons such as helicopter overflights, bird flybys, and the presence of nearby humans. He also noted sea lions stampedes into the water that could not be correlated with any observed stimulus. There is also evidence that both time of day and temperature alter the probability of entry into the water (animals are more likely to enter the water when already overheated) (Bowles, 2000). Steller sea lions have been seen to mill about just offshore with their heads up in a heightened state of watchfulness (Porter, 1997) and remain close to the haulout until they sense it is safe to go back ashore (Lockheed Martin Environmental Services, 1999).

Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of incidental harassment, and the physical presence of aircraft or biologists could also lead to non-acoustic effects on marine mammals involving visual or other cues. However, other disturbance-related data collected during the ait-2 study (ENRI, 2000) does not fit well with stimulus response data from other sources. Sea lions are widely thought to be intolerant of helicopter noise (Porter, 1997), yet the animals in question did not appear to respond to multiple exposures of more intense helicopter noise at Ugak Island than that from the rocket (ENRI, 2000). They are also thought to be intolerant of humans on foot, yet a video from the ait-2 study shows hauled-out sea lions on Ugak Island undisturbed by biologists actively engaged in work within 328 ft (100 m) of them. The Ugak Island haulout is also regularly exposed to disturbances from aircraft and fishing vessels transiting Narrow Strait.

Recent studies (Lawson et al., 2002, and NAWS, 2002) show that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa^2 -sec) or higher. It is expected that most received noise levels at Ugak Island would be below levels which are likely to cause disturbance. The infrequent and brief nature of these sounds would cause masking for not more than a very small fraction of the time during any single launch day and it is unlikely that pinnipeds will become habituated to launch sounds. In addition, the extremely rapid departure of the rockets means that pinnipeds would be exposed to increased sound levels for very short time intervals, and because launches are conducted relatively infrequently, neither physiological stress nor hearing related injuries are likely. Therefore, AADC anticipates that the effects of rocket launches from KLC would have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds, and would have no more than a negligible impact on pinniped populations.

Numbers of Marine Mammals Expected to Be Taken by Harassment

The Steller sea lion is described by two stocks - those west of 144° west longitude listed as endangered, and the eastern stock listed as threatened. Sea lions present hauled out on Ugak Island are of the western stock. The most recent comprehensive estimate (pups and non-pups) of Steller sea lion abundance in Alaska is based on aerial surveys and ground based pup counts in June and July 1998 from Southeast Alaska to the western Aleutian Islands (Sease and Loughlin 1999). In addition, surveys of all non-pup trend sites, haulout sites, and rookeries were conducted during 2000 (Sease et al.,

2001). The best available population estimate for the western stock of Steller sea lions is the sum of the total number of non-pups counted in 2000 (25,384) and the number of pups counted in 1998 (9,211). The 2000 count of non-pups (25,384) plus the number of pups in 1998 (9,211) is 34,595, which will be used as the minimum population estimate for the western U. S. stock of Steller sea lion (Wade and Angliss 1997). This is considered a minimum estimate because it has not been corrected to account for animals which were at sea during the surveys.

The numbers of individual Steller sea lions that might stampede or otherwise shift position on the Ugak Island spit in response to an AADC generated disturbance are difficult to estimate. Because this haulout is occupied primarily from late June to early October, the possible number of animals taken would depend upon the timing of rocket launches. If a launch were to occur outside of this time frame, it is likely that no animals would be exposed to noise resulting from rocket launches. The highest count of sea lions at the Ugak Island haulout was 177 in July 1997 (ENRI 1995-98); this then represents the highest number of animals that could be disturbed by a rocket launch during the season of haulout occupancy.

Effects of Rocket Launches on Subsistence Needs

There are no subsistence uses of pinniped species in Alaska waters within the KLC primary study area, and, thus, there are no anticipated effects on subsistence needs.

Effects of Rocket Launches on Marine Mammal Habitat

Solid rocket boosters would fall into the ocean away from any known or potential haulouts. All sonic booms that reach the earth's surface would be expected to be over open ocean beyond the outer continental shelf. Airborne launch sounds would mostly reflect or refract from the water surface and, except for sounds within a diameter of approximately 30 degrees directly below the launch vehicle, would not penetrate into the water column. The sounds that do penetrate would not persist in the water for more than a few seconds. Overall, rocket launch activities from KLC would not be expected to cause any impacts to habitats used by marine mammals, including pinniped haulouts, or to their food sources.

Mitigation

Based on data collected from previous launches from KLC, there is no evidence of a direct stimulus-response relationship between Steller sea lion behavior and rocket launches. At this time, because of the absence of a significant response by Steller sea lions and because this is not a rookery with pups, NMFS believes there is no need for the implementation of any specific mitigation measures other than the monitoring requirements described below, which includes immediately notifying NMFS if indications of a disturbance to Steller sea lions are recorded, if noise levels are observed above 100 dBA, and in the unanticipated event that any cases of pinniped mortality are judged to result from launch activities at any time during the period covered by these regulations. If data from the monitoring program collected during future launches show the need for additional mitigation, specific measures would be developed by the AADC in cooperation with NMFS and implemented through the LOAs.

Monitoring

Environmental monitoring studies for rocket launches are modeled after those outlined in the KLC Environmental Monitoring Plan (EMP), which is an integral part of the NRMP (discussed previously). The EMP was reviewed and approved by the federal and state agencies having oversight of the various natural resources in and around KLC, and addresses stipulations in the FONSI for the EA for construction of KLC, KLC development permits, and NRMP goals and objectives. The primary KLC environmental monitoring study area was set in September 1996 at a meeting between AADC and representatives of the U.S. Fish and Wildlife Service, NMFS, the FAA, and ENRI. It includes the lands and waters within a 6-mile (9.7 km) radius extending out from the KLC launchpad. The EMP requires that monitoring of Steller sea lions be done at the seasonally occupied (late June to early October), non-breeding haulout on Ugak Island. The EMP also requires monitoring of rocket noise, bald eagle nests, Steller's Eiders, and other environmental quality parameters such as water chemistry, macroinvertebrates, stream sediment, and vegetation.

It was determined in September of 1996 that this monitoring plan would be limited to the first five rocket launches from KLC, provided that at least one of the launches represented the largest class of rocket that could be flown from the facility. ENRI prepared individual monitoring reports for each launch. The fifth rocket was launched from KLC in November of 2001, and a Lockheed/Martin Athena (the largest vehicle that can currently be flown from KLC) was launched in September 2001. This meant that the studies required in the EMP were complete. ENRI also monitored the 6th launch using the same protocols as in previous launches.

In a summary document of the monitoring reports for the first five launches (ENRI, 2002), ENRI and AADC recommended that KLC environmental monitoring activities involving rocket launches include the continuation of Steller sea lion monitoring and the collection of rocket noise data when sea lions are present at the Ugak Island haulout. Even though no apparent behavioral responses of Steller sea lions to rocket launches were observed, sound pressure levels are within the audible range of Steller sea lions and the potential for disruption of behavioral patterns exists. NMFS agrees with this finding, and in addition to any other applicable state and federal permits, regulations, and environmental monitoring agreements that AADC has with other agencies, NMFS proposes to include in its regulations issued for rocket launches from KLC the continuation of rocket motor noise data collection and Steller sea lion monitoring as laid out within the KLC EMP.

Steller Sea Lion Monitoring

The objective of monitoring Steller sea lions is to detect any indications of disturbance that result from KLC rocket launches to individuals at the seasonally occupied Ugak Island haulout site. Monitoring would be conducted for launches that take place from June through October, the only time sea lions are likely to occupy the Ugak Island haulout. The haulout area would be monitored before, during, and after launch operations to document and characterize any observed responses. Monitoring would be designed to determine the type of disturbance reactions and their relationship to noises associated with rocket launches. Fixed-wing aerial surveys would be flown for any launches taking place from June through October using a minimum flight altitude of 152.5 m (500 ft) ASL to be flown at low tide or, with consultation, toward evening. The aircraft would come no closer than one-quarter mile to the haulout. Depending on aircraft availability, one or two biologist observers would accompany the pilot. Data would be gathered both visually and on 35-mm color film with a camera having a zoom lens. A total of five surveys would be flown, if weather conditions permit. The first would occur the day prior to a scheduled launch and the second as

soon after the launch as possible. Replicate surveys would be flown the following three successive days to determine post-launch haulout-use patterns.

For any launches that occur from June through October, a real-time video record would be made of sea lions reactions to launch-related noises. This would be accomplished by the installation of a remote custom-designed, closed-circuit, weatherproof, time-lapse video camera system at the base of the Ugak Island sea lion haulout before a launch, which would be retreived post-launch. Results of the aerial and video surveys would be compared, providing information on startle effects and durations. In addition, video data would be time-correlated with rocket motor noise measurements to provide objective information on any startle responses or indications of disturbance reactions that may occur resulting from rocket launches. Comparisons would also be made with baseline data assembled by AADC to help gauge any natural trends that may be occurring.

Acoustical Measurements

Rocket motor noise monitoring would be done concurrently with video monitoring at the Ugak Island haulout. These data would be synchronized to the video data to document correlations between noise signatures and pinniped responses. Sound intensity and frequency metrics would be recorded before, during, and after a launch by an SLM mounted on a permanent stanchion upon the Ugak Island haulout one day or more before a launch and retrieved within one day post-launch. The SLM would be set to highlight sounds greater than 70 dBA.

Reporting

If indications of a disturbance to Steller sea lions are recorded, and/or if noise levels are observed above 100 dBA, AADC would contact NMFS with such information. In the unanticipated event that any cases of pinniped mortality are judged to result from launch activities at any time during the period covered by these regulations, this event would be reported to NMFS immediately.

Data from monitoring activities would be reduced, analyzed, and reported to NMFS within 90 calendar days following cessation of field activities for each launch. The report would summarize the timing and nature of launch operations, summarize sea lion behavioral observations, and estimate the amount and nature of take by harassment. AADC would also include this information in its Annual Environmental Monitoring and Natural Resources Management Report.

An interim technical report is proposed to be submitted to NMFS 60 days prior to the expiration of each annual LOA issued under these regulations, along with any request for a subsequent annual LOA. This interim technical report would provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during the period covered by the LOA. However, only preliminary information would be available to be included for any launches during the 60–day period immediately preceding submission of the interim report to NMFS.

In addition to annual interim LOA reports, NMFS proposes to require AADC to submit a draft comprehensive final technical report to NMFS 180 days prior to the expiration of the regulations. This draft technical report would provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first four LOA's, plus preliminary information for launches during the first 6 months of the final LOA.

National Environmental Policy Act (NEPA)

The FAA prepared an Environmental Assessment (EA) (June 1996) to evaluate the AADC's proposal to construct and operate a launch site at Narrow Cape on Kodiak Island, Alaska. After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, and after considering public comments, the Office of the Associate Administrator for Commercial Space Transportation (AST) issued a Finding of No Significant Impact (FONSI) based on the determination that licensing the operation of the proposed launch site is not a major Federal action that would significantly affect the quality of the human environment, and that preparation of an Environmental Impact Statement (EIS) is not required (61 FR 54248). NMFS is reviewing this EA and will either adopt it or perform its own NEPA analysis before making a determination on the issuance of an LOA.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an incidental take authorization and regulations under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to promulgation of a final rule. The final rule and LOAs issued thereunder will comply with the requirements of section 7(a)(2) of the ESA and the implementing regulations.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rule would apply only to AADC, which may in turn use a small number of contractors to provide services related to the proposed reporting requirements. The rule would have no effect, directly or indirectly, on small businesses. Because of this certification, a regulatory flexibility analysis is not required.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. This collection has been approved previously by OMB under section 3504(b) of the PRA issued under OMB control number 0648-0151, and includes applications for LOAs and reports.

Information Solicited

Regulations, if issued, would authorize NMFS to issue annual LOAs for the taking of small numbers of Steller sea lions incidental to rocket launches associated with the ait, QRLV, STARS, and other commercial space launch programs from KLC. NMFS requests interested persons and organizations to submit comments, information, and suggestions concerning the request and the content of the proposed regulations to authorize taking. NMFS will consider this information in developing proposed regulations to authorize the taking. All commenters are encouraged to review the application prior to submitting comments.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and record-keeping requirements, Seafood, Transportation.

Dated: October 22, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart S is added and reserved.

3. Subpart T is added and reserved.

4. Subpart U is proposed to be added to read as follows:

Subpart U—Taking of Marine Mammals Incidental to Rocket Launches From the Kodiak Launch Complex, Kodiak Island, AK

Sec.

216.230 Specified activity and specified geographical region.
216.231 Effective dates.
216.232 Permissible methods of taking.
216.233 Prohibitions.
216.234 Mitigation, monitoring and reporting.
216.235 Letter of Authorization.
216.236 Renewal of a Letter of Authorization.
216.237 Modifications to a Letter of Authorization.

Subpart U—Taking of Marine Mammals Incidental to Rocket Launches From the Kodiak Launch Complex, Kodiak Island, AK

§ 216.230 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in rocket launch activities at the Kodiak Launch Complex on Kodiak Island, Alaska.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to Steller sea lions (*Eumetopius jubatus*).

§ 216.231 Effective dates.

Regulations in this subpart are effective from December 1, 2004, through November 30, 2009.

§ 216.232 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the Alaska Aerospace Development Corporation and its contractors, may incidentally, but not intentionally, take those marine mammals specified in § 216.230(b) by Level B harassment, in the course of conducting missile launch activities within the area described in § 216.230(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activities identified in § 216.230(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat.

§ 216.233 Prohibitions.

The following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 216.234 Mitigation, monitoring and reporting.

(a) The holder of the Letter of Authorization must implement the following measures for all launches occurring from June through October:

(1) Conduct five replicate fixed-wing aerial surveys of Steller sea lions hauled out at Ugak Island, each flown at low tide (weather permitting), using a minimum flight altitude of 500 feet ASL, with an approach no closer than one-quarter mile to the haulout, and conducted a day prior to, directly following, and for three consecutive days after a launch.

(2) At least one biologist observer will accompany the pilot during aerial all surveys.

(3) Data gathered during aerial surveys will be gathered visually and on color film through the use of a 35 mm camera with a zoom lens.

(4) A real-time video record of Steller sea lion reactions to launch noise will be made using a video camera system placed upon the Ugak Island haulout before a scheduled launch and then retrieved after the launch.

(5) Sound intensities and frequencies of rocket motor noise will be recorded before, during, and after a launch by a sound level monitor set to highlight sounds greater than 70 dBA that is mounted upon the Ugak Island haulout one day or more before a launch and retrieved within one day post-launch.

(b) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless agreed to in writing otherwise, the holder must notify the Alaska Regional Administrator at least 2 weeks prior to commencing monitoring activities.

(c) Activities related to the monitoring described in paragraph (a) of this section, or in the Letter of Authorization issued under §§ 216.106 and 216.236 may be conducted without a separate scientific research permit.

(d) In coordination and compliance with the Alaska Aerospace Development Corporation, at its discretion, the National Marine Fisheries Service may place an observer on Kodiak or Ugak Islands for any marine mammal monitoring activity prior to, during, or after a missile launch to monitor impacts on marine mammals.

(e) The holder of the Letter of Authorization must comply with any other applicable state or federal permits, regulations, and environmental monitoring agreements set up with other agencies.

(f) The National Marine Fisheries Service must be informed immediately of any proposed changes or deletions to any portions of the monitoring requirements.

(g) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) If indications of a disturbance or injurious or lethal take are recorded, and/or if recorded noise levels are above 100 dBA, the Alaska Regional Administrator, National Marine Fisheries Service, or his/her designee, will be contacted within 48 hours and, in cooperation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(2) Data from monitoring activities will be reported to the National Marine Fisheries Service within 90 days following cessation of field activities for each launch.

(3) An interim technical report must be submitted to the Office of Protected Resources and the Alaska Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means.

(4) A draft comprehensive technical report will be submitted to the Office of

Protected Resources and Alaska Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations with full documentation of the methods, results, and interpretation of all monitoring tasks for launches during all expired Letters of Authorization, plus preliminary information for launches during the first 6 months of the final Letter of Authorization.

(5) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of these regulations.

(6) Both the interim and draft comprehensive reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

§ 216.235 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization, but a Letter of Authorization may not be valid beyond the effective period of the regulations.

(b) A Letter of Authorization with a period of validity less than the effective period of the regulations in this subpart may be renewed subject to renewal conditions in § 216.236.

(c) A Letter of Authorization will set forth:

(1) Species of marine mammals authorized to be taken;

(2) Permissible methods of incidental taking;

(3) Specified geographical region;

(4) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(5) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the total taking by the activity as a whole will have no more than a negligible impact on the affected species or stocks of marine mammal(s).

(e) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.236 Renewal of a Letter of Authorization.

(a) A Letter of Authorization for the activity identified in § 216.230(a) will be renewed upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under § 216.235 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of and acceptance by the National Marine Fisheries Service of the monitoring reports required under § 216.234;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under §§ 216.232 and 216.234 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity will be small and that the total taking by the activity will have no more than a negligible impact on the affected species or stocks of marine mammal(s), and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.237 Modifications to a Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to the provisions of this subpart shall be made by the National Marine Fisheries Service until after notification and an opportunity for public comment has been provided. A renewal of a Letter of Authorization under § 216.236 without modification is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.230(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 040920271–4271–01; I.D. 102004A]

RIN 0648–AS05

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)

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

ACTION: Proposed rule; collection-of-information requirements; request for comments.

SUMMARY: NMFS proposes regulations to implement resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (IDCP). These regulations would prohibit activities that undermine the effective implementation and enforcement of the Marine Mammal Protection Act (MMPA), Dolphin Protection Consumer Information Act (DPCIA), and International Dolphin Conservation Program Act (IDCPA). This proposed rule would enlarge the class of vessels required to pay observer fees. The procedure to categorize tuna purse seine vessels as ''active'' in the Eastern Tropical Pacific Ocean (ETP) and the deadline for submitting vessel permit applications would change. Procedures are proposed for managing the capacity of the U.S. tuna purse seine fleet operating in the ETP through maintenance of a Vessel Register, the definitive list of vessels authorized to purse seine for tuna in the ETP. This proposed rule is intended to contribute to the long-term conservation of dolphin and tuna stocks and to ensure that the domestic tuna tracking and verification program remains consistent with international standards.

DATES: Comments on the proposed regulations must be received by November 29, 2004.

ADDRESSES: Send comments on the rule and the Initial Regulatory Flexibility Analysis to Jeremy Rusin, NMFS,

Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. This address may also be used to submit observer fee payments, permit applications and other documentation to the Administrator, Southwest Region, with the exception of Fisheries Certificates of Origin (see below). Comments may be sent via facsimile (fax) to (562) 980–4027 or via E-mail. Include in the subject line of the E-mail the following document identifier: RIN 0648–AS05. The mailbox address for providing E-mail comments is *0648–AS05*@noaa.gov. Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http//www.regulations.gov*.

Fisheries Certificates of Origin submitted via mail should be sent to Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832–2469.

FOR FURTHER INFORMATION CONTACT: Jeremy Rusin, NMFS, Southwest Region, Protected Resources Division, at (562) 980–4020.

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of the IATTC, which was established in 1949 under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention). The IATTC provides an international forum to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the fisheries and the status of tuna stocks to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. More recently, the IATTC has moved into other fishery management issues, such as managing the cumulative capacity of vessels fishing in the Convention Area, bycatch of non-target and protected species, and imposing time-area closures to conserve tuna stocks.

In support of fleet capacity control, the United States agreed to an IATTC resolution that limited total ETP purse seine fleet capacity. Currently, the United States is committed to limiting the capacity of its domestic tuna purse seine fleet operating in the ETP to 8,969 metric tons (mt) carrying capacity. The U.S. limit was originally based on the cumulative capacity of U.S. vessels actively fishing in the ETP in the years leading up to 1999. In addition, U.S. purse seine vessels based in the western Pacific Ocean (WPO) were allowed to make 32 trips into the ETP without counting against the 8,969 mt limit. Recent resolutions adopted under the IATTC have addressed limits on fleet capacity. The United States and other Parties to the IATTC Convention and Agreement on the IDCP are responsible for domestically implementing resolutions adopted each year. Under the U.S. Tuna Conventions Act (16 U.S.C. 951 *et seq.*), the Secretary of Commerce is authorized to promulgate regulations implementing the recommendations of the IATTC. Implementation of recent capacity resolutions is one objective of this proposed rule.

The IDCPA was signed into law August 15, 1997, and became effective March 3, 1999. The IDCPA amends the MMPA, DPCIA (16 U.S.C. 1385), and Tuna Conventions Act. The IDCPA, together with previous declarations, became the blueprint for the Agreement on the IDCP. In May 1998, eight nations, including the United States, signed a binding, international agreement to implement the IDCP. The Agreement on the IDCP became effective on February 15, 1999, after four nations (United States, Panama, Ecuador, and Mexico) deposited their instruments of ratification, acceptance, or adherence with the depository for the Agreement. The IDCPA (16 U.S.C. 1413) mandates the Secretary of Commerce to issue and revise regulations, as appropriate, to implement the IDCP.

This proposed rule is intended to revise current regulations to ensure consistency between operation of the U.S. tuna purse seine fleet in the ETP and resolutions adopted by the IATTC and by the Parties to the Agreement on the IDCP. This proposed rule also introduces procedural modifications needed in the domestic tuna tracking and verification program, especially regarding the maintenance and submission of tracking and verification records. In addition, these regulations would prohibit labeling tuna with a mark that refers to dolphins or other marine mammals if the label does not comply with the requirements of 16 U.S.C. 1385(d) and prohibit interference with enforcement and inspection activities that undermine the effectiveness of the MMPA.

Definitions

The definition for ''Fisheries Certificate of Origin'' would be revised in § 216.3 to include the acronym ''FCO'', as well as NOAA Form 370. In § 216.3, a definition for ''South Pacific Tuna Treaty'' would be added to specify that the term refers to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty).

In § 300.21, a definition would be added for ''Vessel Register'' in order to formally name the list of vessels authorized to purse seine for tuna in the ETP, which is comprised of both U.S. and international vessels. A second definition would be added in Section 300.21 for ''South Pacific Tuna Treaty'' to specify that the term refers to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

Interference with Investigations and Authorized Activities

These regulations propose to add a new § 216.17 to prohibit activities that undermine the effective implementation and enforcement of the MMPA, DPCIA, and IDCPA. Currently, individuals who refuse to permit boardings by enforcement agents, interfere with inspections or stranding response, or intentionally submit false information may not be subject to prosecution under the MMPA, as such activities are not specifically prohibited. Such activities constrain law enforcement actions needed to ensure compliance with the statute. Lastly, this action would ensure that there are regulations protecting law enforcement officials while conducting investigations in the field.

Vessel Register

The IATTC established a international Vessel Register on June 28, 2002. In § 300.22(b), NMFS proposes to maintain a domestic Vessel Register in accordance with recommendations of the IATTC. In addition, procedures would be established for vessels to be categorized as active or inactive on the Vessel Register for a given calendar year. Vessels would be eligible for inclusion on the Vessel Register if they were determined to have a history of fishing in the ETP prior to the establishment of the IATTC Vessel Register on June 28, 2002. Vessels that were not originally eligible for inclusion on the Vessel Register could be added only to replace another vessel of equal or greater capacity that has been removed from the Vessel Register.

As of September 2004, the following U.S. purse seine vessels, with carrying capacities in parentheses, are eligible for inclusion on the Vessel Register

maintained by the IATTC: *Andrea C* (1,089 mt); *Anna Maria II* (82 mt); *Annie D* (100 mt); *Anthony G* (35 mt); *Antoinette W* (25 mt); *Atlantis* (1,089 mt); *Barbara H.* (91 mt); *Bold Adventuress* (1,361 mt); *Calogera A* (62 mt); *Cape Elizabeth* (1,542 mt); *Cape Finisterre* (1,361 mt); *Carol Linda* (1,587 mt); *Cassie* (62 mt); *Connie Jean* (517 mt); *Daniela* (1,217 mt); *Diana* (1,089 mt); *Donna B* (145 mt); *Eileen* (42 mt); *Ferrigno Boy* (70 mt); *Fiore D'Mare* (85 mt); *G Nazzareno* (75 mt); *Gallant* (91 mt); *Gloria Marie* (23 mt); Jeanette (1,542 mt); *Jeannine* (1,089 mt); *Jenny Lynne* (59 mt); *Kathy Jeanne* (73 mt); *King Philip* (91 mt); *Koorale* (998 mt); *Lady Elizabeth* (288 mt); *Lady Renee* (36 mt); *Linda C.* (11 mt); *Margaret F* (54 mt); *Maria* (89 mt); *Maria T* (45 mt); *Mary Louise* (54 mt); *Mauritania* (340 mt); *Midnight Hour* (45 mt); *Nancy B II* (68 mt); *New Horizon* (33 mt); *Odette Therese II* (1,089 mt); *Pacific Princess* (1,089 mt); *Pioneer* (64 mt); *Proud Heritage* (998 mt); *Retriever* (45 mt); *Romani Sons* (91 mt); *Saint Joseph* (79 mt); *San Antonio* (86 mt); *San Pedro Pride* (104 mt); *Santa Maria* (77 mt); *Sea Encounter* (1,814 mt); *Sea Queen* (91 mt); *Sheelagh B* (82 mt); *St George II* (91 mt); *Tradition* (1,089 mt); *Trionfo* (68 mt); and *Western Pacific* (1,678 mt).

In order for vessels in excess of 400 short tons (st), (362.8 mt) carrying capacity to purse seine for tuna in the ETP, they would be required to be categorized as active on the Vessel Register, have obtained a vessel permit, and have paid the permit application fee and the observer placement fee associated with the active status.

Owners who request to have purse seine vessels in excess of 400 st (362.8 mt) listed as inactive on the Vessel Register would be required to pay the observer placement fee associated with inactive status. However, only purse seine vessels in excess of 400 st (362.8 mt) listed as active on the Vessel Register would be allowed to fish in the ETP; large purse seine vessels listed as inactive would be prohibited from fishing.

Purse seine vessels licensed under the South Pacific Tuna Treaty would be allowed to make a single trip in the ETP per year, not to exceed 90 days in duration. They would not be required to be listed on the Vessel Register; however, they would be required to obtain a vessel permit, pay the permit application fee and the observer placement fee associated with active status, and carry an approved IDCP or ETP-trained Forum Fisheries Agency observer prior to entering the ETP to fish. No more than 32 such trips would be allowed per year.

Purse seine vessels of less than 400 st (362.8 mt) carrying capacity that do not target tuna on a full-time basis (in other words, 50 percent or less of annual landings by the vessel are tuna caught in the ETP) would not be required to be categorized as active, or even be listed on the Vessel Register, in order to purse seine for tuna in the ETP when tuna are seasonally available.

Purse seine vessels of less than 400 st (362.8 mt) carrying capacity that target tuna on a full-time basis (in other words, more than 50 percent of annual landings by the vessel are tuna caught in the ETP) would be required to be categorized as active on the Vessel Register. In order to be categorized as active on the Vessel Register, these small purse seine vessels would be required to submit payment of observer placement fees associated with active status to the Administrator, Southwest Region. Owners may request to have purse seine vessels of less than 400 st (362.8 mt) carrying capacity listed as inactive on the Vessel Register by submitting payment of the observer placement fee associated with inactive status.

New § 300.22(b)(4)(i) would provide that when the owner of a vessel in excess of 400 st (362.8 mt) carrying capacity submits a vessel permit application, permit application fee, and observer placement fee, the Administrator, Southwest Region, would interpret the submissions as the owner's request for the subject vessel to be categorized as active under the Vessel Register in a given calendar year. The owner of a vessel of 400 st (362.8 mt) carrying capacity or less would be required to submit only payment of the observer placement fee associated with active status in order to request the vessel be listed on the Vessel Register as active.

For 2005 only, requests to be categorized as active that are received by the Administrator, Southwest Region, would be prioritized on a first-come, first-served basis. Requests to be active for 2006 and subsequent years that are received by the Administrator, Southwest Region, between August 1 and September 15 of the previous year, for vessels requesting DMLs, or between August 1 and November 30 of the previous year, for vessels not requesting a DMLs, would be prioritized according to the following hierarchy: (1) requests for vessels that were categorized as active in the previous year except for vessels that were determined by the Administrator, Southwest Region, to have made frivolous requests for the previous year; (2) requests for vessels that were categorized as inactive in the previous year; (3) requests for vessels not described in (1) or (2) will be prioritized on a first-come, first-served basis; and (4) requests for vessels that were determined to have made a frivolous request for active status for the previous year. Vessels in excess of 400 st (362.8 mt) carrying capacity would not be categorized as active on the Vessel Register unless the captain of the vessel possessed a valid operator permit.

Under new § 300.22(b)(5), vessels could be removed from the Vessel Register by the Administrator, Southwest Region: (1) if they have sunk, (2) at the written request of the owner or managing owner, (3) if they have not paid the required observer placement fee, (4) if the vessel owner or managing owner does not submit, within the allotted time, a vessel permit application and associated processing fee, (5) if the United States Coast Guard notifies NMFS that the U.S. documentation for the vessel has been deleted, or (6) for serious violations, for failure to pay a penalty, or for default on a penalty payment agreement.

In new § 300.22(b)(6), vessels removed from the Vessel Register for a given year or years could be added back to the Vessel Register and categorized as inactive at any time, provided they pay the vessel assessment associated with inactive status. Vessels removed from active status on the Vessel Register for one of the reasons described in the previous paragraph may be replaced with another vessel by the Administrator, Southwest Region, at any point during the year. Owners or managing owners of vessels eligible for inclusion on the Vessel Register would be notified by the Administrator, Southwest Region, when an opportunity to replace a removed vessel arises.

Vessels categorized as inactive at the time that a vessel is removed from active status, and active capacity becomes available, would be given first priority to become active for the remainder of the year. Second priority would be given to vessels not included on, but eligible for inclusion, on the Vessel Register. In order to replace a vessel removed from active status on the Vessel Register, the owner of a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity would be required to submit to the Administrator, Southwest Region, a vessel permit application, as well as payment of the permit application processing fee and observer placement fee consistent with active status and verification that the captain of the vessel possessed a valid operator permit.

In order to replace a vessel removed from active status on the Vessel Register, the owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less would be required to submit to the Administrator, Southwest Region, only payment of the observer placement fee consistent with active status.

The regulations would require that the owner of a purse seine vessel listed as inactive on the Vessel Register, who requests to have the vessel's status changed to active, pay an observer placement fee equal to the difference between the fee for active status and the fee for inactive status that was already paid. The observer placement fee for an owner of a replacement vessel not already listed as inactive on the Vessel Register would be the full observer placement fee associated with active status.

Vessel Permit Application and Payment of Observer Placement Fee

Section 216.24(b)(4) would require vessel permit applications to be faxed and establish deadlines for submission of vessel permit applications and application processing fees. No vessel permit application or application processing fee may be submitted prior to August 1 of the year prior to year for which permit would be valid. Vessel owners or managing owners requesting a dolphin mortality limit (DML) and that a vessel be categorized as active on the Vessel Register for the following year, would be required to submit the vessel permit application, observer placement fee, and application processing fee no later than September 15 of the year prior to year for which the DML is requested.

Vessel owners or managing owners not requesting a DML for a vessel, but requesting a vessel greater than 400 st (362.8 mt) be categorized as active on the Vessel Register for the following year, would be required to submit the vessel permit application, observer placement fee, and application processing fee no later than November 30 of the year prior to the year for which inclusion on the Vessel Register is requested.

Owners or managing owners of vessels not on the Vessel Register and licensed under the South Pacific Tuna Treaty would be required to submit vessel permit applications, observer placement fees, and application processing fees before the vessel is assigned an observer and enters the ETP to fish, allowing 15 days for NMFS to process the application.

Owners or managing owners of vessels equal to or less than 400 st (362.8 mt) would not be required to submit a vessel permit application or application processing fee; vessel permits are not required for vessels of this size regardless of whether or not they are listed on the Vessel Register.

Any owner that requests to have a purse seine vessel of less than 400 st (362.8 mt) carrying capacity listed as active on the Vessel Register would be required to submit payment of the observer placement fee associated with active status no later than November 30 of the year prior to the year for which inclusion on the Vessel Register is requested. Owners of small purse seine vessels for which at least 50 percent of annual catch is comprised of tuna caught in the ETP would be required to request these vessels be listed as active on the Vessel Register by submitting payment of observer placement fees associated with active status no later than November 30 of the year prior to the year for which inclusion on the Vessel Register is requested. Owners that request to have these small vessels listed as inactive on the Vessel Register would be required to submit payment of observer placement fees associated with inactive status no later than November 30 of the year prior to the year for which inclusion on the Vessel Register is requested.

Owners requesting to replace a vessel removed from active status on the Vessel Register would be required to submit to the Administrator, Southwest Region, a vessel permit application, payment of the permit application processing fee, and payment of the observer placement fee consistent with active status before the vessel would be listed as active. In addition, these owners would be required to verify that the captain of the vessel possessed a valid operator permit.

Importation, Purchase, Shipment, Sale, and Transport

In § 216.24, a new paragraph (f)(3)(ii) would be added requiring that Fisheries Certificates of Origin (FCOs) and associated certifications be submitted by the importer of record within 30 days of the shipment's entry into the commerce of the United States. The proposed regulations would allow certifications to be submitted electronically to the Tuna Tracking and Verification Program using a secure file transfer protocol (FTP). Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program. Certifications submitted by mail either on compact disc or as hard copies to the Tuna Tracking and Verification Program (see **ADDRESSES**) would also be acceptable. All importers of record submitting electronic certifications, whether via FTP or on compact disc, would be required to make submissions in either Adobe Portable Document Format (PDF) or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file. Paragraphs previously designated (f)(2)(ii) and (iii) would be redesignated as (f((2)(iii) and (iv), respectively.

In § 216.24(f)(4) two modifications would be made. In paragraph (f)(4)(xi), the name of the vessel would be required on the FCO regardless of the gear type used. In paragraph (f) (4)(xiv), NMFS would require importers, exporters, or processors who take custody of tuna shipments to sign and date FCOs. Current regulations limit this requirement to tuna shipments harvested by purse seine vessels in excess of 400 st. This modification is necessary because processors who import tuna must be able to verify dolphin-safe status through use of the FCO for all tuna imports regardless of gear or vessel size.

Market Prohibitions

NMFS would add a market prohibition to § 216.24(f)(12)(ii) to complement the dolphin-safe labeling requirements under the DPCIA, as codified in regulations at 50 CFR 216.91 *et seq.* This new prohibition would make commerce in tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals illegal if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d). The Dolphin Protection Consumer Information Act authorizes the Secretary to regulate entities in the stream of commerce that are responsible for trafficking in tuna product that bears labels suggesting the tuna was harvested in a ''dolphin-safe'' manner. As a result and based on NMFS' experience, NMFS has determined that giving NMFS the ability to enforce the labeling standards at the wholesale, distribution, and retail levels will further compliance with the DPCIA. During the course of recent investigations into illegally imported tuna products, NMFS determined that there is both a ready supply of a certain brand of tuna products from Mexico entering the U.S. market that carries a label/mark that implies the tuna is dolphin-safe and a demand among consumers for this product. While there is no indication that the labeled product is not dolphin-safe, it appears that the product entered the U.S. market without being accompanied by the required paperwork. Further, at the time such

products were discovered by law enforcement officials, the party possessing the product (usually a retailer) was not the party that placed the dolphin-related label on the product.

This proposed new prohibition would improve the ability of NMFS Enforcement to pursue enforcement actions against all parties in the stream of commerce that handle or sell labeled tuna product. Putting such enforcement pressure on all businesses that distribute or sell labeled products is likely to raise their awareness of the dolphin-safe labeling standards. NMFS anticipates that this will, in turn, reduce the illegal trafficking of such products.

Changes to Verification Requirements

Section 216.93(c)(v) would be revised to prohibit distribution of confidential Tuna Tracking Forms (TTFs) by replacing the phrase ''shall not'' with ''may not''. Current regulations were intended to prohibit distribution of these confidential documents; however, this intention was not apparent in the way current regulations were constructed.

Section 216.93(e) would be revised in this proposed rule to specify that copies of FCOs and required certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States, consistent with the addition of a the proposed new paragraph (f) (3) (ii) in § 216.24(f)(3).

NMFS would revise § 216.93(f) to require maintenance of records on all tuna imported into the United States, not just tuna harvested in the ETP that is imported. This change would be made because of the need to track all the tuna coming into the United States in order to track and verify tuna harvested in the ETP.

Under these proposed regulations, certain entities (any exporter, transshipper, importer, processor or wholesaler/distributor of tuna or tuna products) would be required to submit FCOs within 30 days of every shipment, as opposed to within 30 days of a request by the Southwest Regional Administrator. These revisions would be made in § 216.93(f)(2).

NMFS would add a requirement that wholesalers and distributors maintain records related to the shipment of tuna, including the FCO, required certifications, invoices, and other import documents under the authority of paragraph (f) of the DPCIA (16 U.S.C. 1385(f)). The revised § 216.93(f) would require any ''wholesaler/distributor'' to comply with the record maintenance, submission, and audit/spot-check obligations of the Tuna Tracking and Verification Program. In addition to maintaining records, wholesalers/distributors would be required to submit or provide access to all pertinent records and facilities related to caught, landed, stored and processed tuna.

For purposes of this regulation, wholesalers/distributors would be identified as entities that sell from offices or warehouses, advertise to businesses rather than to the general public, and generally have no walk-in traffic or public displays. This addition is proposed because current regulations require importers to adhere to the tracking requirements, but do not extend the requirements to parties any farther in the stream of commerce. Investigations into the alleged illegal importation of tuna products have been thwarted because NMFS discovered the products only after they had been delivered to the retailers. For example, wholesalers/distributors did not maintain any paperwork regarding the delivery or purchase of the tuna that would have allowed NMFS to investigate who had been involved in the illegal importation. Without extending the tracking requirements to wholesalers/distributors, this complication with investigations would likely continue, as there is the potential that illegal importations of tuna are ongoing. NMFS does not propose extending recordkeeping requirements to retailers, but in order to aid enforcement of these regulations, NMFS would apply the verification requirements of this section to wholesalers/distributors.

Public Comments Solicited

NMFS is soliciting public comments on this proposed rule. Written comments may be submitted to Jeremy Rusin (see **ADDRESSES** and **DATES**).

Classification

Executive Order 12866

This proposed rule has been determined to be not ''significant'' under Executive Order 12866. NMFS prepared a Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), included as Appendix A to the Environmental Assessment (EA) prepared on the proposed regulations. The EA, including the RIR/IRFA, is available at the following website: *http://swr.nmfs.noaa.gov*.

Regulatory Flexibility Act

Pursuant to procedures established to implement the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared an RIR/IRFA, included as Appendix A to the EA prepared on the proposed regulations. The IRFA indicates that the proposed regulations would have a minimal impact on the U.S. purse seine fishing fleets and associated businesses.

NMFS analyzed three alternatives in the IRFA for this proposed rule. The first alternative that NMFS analyzed was the ''no action'' alternative and this alternative would not implement recommendations of the IATTC member nations or resolutions adopted by the Parties to the Agreement on the IDCP. The second alternative NMFS analyzed was the ''preferred alternative,'' which would: (1) establish a register of U.S. vessels with a history of fishing in the ETP prior to June 28, 2002, and require that only vessels on that list would be authorized to purse seine for tuna in the ETP; (2) limit the aggregate capacity of U.S. purse seine vessels that may fish full time for tuna in the ETP to 8,969 mt carrying capacity per year; (3) revise the requirements for maintaining and submitting tuna tracking and verification records; (4) ensure that owners of U.S. vessels on the register pay annual assessments; (5) prohibit commerce in tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and (6) prohibit interference with enforcement and inspection activities, submission of false information, and other activities that would undermine the effectiveness of the MMPA, IDCPA, and DPCIA. The third alternative NMFS analyzed was the ''variations of the preferred alternative'' alternative and this alternative would retain the clearly required elements of the preferred alternative, but it would also include other measures not specifically required by internationally adopted resolutions. Generally, the objectives of resolutions adopted by the IATTC member nations and the Parties to the Agreement on the IDCP are clear; however, some provisions allow for agency discretion, either in implementing or interpreting the intent of the resolution. These discretionary areas provided the basis for this third alternative.

NMFS rejected the ''no action'' alternative because it would not restrict annual participation by U.S. flag purse seine vessels in the fishery and would not implement needed prohibitions or refine tuna tracking procedures. Under the ''no action'' alternative, the United States would not be fulfilling its obligations under the IATTC and Agreement on the IDCP; adopting this alternative would provide a precedent

for other nations to ignore future international recommendations.

NMFS chose the ''preferred alternative,'' which includes a combination of procedures to restrict domestic fleet capacity, updates to the domestic tuna tracking and verification program, prohibitions against interfering with enforcement activities, and prohibitions against using a label on tuna products that refers to dolphins or other marine mammals when the label does not comply with the requirements of the DPCIA. The ''preferred alternative'' is expected to have minimal impacts on the U.S. purse seine fishing fleet and associated businesses.

NMFS also considered but rejected the third alternative which included taking independent action to address tuna conservation (e.g., quota, area closures, or other variations of the preferred alternative) because these approaches fail to address the potential for fleet capacity growth. Further, the United States does not have independent sources of information that would provide a sufficiently sound approach to support a departure from recommendations of the IATTC member nations and Parties to the Agreement on the IDCP.

The IRFA indicates, with only 1–2 exceptions, that tuna landings of small purse seine vessels (i.e., vessels less than 400 st carrying capacity and classified as small business entities) do not comprise a significant percentage of the total landings of small purse seine vessels. Therefore, these vessels would be exempt from being categorized as active on the Vessel Register or paying associated annual vessel assessments in order to purse seine for tuna when they are seasonally available. The 1–2 small vessels that have historically targeted tuna on a full-time basis, as well as large tuna purse seine vessels (in excess of 400 st carrying capacity), would be required to be listed as active on the Vessel Register and pay associated annual vessel assessments in order to fish for tuna in future years.

The annual capacity limit of 8,969 mt that would be imposed on the U.S. tuna purse seine fleet as a result of this action is expected to accommodate the majority of interested vessels based on vessel participation in the fishery in recent years, including the 1–2 small purse seine vessels that target tuna on a full-time basis. In 2004, owners expressed an interest to have an additional 2 vessels in excess of 400 st carrying capacity categorized as active, which would have totaled approximately 11,500 mt in fleet capacity. Therefore, implementing the fleet capacity limit through this rule would result in 1 or 2 eligible U.S. purse seine vessels being excluded from participating in the ETP tuna fishery if the current level of interest in the fishery is maintained.

Updates to the tuna tracking and verification program; prohibitions against commerce in tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and prohibitions against activities that undermine the implementation and enforcement of the MMPA, IDCPA and DPCIA are not expected to significantly impact small business entities. While the proposed changes are expected to result in some new or increased burdens to small businesses, the experience of the Tuna Tracking and Verification Program indicates that the proposed change would ensure NMFS' continued ability to verify the dolphin-safe status of tuna.

The preferred alternative is not expected to have a significant economic impact on the U.S. tuna purse seine fleet operating in the ETP. The only small business entities which would potentially be affected by this proposed rule would be 1–2 small purse seine vessels which target tuna in the ETP on a full-time basis. These actions are not expected to compromise the ability of these small vessels to target tuna or reduce their retained catch or sales revenue. Similarly, there would be no impacts on processors, nor would total employment be affected by this action.

While this alternative would implement capacity controls for the fleet, the proposed limit, 8,969 mt, is consistent with the recent level of interest and participation in the fishery by U.S. vessels. This alternative would also exempt smaller fishing entities that do not target tuna on a full-time basis from paying annual vessel assessments. Considering their access to fishing grounds in the western Pacific Ocean, vessels in excess of 400 st carrying capacity in the U.S. tuna purse seine fleet are expected to have sufficient flexibility to target tuna where and when they are seasonably available. Foreign purse seine fleets, as well as domestic and international tuna processors, are not expected to be significantly adversely affected by implementation of this alternative, due to the global nature of tuna supply and pricing.

NMFS is requesting comments on the IRFA. The EA, including the RIR/IRFA, is available at the following website: *http://swr.nmfs.noaa.gov*. Send comments to Jeremy Rusin, NMFS (see **ADDRESSES**).

Paperwork Reduction Act

This proposed rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which appears in § 216.93(f) of this proposed rule. Wholesalers/distributors are included in the list of entities required to produce records relative to tracking and verification of tuna to the Administrator, Southwest Region. This added collection-of-information requirement was approved by the Office of Management and Budget (OMB) on February 6, 2003, under control number 0648–0387. The public reporting burden for this collection is estimated to average 30 minutes for a wholesaler/distributor to produce records.

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The preceding public reporting burden estimates for collections of information include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Jeremy Rusin, NMFS (See **ADDRESSES**), or to David Rostker, OMB, by e-mail at *David-Rostker@omb.eop.gov* or by fax to 202–395–7285.

Endangered Species Act

NMFS prepared a Biological Opinion for the interim final rule to implement the IDCPA in December 1999, concluding that fishing activities conducted under the interim final rule are not likely 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 is unaware of any new information that would indicate this proposed action may affect listed species in a manner or to an extent not previously considered, nor do the proposed regulations modify the fishery in a manner that causes an effect to listed species not previously considered in the Biological Opinion. Therefore, NMFS has determined that the conclusions and incidental take

statement of the Biological Opinion remain valid and reinitiation of consultation is not required. NMFS continues to monitor annual sea turtle takes and mortalities in the U.S. tuna purse seine fishery operating in the ETP to ensure that levels are within those analyzed in the Biological Opinion and authorized in the amended Incidental Take Statement.

National Environmental Policy Act

NMFS prepared a draft Environmental Assessment (EA) on these proposed regulations. A copy of the draft EA is available at: *http://swr.nmfs.noaa.gov*.

Dated: October 20, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

List of Subjects

50 CFR Part 216

Fish, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 300

International fisheries regulations; Pacific tuna fisheries.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 216 and 300 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3 the definition for ''Fisheries Certificate of Origin'' is revised and a definition for ''South Pacific Tuna Treaty'' is added to read as follows:

§ 216.3 Definitions.

* * * * *

Fisheries Certificate of Origin or FCO, means NOAA Form 370, as described in § 216.24(f)(4).

* * * * *

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

* * * * *

3. A new § 216.17 is added to subpart B to read as follows:

§ 216.17 General prohibitions.

It is unlawful for any person to:

(a) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, investigation or seizure in connection with enforcement of the MMPA, DPCIA, or IDCPA.

(b) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the MMPA.

(c) Resist a lawful arrest for any act prohibited under the MMPA.

(d) Make any false statement, oral or written, to an authorized officer concerning any act under the jurisdiction of the MMPA, DPCIA, IDCPA, or attempt to do any of the above.

(e) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the MMPA, DPCIA, or IDCPA.

4. Section 216.24 is amended by revising paragraphs (b)(4), (b)(6)(i), (b)(6)(iii), (f)(3), (f)(3)(ii)–(f)(3)(iv), (f)(4)(xi), (f)(4)(xiv) and (f)(12) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

* * * * *

(b) * * *

(4) *Application for vessel permit.* The owner or managing owner of a purse seine vessel may apply for a permit from the Administrator, Southwest Region, allowing at least 15 days for processing. All vessel permit applications must be faxed to (562) 980–4027. An owner or managing owner requesting to have a vessel in excess of 400 st (362.8 mt) carrying capacity for which a DML was requested categorized as active on the Vessel Register under § 300.22(b)(4)(i) of this title must submit to the Administrator, Southwest Region, the vessel permit application, payment of the observer placement fee under paragraph (b)(6)(iii) of this section and payment of the vessel permit application processing fee no later than September 15 of the year prior to the year for which the DML was requested. The owner or managing owner of a vessel in excess of 400 st (362.8 mt) carrying capacity not requesting a DML must submit the vessel permit application, payment of the observer placement fee, and payment of the vessel permit application processing fee no later than November 30 of the year prior to the year for which the vessel permit was requested. An application must contain:

* * * * *

(6) * * *

(i) *Vessel permit application fees.* Payment of the permit application fee is required before NMFS will issue a permit. The Assistant Administrator may change the amount of this fee required at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

* * * * *

(iii) *Observer placement fee.* (A) The owner or managing owner of a vessel for which a DML has been requested must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML was requested. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a vessel for which a DML has not been requested, but that is listed on the Vessel Register, as defined in § 300.21 of this title, must submit payment of the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the observer placement fee must be consistent with the vessel=s status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement

fee associated with active status less the observer placement fee associated with inactive status that was already paid before NMFS will request the IATTC Secretariat change the status of the vessel from inactive to active.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status before NMFS will request the IATTC Secretariat change the status of the vessel to active.

(F) Payments received after the dates specified in paragraphs (b) (6) (iii)(A) or (B) of this section will be subject to a 10 percent surcharge. The Administrator, Southwest Region, will forward all observer placement fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

* * * * *

(f) * * *

* * * * *

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at *http://swr.nmfs.noaa.gov/noaa370.htm*.

(i) * * *

(ii) FCOs and associated certifications, if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in either Adobe Portable Document Format (PDF) or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) * * *

(xi) the name of the harvesting vessel;

* * * * *

(xiv) Each additional importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

* * * * *

(12) *Market rohibitions.* (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either:

(A) Dolphin-safe under subpart H of this part; or

(B) Harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by an applicant nation to become a member of the IATTC.

(ii) It is unlawful for any exporter, transshipper, importer, processor, or wholesaler/distributor to possess, sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals unless the label or mark complies with the requirements of 16 U.S.C. 1385(d).

* * * * *

5. In § 216.93, the section heading and paragraphs are amended by revising paragraphs (c)(5)(v), (e) and (f) to read as follows:

§ 216.93 Tracking and verification program.

* * * * *

(c) * * *

(5) * * *

(v) TTFs are confidential documents of the IDCP. Vessel captains and managing offices may not provide copies of TTFs to any representatives of private organizations or non-member states.

* * * * *

(e) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States as required by § 216.24(f)(3)(ii).

(f) *Verification requirements*—(1) *Record maintenance.* Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCO and required certifications, any report required in paragraphs (a), (b) and (d) of this section, invoices, other import documents, and trip reports.

(2) *Record submission.* Within 30 days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(3) *Audits and spot-checks.* Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

* * * * *

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 951–961 and 971 *et seq.*, unless otherwise noted.

2. In § 300.21 definitions for ''South Pacific Tuna Treaty'' and ''Vessel Register'' are added to read as follows:

§ 300.21 Definitions.

* * * * *

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, Subpart D).

* * * * *

Vessel Register means the regional register of vessels authorized to purse seine for tuna in the Convention Area, as established by the Inter-American Tropical Tuna Commission on June 28, 2002.

3. Section 300.22 is amended by revising paragraph (b) to read as follows:

§ 300.22 Yellowfin tuna—Recordkeeping and written reports.

* * * * *

(b) *Vessel register.* Except as provided under paragraph (b)(1) of this section, vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to purse seine for tuna in the Convention Area.

(1) *Exceptions.* The following classes of vessels are exempted from being listed on the Vessel Register to purse seine for tuna in the Convention Area:

(i) Vessels licensed under the South Pacific Tuna Treaty that exercise an option to fish in the Convention Area for a single trip each year, provided that the total number of optional trips does not exceed 32 in a given calendar year. Each optional trip in the Convention Area may not exceed 90 days in duration.

(ii) Vessels of less than 400 st (362.8 mt) carrying capacity for which landings of tuna caught in the Convention Area comprise 50 percent or less of the vessel's total landings, by weight, for a given calendar year.

(2) *Requirements for inclusion on the vessel register.* The Vessel Register shall include, consistent with IATTC actions, only vessels that fished in the Convention Area prior to the creation of the Vessel Register on June 28, 2002. New vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the vessel or vessels being replaced.

(3) *Vessel information.* The owner of any fishing vessel that uses purse seine, longline, drift gillnet, harpoon, or troll fishing gear to harvest tuna in the Convention Area for sale or a person authorized in writing to serve as agent for the owner must provide such information about the vessel and its characteristics as requested by the Regional Administrator to conform to IATTC actions relative to the Vessel Register. This information initially includes, but is not limited to, vessel name and registration number; a photograph of the vessel with the registration number showing and legible; vessel length, beam and moulded depth; gross tonnage and hold capacity in cubic meters and tonnage; engine horsepower; date and place where built; and type of fishing method or methods used.

(4) *Vessel Register status.* In each calendar year, for a vessel to be categorized as either ''active'' or ''inactive'' on the Vessel Register, the vessel owner or managing owner must pay the associated observer placement fee pursuant to § 216.24(b)(6)(iii) of this title, or the vessel will be removed from the Vessel Register by the Regional Administrator for that year.

(i) *Active status.* As early as August 1 of each year, vessel owners or managing owners may submit to the Regional Administrator a vessel permit application and payment of the permit application fee and observer placement fee for each vessel in excess of 400 st (362.8 mt) carrying capacity qualified to be listed on the Vessel Register under paragraph (b)(2) of this section to have a vessel categorized as active for the following calendar year. Vessel permit applications may not be submitted via regular mail; they must be faxed to (562) 980–4027. Owners or managing owners of vessels of 400 st (362.8 mt) carrying capacity or less must only submit payment of the observer placement fee associated with active status in order to request a small purse seine vessel be categorized as active for the following calendar year. The Regional Administrator must receive the faxed vessel permit application and payment of the observer placement fee and permit application processing fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application and payment of the observer placement fee and permit application processing fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title;

(C) For 2005 only, requests for vessels will be prioritized on a first-come, first-served basis according to the date and time the fax is received in the office of the Regional Administrator;

(D) Requests for active status for 2006 and subsequent years will be prioritized according to the following hierarchy:

(*1*) Requests received for vessels that were categorized as active in the previous year, beginning with the vessel's status in 2005, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(*2*) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year, beginning with the vessel's status in 2005;

(*3*) Requests for vessels not described in paragraphs (b)(4)(D)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated observer placement fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(*4*) Requests received from owners or managing owners of vessels that were determined, by the Regional Administrator, to have made a frivolous request for active status, under paragraph (b)(4)(ii) of this section.

(ii) Frivolous requests for active status. Beginning with requests made for 2005, a request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of *force majeure* or other extraordinary circumstances as determined by the Regional Administrator, if, for a vessel categorized as active in a given calendar year, less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area.

(iii) *Inactive status.* From August 1 through November 30 of each year, vessel owners or managing owners may request that vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year by submitting to the Regional Administrator payment of the associated observer placement fees. Payment of the observer placement fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive.

(5) *Removal from the Vessel Register.* A vessel may be removed from the

Vessel Register by the Regional Administrator:

(i) If the vessel has sunk;

(ii) Upon written request by the vessel's owner or managing owner;

(iii) If the vessel owner or managing owner does not pay the observer placement fee associated with the vessel's active or inactive status on the Vessel Register for a given calendar year;

(iv) If the vessel owner or managing owner does not submit, within the allotted time, a vessel permit application and permit processing fee;

(v) If the United States Coast Guard notifies NMFS that the U.S. documentation for the vessel has been deleted; or

(vi) For serious violations, for failure to pay a penalty, or for default on a penalty payment agreement.

(6) *Procedures for replacing vessels removed from the Vessel Register.* (i) A vessel previously listed on the Vessel Register, but removed for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner of the vessel pays the observer placement fee associated with inactive status.

(ii) A vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(6)(iv) of this section.

(iii) After a vessel categorized as active is removed from the Vessel Register the Regional Administrator will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) The owner or managing owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less may request a vessel be categorized as active to replace a vessel removed from the Vessel Register by submitting payment of the observer placement fee to the Regional Administrator.

(v) The owner or managing owner of a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity may request a vessel be categorized as active to replace a vessel removed from the Vessel Register by submitting the following items to the Regional Administrator:

(A) Payment of the observer placement fee;

(B) A vessel permit application faxed to (562) 980–4027;

(C) Payment of the permit application processing fee; and

(D) Verification that the captain of the vessel possesses a valid operator permit.

(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

[FR Doc. 04–24008 Filed 10–28–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 209

Friday, October 29, 2004

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

Agricultural Marketing Service

[Docket No. FV–05–333]

United States Standards for Grades of Canned Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Canned Pears. AMS received two petitions, one from a grower cooperative, the other from a processor, requesting that USDA change the character classification for Grade ''B'', slices, and diced, to read ''the units are reasonably tender or tenderness may be variable within the unit.'' This change was requested by the industry in order to bring the standards for canned pears in line with the present quality levels being marketed today and provide guidance in the effective utilization of canned pears.

EFFECTIVE DATE: November 29, 2004.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue SW., Washington, DC 20250–0247; fax (202) 690–1087 or e-mail at *karen.kaufman@usda.gov.* The final United States Standards for Grades of Canned Pears, will be available either through the address cited above or by accessing the AMS Home Page on the Web at ''*http://www.ams.usda.gov/standards/frutcan.htm.*''

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Those United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is revising the U.S. Standards for Grades of Canned Pears using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Proposed by the Petitioner

AMS received two petitions, one from a grower cooperative and the other from a processor, requesting the revision of the United States Standards for Grades of Canned Pears. The standards are established under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). The petitioners represent growers from Washington State, Oregon and parts of California.

The petitioners are requesting that USDA change the character classification for Grade ''B'', slices, and diced, canned pears. The petitioners believe the change in the standard will improve the economic position of domestic growers of pears.

Prior to undertaking research and other work associated with revising the grade standards, AMS decided to seek public comments on the petition. A notice requesting comments on the petition to revise the United States Standards for Grades of Canned Pears was published in the January 21, 2004, **Federal Register** (69 FR 2885). A second notice was published in the July 21, 2004, **Federal Register** (69 FR 139) based on comments received from the first notice. AMS received one comment in response to the second notice. The comment favored the revision to the standard. These comments are available by accessing AMS's Home Page on the Internet at: *http://www.ams.usda.gov/fv/ppb.html.*

Based on the comments, AMS is revising the standard for canned pears following the standard format for U.S. Grade Standards. The revision will change the character classification for Grade ''B'', slices, and diced, style canned pears by including the following: ''the units are reasonably tender or the tenderness may be variable within the unit.'' The current standard contains this wording for character classifications for halves, quarters, pieces or irregular pieces and whole pears.

This revision will provide a common language for trade, a means of measuring value in the marketing of canned pears, and provide guidance in the effective utilization of canned pears. The official grade of a lot of canned pears covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Products Thereof, and Certain Other Processed Food Products (§ 52.1 to 52.83).

The U.S. Standards for Grades of Canned Pears will become effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: October 25, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24161 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–04–302]

United States Standards for Grades of Sweet Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on it's proposal to revise the United States Standards for Grades of Sweet Potatoes. USDA has received a request from several industry groups to add a new grade to the standards, U.S. No. 1 Petite. The change being proposed would allow the packing and shipping of smaller size sweet potatoes under the U.S. standards, thereby, improving the usefulness of the standards in serving the industry.

DATES: Comments must be received by December 28, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary U.S. Standards for Grades of Sweet Potatoes using procedures that appear in part 36 Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1963.

Background

On December 10, 2003, AMS published a notice soliciting comments on a possible revision to the United States Standards for Grades of Sweet Potatoes. As a result, AMS received five comments from industry groups requesting the addition of a new grade entitled U.S. No. 1 Petite, with the same requirements as the U.S. No. 1 grade currently in the standard, except for the size requirements. The request specified that the size requirements for the U.S. No. 1 Petite be: A minimum diameter of 1½ inches, a maximum diameter of 2¼ inches, a minimum length of 3 inches and a maximum length of 7 inches. These industry groups stated this new grade would aid in the marketing of smaller size sweet potatoes as the U.S. standards currently require sweet potatoes to be a larger size in order to meet a grade. Therefore, the addition of the U.S. No. 1 Petite grade to the standards would improve its usefulness in serving the industry.

The official grade of a lot of sweet potatoes covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (§§ 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on changes to the standard.

Authority: 7 U.S.C. 1621–1627.

Dated: October 25, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24163 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–04–306]

United States Standards for Grades of Watermelons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), of the Department of Agriculture is soliciting comments on the proposal to revise the United States Standards for Grades of Watermelons. AMS has received a petition from the National Watermelon Association (NWA), requesting a definition for seedless watermelons be added to the standards. Additionally, the petition included a request to add a variance to the size requirements. This change was requested by the industry in order to bring the standards for watermelons in line with current marketing practices, thereby, improving the usefulness of the standards in serving the industry.

DATES: Comments must be received by December 28, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Watermelons is available either through the address cited above or by accessing the AMS Home Page on the Web at *http://www.ams.usda.gov/fv/fvstand.htm.*

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary United States Standards for Grades of Watermelons using procedures that appear in part 36 Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1978.

Background

AMS received a petition from the NWA requesting a revision to the United States Standards for Grades of Watermelons. The standards are established under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). The petitioner represents watermelon growers and distributors from 30 states as well as Canada and Mexico.

The petitioner is requesting that USDA add the following definition: ''Seedless Watermelons'' are watermelons which have 16 or less mature seeds, not to include pips/caplets, on the face of the melon which

has been cut into four equal sections (one lengthwise cut and one crosswise cut). Additionally, the petitioner is requesting the size requirements be revised. Currently the size requirements state, ''When the size of the watermelons is stated in terms of average weight, unless otherwise specified, the melons in any lot averaging less than 30 pounds (13.6 kgs.) shall not vary more than 3 pounds (1.4 kgs.) below the stated average, and the melons in any lot averaging 30 pounds (13.6 kgs.) or more shall not vary more than 5 pounds (2.3 kgs.) below the stated average.'' The petitioner is requesting the size requirements be revised to allow for watermelons to vary 3 pounds above or below the average. Therefore, the size requirements would state, ''When the size of the watermelons is stated in terms of average weight, unless otherwise specified, the melons in any lot averaging less than 30 pounds (13.6 kgs.) shall not vary more than 3 pounds (1.4 kgs.) above or below the stated average, and the melons in any lot averaging 30 pounds (13.6 kgs.) or more shall not vary more than 5 pounds (2.3 kgs.) below the stated average.''

Prior to undertaking research and other work associated with revision of the grade standards, AMS decided to seek public comments on the petition. A notice requesting comments on the petition to revise the United States Standards for Grades of Watermelons was published in the April 22, 2004, **Federal Register** (69 FR 21812).

In response to our request for comments, AMS received one comment from an industry group. The comment was in favor of the proposed revision of the standards.

Based on the submitted information, AMS is proposing to revise the standards for watermelons following the standard format for U.S. Grade Standards. Specifically, the proposed revision will define seedless watermelons by including the following definition: ''Seedless Watermelons'' are watermelons which have 16 or less mature seeds, not to include pips/caplets, on the face of the melon which has been cut into four equal sections (one lengthwise cut and one crosswise cut). AMS is also proposing to change the size requirements by adding an allowance for watermelons to vary 3 pounds above or below the stated average weight.

This proposal will bring the standards for watermelons in line with current marketing practices, thereby, improving the usefulness of the standards in serving the industry. The official grade of a lot of watermelons covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (§§ 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: October 25, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24162 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Florida Citrus, Fruit, Vegetable, and Nursery Crop Disaster Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of program implementation.

SUMMARY: This notice announces the availability of disaster relief for producers of citrus, selected tropical fruits, vegetables, fruits and nursery crops located in Florida counties that have received a Presidential disaster declaration for Hurricanes Charley, Frances, or Jeanne in order to reestablish producers' purchasing power in the following Presidentially-declared disaster counties, and any other such counties subsequently declared by the President: Alachua, Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

EFFECTIVE DATE: October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Eloise Taylor, Branch Chief, Compliance Branch, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), USDA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; phone: (202) 720–9882; fax: (202) 720–4941; e-mail: *Eloise.Taylor@usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 32 of the Agricultural Act of August 24, 1935, allows the Secretary of Agriculture to make payments to restore producers' purchasing power. This authority has been used in the past to provide assistance to producers in response to unusual market conditions that adversely affected producers. Similarly, the widespread and significant destruction that resulted in Florida from Hurricanes Charley, Frances, and Jeanne has adversely affected the purchasing power of certain producers of agricultural commodities in those counties listed in the summary paragraph of this notice. Accordingly, the Secretary of Agriculture has determined that assistance is appropriate under this authority, in these counties, for producers of crops of citrus, nursery, vegetables, fruits and selected tropical fruits. Payment rates under each program will be as announced by FSA.

Notice and Comment

Because of the need to provide timely assistance to disaster affected producers, this program is effective immediately without regard to the provisions of 5 U.S.C. 553 and the Statement of Policy of the Secretary of Agriculture dated July 24, 1971 (36 FR 13804).

Small Business Regulatory Enforcement Fairness Act

In accordance with 5 U.S.C. 808, because the payments provided under this notice need to be made to affected producers as timely as possible, it was determined that a delay for consultation, review, and comment on this notice would be impracticable and contrary to the public interest. Thus, this notice is effective immediately.

Paperwork Reduction Act

A request for emergency clearance of the information collections associated with this notice was submitted to the Office of Management and Budget (OMB) under 5 CFR 1320.13 (a)(2)(iii), and has been approved by OMB and assigned OMB control number 0560–0247.

Environmental Review

Due to the weather-related disasters requiring the Agency to provide immediate relief, sufficient time was not available to complete an environmental review prior to implementing this program. Therefore, an environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National

Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA at 7 CFR part 799. A copy of the draft environmental assessment will be available after completion for review upon request.

II. Application Process

Producers wishing to receive benefits must submit an application to FSA at their local FSA Service Center during the signup periods, beginning as follows:

Florida Citrus Disaster Program—October 5, 2004.

Florida Nursery Disaster Program—October 20, 2004.

Florida Fruit and Vegetable Disaster Program—October 20, 2004.

Signup will end on such date as announced by FSA. Applications for assistance are available at local FSA Service Centers.

III. Payment Limitation

(a) Consistent with the other crop disaster assistance programs of FSA and CCC, the total amount of payments made under this notice that a ''person'' may receive can not exceed $80,000. As set forth in the individual descriptions of each program, payment limitation rules in 7 CFR part 1400.301 will be used in applying this limit to specified portions of the payment made under this notice. Producers who receive payments for citrus, fruits, vegetables, tropical fruits, and/or nursery crops may receive no more than a combined $80,000 for payments subject to the payment limitation for any or all of the programs in this notice. This payment limitation is separate and distinct from all other Commodity Credit Corporation (CCC) and FSA program payment limitations.

(b) Adjusted gross income (AGI) rules in 7 CFR 1400.600 also apply to persons receiving payments under this notice with respect to that portion of the payment subject to the $80,000 limitation. Generally, these regulations provide that payments will not be available for persons whose adjusted gross income is $2.5 million or higher, unless 75 percent or more of their income is derived from farming, ranching, and forestry. These provisions do not apply to payments that are not subject to limitation. A portion of these payments are similar to the payments made under the Emergency Conservation Program (ECP), which pays for losses associated with weather damage that materially affects productive capacity and is required to return the land to productive agricultural uses. Accordingly, in determining whether or not to provide this assistance, the portion of the payment associated with clean-up and rehabilitation is not subject to AGI.

(c) The highly erodible land and wetland conservation rules in 7 CFR part 12 apply to this notice.

(d) The controlled substance rules in 7 CFR 718 apply.

IV. Florida Citrus Disaster Program

(a) Eligible producers are those producers who maintain groves of fruit being trees of citrus types approved by the Risk Management Agency (RMA), in its Florida Citrus Fruit Crop provisions, and as otherwise announced by FSA. Producers that had not marketed citrus in both 2003 and 2004 are not eligible for this assistance, except producers of groves that will be of fruit-bearing age for 2005, but were too immature to produce marketable fruit in 2003 or 2004, will be eligible for such assistance. For the purposes of this notice, a grove is defined as a contiguous acreage of the same citrus crop.

(b) Citrus producers will be reimbursed on a per-acre basis for each eligible grove. Payment will be based on the severity of destruction as determined by the paths of the storms and damage estimates developed by FSA in cooperation with the Florida Department of Agriculture. Estimates take into account levels of loss generally correlating to the distance from the eyes of the hurricanes, the average production loss, tree loss and rehabilitation and cleanup costs. The levels of damage that will determine payment rates are as follows:

Tier I—75 percent or greater crop loss and associated tree damage.

Tier II—50 to 74 percent crop loss and associated tree damage.

Tier III—35 to 49 percent crop loss and associated tree damage.

Tier IV—15 percent and greater associated tree damage only.

A copy of the map showing the loss tiers for citrus is available on the FSA Disaster Assistance Web site at *http://disaster.fsa.usda.gov* and at FSA Service Centers. Citrus producers who suffered citrus crop production losses and associated fruit-bearing tree damage, including related cleanup and rehabilitation costs, must provide to FSA a certified statement on an FSA approved form of the level of destruction, the number of acres in the disaster-affected grove, and the geographic location of the losses.

(c) If the actual level of loss is greater than the tier associated with the location band for the grove, based upon documentation submitted by the producer to FSA, FSA may assign the grove to a lower tier which represents a greater level of loss and a higher payment rate.

(d) If the actual level of loss is less than the tier associated with the location band for the grove, the producer shall certify to the lower loss level on the application and a lower payment rate will be used by FSA based upon the tier rate associated with the lower loss level.

(e) Payments will be calculated by multiplying the number of net acres in each tier times the applicable payment rate, as determined by FSA, times the producer's share of the loss. The number of net acres is determined by subtracting drainage ditches, canals, and other such land uses from the citrus acres planted in the grove.

(f) The percentages of the payment for citrus crops that are subject to the payment limitation and AGI provisions are:

Tier I—55 percent
Tier II—60 percent
Tier III—64 percent
Tier IV—0 percent

(g) The percentages of the payment for citrus crops that are not subject to the payment limitation and AGI provisions are:

Tier I—45 percent
Tier II—40 percent
Tier III—36 percent
Tier IV—100 percent

V. Florida Nursery Disaster Program

(a) Commercial ornamental nursery and fernery producers are eligible for assistance for inventory losses for each nursery or fernery operation and clean-up costs for nursery operations. For a nursery to be considered a commercial nursery, it must be certified by the State of Florida. Eligible producers include producers of the following types of nursery stock and such stock as announced by FSA:

- Deciduous shrubs, broadleaf evergreens, coniferous evergreens, shade and flowering trees.
- Stock for use as propagation in a commercial ornamental nursery operation.
- Fruit or nut seedlings grown for sale as seed stock for commercial orchard operations growing fruit or nuts.

(b) Eligible nursery inventory does not include:

- Edible varieties.
- Plants produced for reforestation purposes or for the purpose of producing a crop for which RMA does not provide insurance, or for which CCC does not provide assistance under the Non-insured Assistance Program (NAP).

(c) Losses will be determined on an individual-nursery basis. Production loss from one nursery will not be offset by production from another nursery operated by the same applicant. Payments are calculated by multiplying the difference between beginning and ending inventory value times 25 percent times the producer's share of the loss. The payment for production loss is subject to the $80,000 payment limitation and AGI provisions.

(d) Producers are also eligible for a payment of $250 per acre for debris removal and associated costs from hurricane damage if they can document that these costs were equal to or greater than $250 per acre. None of the payment for cleanup is subject to the payment limitation and AGI provisions. Producers must provide the inventory value before the hurricane and the inventory value after the hurricane. The value of the inventory is the producer's wholesale price list, less the maximum customer discount they provide, not to exceed the prices in RMA's ''Eligible Plant List and Price Schedule.''

VI. Florida Vegetable, Fruit and Tropical Fruit Disaster Program

(a) Producers of vegetables, fruits and selected tropical fruit are eligible for assistance. Payments will be made on a per-acre basis, and are based on the type of planting application or method installed or completed on the date and time the hurricanes occurred in that area.

(b) Plasticulture refers to production practices where the soil has been covered with plastic mulch, fumigated, fertilized, and with an irrigation system installed. For plasticulture losses, producers must have a loss that is 50 percent or greater of plastic or plant population, as applicable. Producers must also document that the necessary materials and procedures were followed to produce vegetables using any of the practices. Payments are calculated by multiplying the payment rate for each practice times the affected acres in the practice times the producer's share of that crop. A portion of the payment that is associated with production losses is subject to the $80,000 payment limitation and AGI provisions. The payment associated with debris removal and associated costs from hurricane damage are not subject to payment limitation or AGI. Plasticulture includes the following practices:

(1) Practice I—the producer laid down new plastic, fumigated the soil, put in transplants and had a loss or removal of more than 50 percent of the plastic per acre requiring the replacement of preplant inputs and plastic.

(2) Practice II—the producer laid down new plastic, fumigated the soil, but did not put in transplants and had a loss or removal of more than 50 percent of the plastic per acre requiring the replacement of preplant inputs and plastic; or the producer laid down new plastic with 50 percent or more loss in plant population and did not re-plant due to cultural or weather related limitations.

(3) Practice III—the producer double-cropped with respect to the plastic and had a loss of greater than 50 percent of the plastic per acre; or the producer laid down new plastic with 50 percent or more loss in plant population and replanted.

(c) Practice IV—The producer who plants conventional row crop fruits and vegetables must suffer a loss of 50 percent or more of the plant population. Payments are calculated by multiplying the number of acres affected by the loss times the payment rate times the producer's share of the crop. All payments are subject to the total payment limitation and AGI provisions.

(d) Practice V—For tropical fruit producers, only those producers in Lee County or in Bands 1 or 2 designated under the Florida Citrus Program are eligible. Producers must have suffered a loss of 50 percent or more relative to their expected production, as defined in 7 CFR part 1480.3. Payments are calculated by multiplying the number of acres affected by the payment rate times the producer's share of the crop. The total payment is subject to the payment limitation and AGI provisions.

VII. Payment Conditions for All Programs

(a) Actual losses or costs for any program must equal or exceed the payment amount received for that program.

(b) Payment rates will be 5 percent less for producers who did not obtain Federal Crop Insurance, which is available from the Risk Management Agency, or on coverage from CCC under NAP.

(c) Eligible producers who elected not to purchase insurance on an insurable crop, or NAP coverage on an uninsurable crop for which benefits are received under any of these programs, must purchase for the next available coverage period:

(1) Crop insurance at least at the catastrophic level on that crop, although producers who are required to purchase a citrus insurance policy may elect to purchase a fruit or tree policy;

(2) NAP coverage for the next available coverage period by paying the administrative fee and filing all required paperwork by the applicable State filing deadline.

(d) If a producer who is required to purchase crop insurance or NAP for the applicable year fails to do so, the producer must refund the disaster payment.

VIII. Appeals

Any person who is dissatisfied with a determination made with respect to these programs may make a request for reconsideration or appeal of such determination in accordance with the regulations set forth in 7 CFR parts 11 and 780.

Signed in Washington, DC, on October 25, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–24290 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Yaak EIS; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of urban interface fuels treatments, vegetation management, watershed rehabilitation activities, wildlife habitat improvement, and access management changes, including road decommissioning. The project is located in the Northeast Yaak planning subunit on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, and northeast of Troy, Montana.

DATES: *Scoping Comment Date:* Comments concerning the scope of the analysis should be received by November 30, 2004.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Michael L. Balboni, District Ranger, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935.

FOR FURTHER INFORMATION CONTACT: Eric Dickinson, Team Leader, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935. Phone: (406) 295–4693.

SUPPLEMENTARY INFORMATION: The project area is approximately 26 air miles northeast of Troy, Montana, within all or portions of T37N, R29W–R32W, and T36N, R30N–R31W, Lincoln

County, Montana. The area encompasses the following drainages: Blacktail, Caribou, East Fork Yaak River, Porcupine, Basin, Solo Joe, Windy, Bunker Hill, and Vinal drainages and several small drainages tributary to the East Fork of the Yaak River.

The purpose and need for this project is to: (1) Reduce fuels and the potential for crown fires in the urban interface and other forested areas; (2) manage for more diverse and sustainable vegetative conditions; (3) improve conditions in old growth habitat; (4) improve growing conditions and long-term management of overstocked sapling/pole stands; (5) improve and maintain winter range conditions; (6) improve the quality of grizzly bear habitat; (7) provide for motorized access to national forest resources for recreation and to meet management objectives, while maintaining wildlife security; (8) continue to decrease cumulative sediment introduction to streams from roads; and (9) contribute forest products to the economy.

To meet this purpose and need this project proposes:

(1) Intermediate tree harvest on approximately 2,010 acres and regeneration harvest on 340 acres to reduce fuels and manage for a more diverse and sustainable vegetative conditions. Included in the intermediate tree harvest is an estimated 140 acres in stands designated as old growth (MA–13) Old growth characteristics would be maintained and enhanced with this treatment. This proposal includes a project-specific forest plan amendment to allow for this harvest in MA–13. Mechanical fuels reduction is proposed on 110 acres, and hand piling fuels reduction is proposed on 100 acres, all in the wildland urban interface. Maintenance underburning is proposed on approximately 120 acres in the wildland urban interface, including 80 acres within old growth or replacement old growth. This harvest would contribute approximately 12 to 16 million board feet (MMBF) or 29,300 to 39,000 hundred cubic feet (CCF) of timber products to the economy. Approximately 0.6 miles of new specified road construction and 0.7 miles of road realignment would be needed for this project and to provide for long-term management needs. The road would be placed in storage after treatment. It is estimated that five temporary roads ranging from 0.2 to 0.5 miles would be constructed to accomplish this harvest and would be obliterated following activities. Best Management Practice work and road maintenance work would be implemented on haul roads. Pre-commercial thinning is proposed on approximately 270 acres to improve growing conditions and maintain structural diversity in managed sapling stands.

(2) Decommissioning all or portions of 13 roads (approximately 17 miles) which were determined through an interdisciplinary process to be unneeded and are at risk of contributing sediment to streams. the decommissioning work would include outsloping portions of the road prism, installing ditch-intercept waterbars, and reestablishing stream crossings. Several roads in the upper Caribou and Bloom Creek area used in the 1950s are inaccessible and would be abandoned. To improve motorized public access, Road 746 would be opened for public travel.

(3) To enlarge and consolidate grizzly bear core habitat while maintaining the 55 percent standard in Bear Management Unit 16, Road 5816 (at the junction of Road 6810H), Road 6004, and Road 6005, would be bermed and stabilized. These roads are currently gated, so public access would not change. A smaller core area in the Solo Joe/Hudson Cr. area would be eliminated.

(4) Design features and mitigations to maintain and protect resource values.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public Involvement and Scoping

The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, Tribal governments, and other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying alternatives to the proposed action.
4. Exploring additional alternatives that will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this proposal (*i.e.,* direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in February 2005. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed in June 2005. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and to applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy

Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

As the Forest Supervisor of the Kootenai National Forest, 1101 U.S. Highway 2 West, Libby, MT 59923, I am the Responsible Official. As the Responsible Official, I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility for preparing the DEIS and FEIS to Michael L. Balboni, District Ranger, Three Rivers Ranger District.

Dated: October 25, 2004.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 04–24211 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Salmon River Canyon Project; Nez Perce National Forest, Payette National Forest, Bitteroot National Forest, Salmon/Challis National Forest, Idaho County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement. EIS No. 990413.

SUMMARY: On July 24, 1998, a notice of intent to prepare an environmental impact statement (EIS) for the Salmon River Canyon Project; Nez Perce National Forest, Payette National Forest, Bitteroot National Forest, Salmon/Challis National Forest was published in the **Federal Register** (63 FR 39810). The Forest Service has decided to cancel the preparation of an EIS for this proposed action. The Notice of Intent is hereby withdrawn.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation may be directed to Ken Stump, Assistant Fire Management Officer, RR 2 Box 475 Grangeville, ID 83530 or telephone 208–983–1950.

Steve E. Williams,

Acting Forest Supervisor.

[FR Doc. 04–24210 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Province Advisory Committee (OPAC) will meet on Friday, November 19, 2004. The meeting will be held at the Olympic National Forest Headquarters, 1835 Black Lake Blvd., SW., Olympia, Washington. The meeting will begin at 9:30 a.m. and end at approximately 3:30 p.m. Agenda topics are: Current status of key Forest issues; Special Forest Products Update; Invasive Plant Update; Strategic Resource Planning; Open forum; and Public comments.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd, Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: October 22, 2004.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 04–24212 Filed 10–28–04; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its ad hoc committee and board meetings to take place in Washington, DC on Wednesday, November 10, 2004 as noted below.

DATES: The schedule of events is as follows:

Wednesday, November 10, 2004

9:30 a.m.–Noon: Ad Hoc Committee on Public Rights-of-Way—Closed

1:30 p.m.–3 p.m. Board Meeting

ADDRESSES: The meeting will be held at the Wardman Park Marriott Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

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

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items: (a) Approval of the July 12, 2004 draft meeting minutes; and, (b) public rights-of-way guidelines (closed).

This meeting is accessible to persons with disabilities. If you plan to attend and require a sign language interpreter or similar accommodation, please make your request with the Board by November 1, 2004. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

James J. Raggio,

General Counsel.

[FR Doc. 04–24158 Filed 10–28–04; 8:45 am]

BILLING CODE 8150–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Deletion from procurement list.

SUMMARY: This action deletes from the Procurement List a product previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 28, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Deletion

On April 30, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 23723) of proposed deletion to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer suitable for

procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Product/NSN: Short Run, Short Schedule Duplicating, 7690–00–NSH–0087.
NPA: None currently authorized.
Contract Activity: Government Printing Office, Washington, DC.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–24236 Filed 10–28–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

Comments Must Be Received on or Before: November 28, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services, E. Ross Adair Federal Building and U.S. Courthouse, 1300 S. Harrison Street, Fort Wayne, Indiana.

NPA: The Arc of Northeast Indiana, Inc., Fort Wayne, Indiana.

Contract Activity: GSA, Public Buildings Service–5P, Chicago, Illinois.

Service Type/Location: Document Destruction, Internal Revenue Service, (At the following locations for the identified Nonprofit Agencies): 101 Park Deville Drive, Columbia, Missouri, 919 Jackson Street, Chillicothe, Missouri, 3702 W. Truman Blvd, Jefferson City, Missouri.

NPA: Independence and Blue Springs Industries, Inc., Independence, Missouri, 137 S. Broadview, Cape Girardeau, Missouri, 2725 N. Westwood Blvd, Poplar Bluff, Missouri.

NPA: Cape Girardeau Community Sheltered Workshop, Inc., Cape Girardeau, Missouri, 12941 I–45 North, Houston, Texas, 8876 Gulf Freeway, Houston, Texas, 8701 South Gessner (Alliance Tower), Houston, Texas, 1919 Smith Street (G. T. ''Mickey'' Leland Federal Building), Houston, Texas, 350 Pine Street (Petroleum Tower), Beaumont, Texas.

NPA: Austin Task, Inc., Austin, Texas, 4050 Alpha Road, Farmers Branch, Texas, 1801 N. Hampton Road (DeSoto State Bank Building), DeSoto, Texas, 1100/1114 Commerce Street (Earle Cabell Federal Building Complex), Dallas, Texas, 2601 Meacham Blvd (FAA Building), Fort Worth, Texas, 819 Taylor Street (U.S. Federal Courthouse), Fort Worth, Texas.

NPA: Expanco, Inc., Fort Worth, Texas, 1800 NW. Loop 821 (Bank Building Office Center), Longview, Texas, 909 ESE Loop 323 (Commerce Square III), Tyler, Texas.

NPA: Goodwill Industries—Opportunities in Tyler, Tyler, Texas.

Contract Activity: IRS-Western Area Procurement Branch—APFW, San Francisco, California.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, DLA Gadsden Depot, Gadsden, Alabama.

NPA: None currently authorized.

Contract Activity: Defense Logistics Agency, Fort Belvoir, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–24237 Filed 10–28–04; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Texas State Advisory Committee in the Western Region will convene at 1 p.m. (PST) and adjourn at 2 p.m., Friday, November 5, 2004. The purpose of the conference call is to discuss education issues in Texarkana and plan for a Committee forum.

This conference call is available to the public through the following call-in number: 1–800–497–7709, access code number 26971510. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Arthur Palacios of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, November 4, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC October 22, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–24209 Filed 10–28–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–816)

Corrosion Resistant Carbon Steel Flat Products from Korea: Extension of Time Limits for the Final Results of Antidumping Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 29, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Young at (202) 482–6397, AD/CVD Operations, Office III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue (1) the preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results. *See also* 19 CFR 351.213(h)(2).

Background

On September 30, 2003, the Department published a notice of initiation of the administrative review of the antidumping duty order on corrosion resistant carbon steel flat products from Korea, covering the period August 1, 2002 to July 31, 2003 (68 FR 56262). On October 3, 2003, the Department published a notice of initiation of new shipper antidumping duty review on the aforementioned subject merchandise and covering the same period (68 FR 57423). On March 4, 2004, the Department fully extended the preliminary results of the aforementioned administrative review by 120 days (69 FR 10203). On March 24, 2004, the Department fully extended the new shipper review by 120 days (69 FR 13812). On April 15, 2004, the Department aligned the new shipper review with the current administrative review, further extending the preliminary results of the new shipper review until August 30, 2004. *See* Memorandum to the File from Paul Walker, re: Request for Alignment of Annual and New Shipper Reviews, a public document on file in the Central Records Unit room B099 in the main Commerce Building. On September 7, 2004, the Department published the preliminary results of its reviews (69 FR 54101). The final results of these reviews are currently due no later than January 5, 2005.

Extension of Final Results of Reviews

We determine that it is not practicable to complete the final results of these reviews within the original time limit, because the Department recently decided that it is necessary to conduct verifications of one or more of the respondents in the abovementioned reviews. Thus, the Department needs additional time to complete these verifications and incorporate its findings in the final results of these reviews. Therefore, we are extending the deadline for the final results of the above–referenced reviews until March 7, 2005.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 25, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2916 Filed 10–28–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the review of heavy forged hand tools from the People's Republic of China (''PRC''). This review covers the period

February 1, 2003 through January 31, 2004.

EFFECTIVE DATE: October 29, 2004.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, AD/CVD Operations, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3208.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Background

On March 26, 2004, the Department published a notice of initiation of a review of heavy forged hand tools (''HFHTs'') from the PRC covering the period February 1, 2003 through January 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 15788 (March 26, 2004).

Extension of Time Limit of Preliminary Results

Completion of the preliminary results of this review within the 245-day period is not practicable. This review covers three companies, and to conduct the sales and factor analyses for each requires the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing methods and corporate relationships. The Department is also extending the preliminary results because additional time is needed to determine whether the reporting methodology submitted by these respondents is appropriate. In addition, the Department is analyzing issues related to scope exclusions of certain products.

Therefore, given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days until February 28, 2005. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: October 25, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2914 Filed 10–28–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Stainless Steel Flanges from India: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the due date for the preliminary results of review of the antidumping duty order on stainless steel flanges from India from October 31, 2004, to February 28, 2005.

EFFECTIVE DATE: October 29, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Butt–Weld Flanges from India*, 59 FR 5994 (February 9, 1994). On February 27, 2004, Echjay Forgings and the Viraj Group, producers of the subject merchandise, requested reviews of their U.S. sales during the period February 1, 2003, through January 31, 2004. On March 26, 2004, the Department published a notice initiating the requested reviews. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 15788, (March 26, 2004).

Extension of Time Limit for Preliminary Results

The Tariff Act of 1930, as amended (the Act), at section 351(a)(3)(A), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that if the Department determines that it is not practicable to complete the review within this time period, the Department may extend the 245–day period to 365 days.

The Department has determined that it is not practicable to complete the preliminary results by the current 245–day deadline of October 31, 2004. There are a number of discrepancies in the submitted data that require additional information and analysis. These discrepancies pertain, *inter alia*, to control numbers, customer categories, and claimed adjustments (*e.g.*, duty drawback). We require additional time to analyze the questionnaire responses and issue supplemental questionnaires. Therefore, in accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department is extending the time limit for the preliminary results by 120 days to February 28, 2005.

This notice of postponement is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 18, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2915 Filed 10–28–04; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request under the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

October 26, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain polyester monofilament yarn, for use in women's and children's apparel, cannot be supplied by the domestic industry in commercial

quantities in a timely manner under the AGOA.

SUMMARY: On August 23, 2004, the Chairman of CITA received a petition from Textiles Erre Emme Ltda. of Bogota, Colombia, alleging that certain polyester monofilament texturized, raw, white yarn, of denier 20D/F1, classified in subheading 5402.33.30 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in women's and children's apparel, cannot be supplied by the domestic industry in commercial quantities in a timely manner, and requesting that such apparel made from such yarn be eligible for preferential treatment under the ATPDEA. Based on currently available information, CITA has determined that these subject yarns can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

FOR FURTHER INFORMATION CONTACT: Shikha Bhatnagar, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

Background

The ATPDEA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The ATPDEA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabric or yarn that is not formed in the United States or a beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. Pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), the President's authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA has been delegated to CITA.

On August 23, 2004, the Chairman of CITA received a petition from Textiles Erre Emme Ltda of Bogota, Colombia, alleging that certain polyester monofilament texturized, raw, white yarn, of denier 20D/F1, classified in subheading 5402.33.30 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in women's and children's apparel, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petitioner requested quota- and duty-free treatment under the ATPDEA for such apparel that are woven or knit in one or more ATPDEA beneficiary countries from such yarn.

On August 31, 2004, CITA solicited public comments regarding this request, particularly with respect to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner. On September 16, 2004, CITA and USTR offered to hold consultations with the Senate Finance Committee and the House Ways and Means Committee. Neither Committee has requested consultations on this request. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

CITA has determined that certain polyester monofilament texturized, raw, white yarn, of denier 20D/F1, classified in subheading 5402.33.30 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in women's and children's apparel can be supplied by the domestic industry in commercial quantities in a timely manner. Textiles Erre Emme Ltda.'s request is denied.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.E4–2913 Filed 10–28–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for The Office of the Surgeon General are:

1. MG Joseph G. Webb, Jr., Deputy Surgeon General, Office of the Surgeon General.
2. Mr. John C. Metzler, Jr., Director of Cemetery Operations, Arlington National Cemetery, Military District of Washington.
3. Ms. Patricia A. Rivers, Chief, Environmental Division, Directorate of Military Programs, U.S. Army Corps of Engineers.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–24196 Filed 10–28–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

[Docket No. EA–122–B]

Application to Export Electric Energy; Dynegy Power Marketing, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Dynegy Power Marketing, Inc. (DYPM) has applied to renew of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before November 15, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Systems (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202-586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On August 8, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized DYPM, formerly Electric Clearinghouse, Inc., to transmit electric energy from the United States to Canada as a power marketer (Order No. EA–122). On October 15, 1999, that authorization to export electricity was renewed in EA–122–A for a period of five years which expired on October 15, 2004.

On October 18, 2004, the FE received an application from DYPM to renew its authorization to transmit energy from the United States to Canada for a term of five years. DYPM, a Texas corporation having its principal place of business in Houston, Texas is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised service territory in the United States.

In its application DYPM notes that it has had no electricity export transactions to Canada in the past several months. However, DYPM requests DOE to expedite the processing of its application in order to take advantage of certain market situations that could necessitate DYPM to make sales into the Ontario Independent Electricity Market Operator. Accordingly, DOE has shortened the public comment period to 15 days.

DYPM proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Power Company and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by DYPM as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the DYPM application to export to electric energy to Canada should be clearly marked with Docket EA–122–B. Additional copies are to be filed directly with Betsy R. Carr, Sr. Director & Regulatory Counsel, and Steven F. Dalhoff, Director, Regulatory Affairs, Dynegy Power Marketing, Inc., 1000 Louisiana, Suite 5800, Houston, TX 77002–5050.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy home page select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on October 26, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 04–24223 Filed 10–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

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), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, November 4, 2004 6 p.m. to 9 p.m.

ADDRESSES: Broomfield Recreation Center, Lakeshore Room, 280 Lamar Street, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Update on Building 371 Demolition Plans
2. Discussion of Public Participation in the Independent Validation and Verification of Rocky Flats Cleanup
3. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. 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 Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions 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. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on October 26, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–24215 Filed 10–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

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), Hanford. The Federal Advisory Committee Act (Pub. L. No 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, November 4, 2004, 9 a.m.–4:30 p.m.; Friday, November 5, 2004, 8:30 a.m.–4 p.m.

ADDRESSES: Monarch Hotel & Conference Center, 12566 SE 93rd Avenue, Clackamas, OR 97015, Phone: (503) 652–1515, Fax: (503) 652–7509.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy, Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, November 4, 2004

1. Central Plateau Vision Development Discussions/outcomes from the October Committee of the Whole
   What are the decisions that agencies need to be making?
   What is the information needed to support those decisions?
   What tools are being used for analysis and integration?
   What are the various waste streams?
   What stays at Hanford and what leaves?
2. Update on the River Corridor Contract
3. Follow-up on HAB Priorities for the 2005 Year
4. Stop Work Authority for Construction Workers
5. Minority Outreach (from the Public Involvement Committee)

Friday, November 5, 2004

1. Central Plateau Vision Development (continued discussion)
2. Committee Updates
3. Agency Updates
4. Adoption of Board Advice
5. Identification of Topics for January 2005 Board Meeting

Public Participation: The meeting is open to the public. 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 Yvonne Sherman's office 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. Each individual wishing to make public comment will be provided equal time to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC on October 26, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–24216 Filed 10–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 18, 2004, 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

5:30 p.m. Informal Discussion
6 p.m. Call to Order; Introductions; Review Agenda; Approval of October Minutes
6:30 p.m. DDFO's Comments
6:35 p.m. Federal Coordinator Comments
6:40 p.m. Ex-Officio Comments
6:45 p.m. Public Comments and Questions
7 p.m. Task Forces/Presentations
- Waste Disposition—C–746–U Landfill
- Water Quality Task Force
- Long Range Strategy/Stewardship
- Community Outreach

8 p.m. Public Comments and Questions
8:15 p.m. Break
8:30 p.m. Administrative Issues
- Review of Work Plan
- Review of Next Agenda

8:40 p.m. Review of Action Items
8:45 p.m. Subcommittee Reports
- Executive Committee

9 p.m. Final Comments
9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. 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. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (270) 441–6819.

Issued at Washington, DC on October 26, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–24217 Filed 10–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration; Summit/Westward Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Revised Record of Decision (ROD).

SUMMARY: This notice announces the availability of the Revised ROD to offer contract terms for an optional electrical interconnection of the proposed Summit/Westward Project into the Federal Columbia River Transmission System at a point near the existing Wauna Substation of the Clatskanie People's Utility District (CPUD), Columbia County, Oregon. The project developer, Westward Energy, LLC, is evaluating this interconnection plan along with BPA's previous offer for interconnection at BPA's Allston Substation (documented in a ROD dated July 25, 2003). BPA's decision to offer contract terms is consistent with our Business Plan Final Environmental Impact Statement (DOE/EIS–0183, June 1995) and the Business Plan ROD (August 1995). In a related action, BPA has also decided to facilitate CPUD construction of a new 230-kilovolt transmission line by allowing joint use of BPA right-of-way through partial reconstruction of BPA's 115-kilovolt Allston-Astoria No. 1 transmission line from single-circuit H-frame wood-pole design to double-circuit single metal-pole design. Terms of BPA's participation in this project will be documented in a Construction Agreement.

ADDRESSES: Copies of the Business Plan EIS and ROD, the Summit/Westward ROD of July 25, 2003, and this Revised ROD may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. These documents are also available on our Web site at *http://www.efw.bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas C. McKinney, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *tcmckinney@bpa.gov.*

Issued in Portland, Oregon, on October 21, 2004.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 04–24224 Filed 10–28–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–11–000, et al.]

FPL Energy Callahan Wind, L.P., et al.; Electric Rate and Corporate Filings

October 21, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. FPL Energy Callahan Wind, LP

[Docket No. EG05–11–000]

Take notice that on October 20, 2004, FPL Energy Callahan Wind, LP (FPLE Callahan Wind), 700 Universe Blvd., Juno Beach, FL 33408, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

FPLE Callahan Wind states it is a wind-powered facility located in Taylor County, Texas with a nameplate capacity of 114 MW. FPLE Callahan Wind further states that the Facility consists of 76 GE Wind Turbine Generators of 1.5 MW each and is expected to commence operations in February 2005. FPLE Callahan Wind states it will sell electricity produced by the Facility exclusively at wholesale within ERCOT.

Comment Date: 5 p.m. eastern time on November 10, 2004.

2. Entergy Services, Inc.

[Docket Nos. ER04–699–000 and ER03–1272–002]

Take notice that on October 15, 2004 Entergy Services, Inc. (Entergy), submitted for filing cost information and workpapers of transmission upgrades in response the Commission's order issued September 16, 2004 in Docket Nos. ER04–699–000 and ER03–1272–002.

Comment Date: 5 p.m. eastern time on November 5, 2004.

3. Southwest Power Pool, Inc.

[Docket No. ER05–55–000]

Take notice that on October 19, 2004, Southwest Power Pool, Inc. (SPP), submitted for filing a Notice of Cancellation of an interconnection and operating agreement (IOA) among SPP, Westar Energy, Inc. (Westar), and Duke Energy Leavenworth, LLC (Duke). SPP requests an effective date of October 18, 2004.

SPP states that copies of the filing were served upon the parties to the IOA.

Comment Date: 5 p.m. eastern time on November 9, 2004.

4. CL Power Sales Nine, L.L.C.

[Docket No. ER05–56–000]

Take notice that on October 18, 2004, CL Power Sales Nine, L.L.C., (CL Nine) by and through Edison Mission Energy submitted for filing a Notice of Cancellation of Market-Based Rate Tariff, CL Power Sales Nine, L.L.C. Rate Schedule FERC Form No. 1.

Comment Date: 5 p.m. eastern time on November 8, 2004.

5. Niagara Mohawk Power Corporation

[Docket No. ER05–57–000]

Take notice that on October 18, 2004, Niagara Mohawk Power Corporation, a National Grid company (Niagara Mohawk), submitted for filing an Interconnection Service Agreement between Niagara Mohawk and General Mills.

Niagara Mohawk states that a copy of this filing will be served upon General Mills, as well as the New York Independent System Operator, Inc., and the New York Public Service Commission.

Comment Date: 5 p.m. eastern time on November 8, 2004.

6. Central Hudson Gas & Electric Corporation

[Docket No. ER05–58–000]

Take notice that on October 18, 2004, Central Hudson Gas & Electric Corporation (Central Hudson) submitted a Notice of Cancellation of its Rate Schedule FERC No. 51, effective July 16, 1975 in Docket No. ER76–79–000. Central Hudson states that it consents to the termination requested by Orange & Rockland Utilities, Inc. (O&R) and, accordingly, requests waiver on the notice requirements set forth in 18 CFR 35.15 of the regulations to permit the notice of cancellation to be effective September 1, 2004.

Central Hudson states that copies of the filing were served upon O&R and the State of New York Public Service Commission.

Comment Date: 5 p.m. eastern time on November 8, 2004.

7. Regional Transmission Organizations

[RT01–99–000, RT01–99–001, RT01–99–002 and RT01–99–003]

Bangor Hydro-Electric Company, *et al.*

[RT01–86–000, RT01–86–001 and RT01–86–002]

New York Independent System Operator, Inc., *et al.*

[RT01–95–000, RT01–95–001 and RT01–95–002]

PJM Interconnection, L.L.C., *et al.*

[RT01–2–000, RT01–2–001, RT01–2–002 and RT01–2–003]

PJM Interconnection, L.L.C.

[RT01–98–000]

ISO New England, Inc.

New York Independent System Operator, Inc.

[RT02–3–000]

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc., have posted on their internet web sites charts and information updating their progress on the resolution of ISO seams.

Comment Date: 5 p.m. eastern time on November 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2906 Filed 10–28–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6657–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–NAS–K11114–HI Rating EC2, Outrigger Telescopes Project, Proposed for the W.M. Keck Observatory Site within the Mauna Kea Science Reserve, Funding, Construction, Installation and Operation, Island of Hawaii.

Summary: EPA expressed concerns about the cumulative impacts to native Hawaiian cultural resources, visual resources, and species impacts, and asked for more information supporting the selection of the proposed alternative.

ERP No. D–NOA–K91013–HI Rating EC2, Seabird Interaction Mitigation Methods, To Reduce Interaction with Seabird in Hawaii-Based Longline Fishery and Pelagic Squid Fishery Management, To Establish an Effective Management Framework for Pelagic Squid Fisheries, Fishery Management Plan, Pelagic Fisheries of the Western Pacific Region, Exclusive Economic Zone of the U.S. and High Sea.

Summary: EPA expressed concerns over the impacts to seabirds associated with the preferred alternative, and requested more information on the effects of the newly-established U.S. squid fishery of protected species.

ERP No. D–NOA–L91025–00 Rating EC2, 2005–2006 Pacific Coast Groundfish Fishery, Proposed Acceptable Biological Catch and Optimum Yield Specifications and Management Measures, WA, OR and CA.

Summary: EPA expressed concerns about projected exceedences for optimum yields for canary and widow rockfish, impacts on essential fish habitat, and the need to increase observer coverage for better accounting of bycatch.

ERP No. D–NOA–L99010–AK Rating LO, Pribilof Islands Setting for the Annual Subsistence Harvest of Northern Fur Seals, To Determine and Publish the Take Ranges, Pribilof Islands, AK.

Summary: EPA does not object to the proposed harvest levels or their associated impacts.

ERP No. DS–TPT–K61154–CA Rating LO, Presidio Trust Public Health Service Hospital (PUSH or Building 1801) at the Presidio of San Francisco (Area B) of Presidio Trust Management Plan, To Rehabilitate and Reuse Buildings, Gold Gate National Recreation Area, San Francisco Bay, Marin County, CA.

Summary: EPA had a lack of objections to the project as proposed.

Final EISs

ERP No. F–AFS–J65375–MT Sheep Creek Range Analysis, Grazing and Special Use Allotments Reorganization, Grazing and Special Use Permits Issuance, Lewis and Clark National Forest, White Sulphur Springs Ranger District, Meagher and Cascade Counties, MT.

Summary: EPA supports improved grazing management, but expressed environmental concerns about continued impacts to water quality from delays in reducing grazing pressure (AUMs) on allotments with less than properly functioning streams for 3–5 years or longer. EPA recommends more timely implementation of grazing improvements, including AUM reductions, on allotments with non-functioning and functioning-at-risk streams.

ERP No. F–AFS–L65372–AK Threemile Timber Sale, Implementation, Petersburg Ranger District, Tongass National Forest, AK.

Summary: No comment letter was sent to the preparing agency.

ERP No. F–AFS–L65373–AK Gravina Island Timber Sale, Implementation, Timber Harvest and Related Activities, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK.

Summary: The Final EIS responded to EPA's concerns by developing a new alternative that combined helicopter and land-based timber extraction and selecting an alternative that is less damaging to riparian areas and greatly limited road access, protecting deer habitat and intertidal areas which are

subsistence resources for native Alaskans. EPA continues to have concerns about the adverse impacts to streams and wetlands, as well as cumulative impacts from roads and access to the roadless area.

ERP No. F–AFS–L65452–ID South Fork Wildfire Salvage Project, Harvesting Fire-Killed and Imminently Dead Trees, Cascade Ranger District, Boise National Forest, Valley County, ID.

Summary: No comment letter was sent to the preparing agency.

ERP No. F–BLM–L65446–AK Alpine Satellite Development Plan, Construction and Operation of Five Oil Production Pads, Associated Well, Roads, Airstrips, Pipelines and Powerlines, Authorization and Permits Issuance, Northeast corner of the National Petroleum Reserve-Alaska, Colville River Delta, North Slope Borough, AK.

Summary: EPA has environmental concerns about the Preferred Alternative (Alternative F). The Final EIS does not provide sufficient information, data, analyses, or discussion to ensure that all developmental components of the Preferred Alternative will meet the substantive environmental requirements of Clean Water Act Section 404. In addition, EPA has concerns about impacts from current road alignment design, disturbance from access to production pads, the potential for violation of Special Condition 10 of the Corps Permit, erosion from pad sidesloped, lack of specific mitigation measures, and insufficient 9 information regarding air quality impacts.

ERP No. F–COE–L32011–AK Akutan Harbor Navigation Improvements Project, Construction and Implementation, Bering Sea, City of Akutan, AK.

Summary: EPA agreed with U.S. Army Corps' conclusion that the project would not violate Alaska's water quality standards or exceed the Akutan Harbor TMDL load allocations. However, EPA reiterated objections to the direct and indirect effects on wetlands, and requested that the Corps explore offsite beneficial use options to the stockpiling of dredged material in wetlands. EPA also recommended that the Corps explore compensatory mitigation through wetland enhancements during detailed project design.

ERP No. F–NOA–E39066–FL Programmatic EIS—Seagrass Restoration in the Florida Keys National Marine Sanctuary, Implementation, U.S. Army COE Section 404 and CZMA Permits, Monroe County, FL.

Summary: EPA continues to fully support the proposed restoration goals for Seagrass damaged in FKNMS waters, but requests that some issues be clarified in the NOAA ROD.

Dated: October 26, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–24251 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6657–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed October 18, 2004 Through October 22, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040495, FINAL EIS, AFS, MT, Fortine Project, To Implement Vegetation Management, Timber Harvest and Fuel Reduction Activities, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT, *Wait Period Ends:* November 29, 2004, *Contact:* Joleen Dunham (406) 882–4451.

EIS No. 040496, DRAFT SUPPLEMENT, FHW, NC, Eastern Section of the Winston-Salem Northern Beltway, U.S. 52 south to I–40 Business and I–40 Business south to U.S. 311, Improvements to the Surface Transportation Network, TIP Project Nos. U–2579 and U–2579A, Forsyth County, NC, *Comment Period Ends:* January 5, 2005, *Contact:* John F. Sullivan, III, P.E. (919) 856–4346.

EIS No. 040497, FINAL SUPPLEMENT, FHW, NC, Western Section of the Winston-Salem Northern Beltway, U.S. 158 north to U.S. 52, TIP Nos. R–2247, Forsyth County, NC, *Wait Period Ends:* November 29, 2004, *Contact:* John F. Sullivan, III, P. (919) 856–4346.

EIS No. 040498, FINAL EIS, AFS, UT, Wasatch Powerbird Guides Permit Renewal, Authorization to Continue Providing Guided Helicopter Skiing Activities on National Forest System (NFS) Land on the Wasatch-Cache and Uinta National Forests, Special-Use Permit (SUP), Provo and Salt Lake City, UT, *Wait Period Ends:* November 29, 2004, *Contact:* Steve Scheid (801) 733–2689. This document is available on the Internet at: *http://www.fs.fed.us/r4/wcnf/projects/decision/wpg.*

EIS No. 040499, FINAL EIS, COE, AK, Unalaska Navigation Improvements Project, Construction of Harbor on Amaknak Island in Aleutian Island Chain, Locally known as ''Little South America, Integrated Feasibility Report, Aleutian Island, AK, *Wait Period Ends:* November 29, 2004, Contact: Guy McConnell (907) 753–2614.

EIS No. 040500, DRAFT EIS, FHW, UT, Brown Park Road Project, Reconstruction (Paving) and Partial Re-alignment from Red Creek to Colorado State Line, Diamond Mountain Resource Management Plan Amendment (BLM), U.S. Army COE Section 404 Permit, Daggett County, UT, *Comment Period Ends:* December 17, 2004, *Contact:* Gregory S. Punske, P.E. (801) 963–0182.

EIS No. 040501, FINAL EIS, COE, CA, Hamilton City Flood Damage Reduction and Ecosystem Restoration, Propose to Increase Flood Protection and Restore the Ecosystem, Sacramento River, Glenn County, CA *Wait Period Ends:* November 29, 2004, *Contact:* Alicia Kirchner (916) 557–6767.

EIS No. 040502, FINAL EIS, FHW, CT, CT–2/2A/32, Transportation Improvement Study, Construction, Funding, Coast Guard Bridge Permit, NPDES Permit, COE Section 10 and 404 Permit, New London County, CT, *Wait Period Ends:* November 29, 2004, *Contact:* Bradley Keazer (860) 659–6703.

EIS No. 040503, FINAL EIS, COE, CA, Matilija Dam Ecosystem Restoration Feasibility Study, Restoring Anadromous Fish Populations, Matilija Creek, Ventura River, Ventura County Watershed Protection District, Ventura County, CA, *Wait Period Ends:* November 29, 2004, *Contact:* Chris Serjack (213) 452–3865.

Dated: October 26, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–24252 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7831–4]

Eighth Meeting of the World Trade Center Expert Technical Review Panel To Continue Evaluation on Issues Relating to Impacts of the Collapse of the World Trade Center Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The World Trade Center Expert Technical Review Panel (or WTC Expert Panel) will hold its eighth meeting intended to provide for greater input on ongoing efforts to monitor the situation for New York residents and workers impacted by the collapse of the World Trade Center (WTC). The panel members will help guide the EPA's use of the available exposure and health surveillance databases and registries to characterize any remaining exposures and risks, identify unmet public health needs, and recommend any steps to further minimize the risks associated with the aftermath of the WTC attacks. The panel will meet several times over the course of approximately two years. These panel meetings will be open to the public, except where the public interest requires otherwise. Information on the panel meeting agendas, documents (except where the public interest requires otherwise), and public registration to attend the meetings will be available from an Internet Web site. EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003.

DATES: The eighth meeting of the WTC Expert Panel will be held on November 15, 2004, from 9 a.m. to 5 p.m., eastern standard time. On-site registration will begin at 8:30 a.m.

ADDRESSES: The WTC Expert Panel meeting will be held at St. John's University, Saval Auditorium, 101 Murray Street (between Greenwich Street and West Side Highway), New York City (Manhattan). The auditorium is located on the second floor of the building and is handicap accessible. A government-issued identification (*e.g.*, driver's license) is required for entry.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration and logistics, please see the panel's Web site *http://www.epa.gov/wtc/panel* or contact ERG at (781) 674–7374. The meeting agenda and logistical information will be posted on the Web site and will also be available in hard copy. For further information regarding the WTC Expert Panel, contact Ms. Lisa Matthews, EPA Office of the Science Advisor, telephone (202) 564–6669 or e-mail: *matthews.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. WTC Expert Panel Meeting Information

Eastern Research Group, Inc., (ERG), an EPA contractor, will coordinate the WTC Expert Panel meeting. To attend the panel meeting as an observer, please register by visiting the Web site at: *http://www.epa.gov/wtc/panel*. You may also register for the meeting by calling ERG's conference registration line between the hours of 9 a.m. and 5:30 p.m. EST at (781) 674–7374 or toll free at 1–800–803–2833, or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations are accepted on a first-come, first-served basis. The deadline for pre-registration is November 10, 2004. Registrations will continue to be accepted after this date, including on-site registration, if space allows. There will be a limited time at the meeting for oral comments from the public. Oral comments will be limited to five (5) minutes each. If you wish to make a statement during the observer comment period, please check the appropriate box when you register at the web site. Please bring a copy of your comments to the meeting for the record or submit them electronically via e-mail to *meetings@erg.com*, subject line: WTC.

II. Background Information

Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency. EPA, other federal agencies, New York City and New York State public health and environmental authorities focused on numerous cleanup, dust collection and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9–11 Web site at&thnsp;*http://www.epa.gov/wtc/*.

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust, as well as the development of a human exposure and health risk assessment. This risk assessment document, Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster, is available on the Web at *www.epa.gov/ncea/wtc.htm*). Numerous additional studies by other Federal and State agencies, universities and other organizations have documented impacts to both the outdoor and indoor environments and to human health.

While these monitoring and assessment activities were ongoing and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June until December 2002, residents impacted by WTC dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request either federally-funded cleaning and monitoring for airborne asbestos or monitoring of their residences. The cleanup continued into the summer of 2003 by which time the EPA had cleaned and monitored 3,400 apartments and monitored 800 apartments. Detailed information on this portion of the EPA response is also available at *http://www.epa.gov/wtc/*.

A critical component of understanding long-term human health impacts is the establishment of health registries. The WTC Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the WTC towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH) in cooperation with a number of academic institutions, public agencies and community groups. Detailed information about the registry can be obtained from the registry Web site at: *http://www.nyc.gov/html/doh/html/wtc/index.html*.

In order to obtain individual advice on the effectiveness of these programs, unmet needs and data gaps, the EPA has convened a technical panel of experts who have been involved with WTC assessment activities. Dr. Paul Gilman, EPA Science Advisor, serves as Chair of the panel, and Dr. Paul Lioy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School–UMDNJ and Rutgers University, serves as Vice Chair. A full list of the panel members, a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel meetings typically will be one- or two-day meetings, and they will occur over the course of approximately a two-year period. Panel members will

provide individual advice on issues the panel addresses. These meetings will occur in New York City and nearby locations. All of the meetings will be announced on the Web site and by a **Federal Register** Notice, and they will be open to the public for attendance and brief oral comments.

The focus of the eighth meeting of the WTC Expert Panel is to hear comments from panel members and the public on the External Review Draft entitled, Draft Proposed Sampling Program to Determine Extent of World Trade Center Impacts to the Indoor Environment (EPA/600/R–04/169A). The document was published in the **Federal Register** on October 21, 2004 (69 FR 61838) for a 30-day public comment period. The document is also available on the panel Web site identified earlier at: *http://www.epa.gov/wtc/panel*. Written comments on the draft sampling proposal should be submitted to the EPA by November 19, 2004. Please follow the detailed instructions as provided in the October 21, 2004 **Federal Register** Notice for submitting written comments. EPA will consider all comments in revising the document. At the November 15 panel meeting, panel members will be asked to provide their individual views regarding gaps on potential health effects and additional health studies that they have identified. Further information on meetings of the WTC Expert Panel can be found at the panel Web site.

III. How To Get Information on E-DOCKET

EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Dated: October 25, 2004.

Paul Gilman,

EPA Science Advisor and Assistant Administrator for Research and Development.

[FR Doc. 04–24245 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7829–1]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''); Pacific Sound Resources (PSR); West Seattle, WA

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.*, as amended, notice is hereby given that the Environmental Protection Agency (''EPA''), the State of Washington Department of Natural Resources (''DNR'') and the state of Washington (''State'') have negotiated a proposed Administrative Settlement (''Agreement'') pursuant to CERCLA, with respect to the Pacific Sound Resources (''PSR'') Superfund Site in West Seattle, Washington (''Site'').

The Site was listed on the Superfund National Priorities List (''NPL'') in 1994. Wood treating operations at the Site date from the early 1900s to 1994, under successive operators. Hazardous substances, primarily wood treating chemicals, were released at or from the Site. As a result, EPA has undertaken response actions under CERCLA, and will undertake response actions in the future, many of which have been or will be funded by PSR as a responsible party pursuant to a 1994 PSR Consent Decree. Outstanding EPA costs are approximately $3.5 million. Projected future remedial costs are estimated at approximately $8 million for remaining sediment remedial action, some or all of which may be funded by the PSR Decree. EPA estimates that the total response costs incurred and to be incurred at or in connection with the is approximately $45 million.

The Settling Parties' liability for the Site arises in most significant part from releases from three storage tanks on a small portion of the Site (approximately 2.3 acres of filled state-owned aquatic lands within the approximately 25-acre Site) leased to PSR by DNR. EPA has determined that these releases contributed a minor portion of the total of hazardous substances at the Site. The processing areas of the Site, including the transfer table pit and wood-treating retorts, were and are on PSR property and were where most releases occurred. DNR also leased submerged aquatic lands owned by the State to PSR on which PSR floated treated wood products which released comparatively small amounts of hazardous substances to water and sediment in Elliott Bay.

In September 2002, PSR and the Port of Seattle jointly sued the Settling Parties and other potentially responsible parties in contribution in the Superior Court for the State of Washington under the Model Toxics Control Act (''MTCA''), RCW 70.105D *et seq.* In May 2004, the Settling Parties conditionally agreed to settle these MTCA claims for $4.75 million to be divided equally between the MTCA Plaintiffs. EPA stands as the sole beneficiary pursuant to the PSR Consent Decree of the settlement proceeds which would go to PSR. This MTCA claims settlement is conditioned on this proposed Agreement resolving the outstanding CERCLA claims by EPA against the Settling Parties.

By this proposed Agreement, Settling Parties shall provide EPA with a maximum of 250,000 cubic yards of clean sediment (from navigation dredging of the Snohomish, Swinomish, or other rivers of the state of Washington) necessary for the sediment remedial action at the Site. Further, EPA has designed the sediment remedy for the Site to meet a 100-year earthquake or other disaster contingency, and has agreed that if such remedy failure occurs, it will be addressed by EPA rather than by an Agency or instrumentality of the state. Toward this end, DNR shall also provide such quantity of clean sediment as EPA may require, not to exceed a maximum of 250,000 cubic yards, to address such a remedy failure contingency, subject to sediment availability. Settling Parties also agree that EPA may install, maintain and monitor the remedial

action at the Site as EPA deems necessary, including the installation and maintenance of additional monitoring wells beyond those presently on Site. DNR and the State shall receive legal protection for cleanup liability at the Site in the form of a covenant not to sue from EPA.

DATES: Comments must be provided by November 29, 2004.

ADDRESSES: Comments should be addressed to Sally Thomas, Remedial Project Manager, Environmental Protection Agency, 1200 Sixth Avenue, M/S–ECL–110, Seattle, Washington, 98101, and refer to PSR Superfund Site, Proposed Agreement with DNR and the state of Washington.

FOR FURTHER INFORMATION CONTACT: Sally Thomas at 206–553–2102.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency will receive comments relating to the proposed Agreement for a period of thirty (30) days from the date of this publication.

Copies of the proposed Agreement may be examined at the EPA Region 10 offices at 1200 Sixth Avenue, Seattle, Washington, 98101. A Copy of the proposed Consent Order may be obtained by mail or in person from Ms. Thomas at the address listed above.

Dated: October 13, 2004.

Richard Albright,

Acting Regional Administrator, Region 10.

[FR Doc. 04–24244 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7832–1]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the South Central Terminal Site Near Pana, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment on proposed CERCLA section 122(h)(1) agreement with three prior owner/operators regarding partial recovery of costs incurred by EPA in implementing a removal action to address soil contamination, hazardous liquids and sludges, and deteriorated above-ground storage tanks, piping and asbestos insulation at an abandoned oil refinery near Pana, Illinois.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, notification is hereby given of a proposed administrative settlement agreement regarding partial recovery of costs incurred by EPA in implementing a removal action at the site of the former South Central Terminal oil refinery and bulk storage facility near downstate Pana, Illinois. EPA proposes to enter into this agreement under the authority of sections 122(h) and 107 of CERCLA. The proposed agreement has been executed by three historical owner/operators of the facility, Growmark, Inc., Rosewood Refining, L.L.C., and Bi-Petro, Inc. (the ''Settling Parties''). Under the proposed agreement, the Settling Parties will pay a total of $625,000 to reimburse the Superfund for part of the $3.16 million incurred by EPA in implementing the removal action at the facility. For thirty days following the date of publication of this notice, EPA will receive written comments relating to the proposed agreement. EPA will consider all comments received and may decide not to enter into the proposed agreement if comments disclose facts or considerations which indicate that the agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before November 29, 2004.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of South Central Terminal, EPA Docket No. V–W–'04–C–799.

FOR FURTHER INFORMATION CONTACT: Reginald A. Pallesen, Associate Regional Counsel, by mail at: U.S. Environmental Protection Agency, Office of Regional Counsel (C–14J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or by phone at: (312) 886–0555. A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. 04–24246 Filed 10–28–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

October 13, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before December 28, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0194.

Title: Section 74.21, Broadcasting Emergency Information.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1 hour.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: In the event of an emergency, Section 74.21 requires that a licensee of an auxiliary broadcast station notify the FCC in Washington, DC, as soon as practical, when that station is operated in a manner other than that for which it is authorized. This notification shall specify the nature of the emergency and the use to which the station is being put. The licensee shall also notify the FCC when the emergency operation has been terminated. These notifications are used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

OMB Control Number: 3060–0660.

Title: Section 21.937, Negotiated Interference Protection.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 75.

Estimated Time per Response: 30 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 450 hours.

Total Annual Cost: $300,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: Occurs at or within the boundaries of an adjacent Basis Trading Area (BTA), partitioned service area or an incumbent Multipoint Distribution Service (MDS) station's protected service area, can be negotiated and established with the written consent of the affected licensee. Thus, Section 21.937 permits negotiated interference agreements among these parties. These written agreements must be submitted to the Commission within thirty days of ratification. (These agreements are often included with the submission of the FCC Form 304 attached as Exhibits.) These agreements allow the parties to establish acceptable levels of interference based on design of their stations and service needs. These agreements are the most effective means of regulating interference and they provide flexibility in designing MDS systems.

OMB Control Number: 3060–0661.

Title: Section 21.931, Partitioning of BTAs.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time per Response: 7 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 10 hours.

Total Annual Cost: $11,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: Section 21.931 permits a Basic Trading Area (BTA) to enter into contracts with eligible parties to partition any contiguous portion of its service area. Under Section 21.931(a)(2), applicants are required to submit partitioning contracts with the Commission within 30 days of the date the contracts are reached. These contracts will be submitted with one of the following: (1) An Multipoint Distribution Service (MDS) long-term application; (2) an application for assignment or transfer; or (3) a statement of intention. These collections have separate OMB control numbers. These partitioning contracts will facilitate the development of successful wireless cable systems in rural areas and will make the most efficient use of the available spectrum. The contracts designate the specific geopolitical boundaries used to partition the BTA. The Commission will apply the same MDS technical rules to partitioned service areas.

OMB Control Number: 3060–0992.

Title: Request for Extension of the Implementation Deadline for Non-Recurring Services, CC Docket No. 96–45 (FCC 01–195) and 47 CFR Section 54.507(d)(1)–(4).

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 850.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 850 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: Section 54.507(d) provides additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. Section 54.507(d) extends the deadline for receipt of non-recurring services from 6/30 to 9/30 following the close of the funding year. Section 54.507(d) establishes a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. The rule provides schools and libraries with more time to install non-recurring services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24273 Filed 10–28–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–105; DA 04–3219]

Parties Asked To Refresh Record Regarding Reconsideration of the Designation by the Commission of 211 and 511 as Abbreviated Dialing Codes

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Commission invites interested parties to refresh the record pertaining to petitions for reconsideration filed with respect to the designation of 211 and 511 as abbreviated dialing codes.

DATES: Interested parties may file supplemental comments updating their previously filed petitions for reconsideration no later than November 12, 2004. Oppositions or responses to these comments may be filed no later than November 19, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: In a Public Notice in this proceeding released on October 8, 2004, the Commission invites interested parties to update the record pertaining to petitions for reconsideration filed with respect to the designation of 211 and 511 as abbreviated dialing codes by the Commission in the Third Report and Order in CC Docket No. 92–105, *The Use of N11 Codes and Other Abbreviated Dialing Arrangements (211/511 Assignment Order*), 66 FR 9674, February 9, 2001.

On July 31, 2000, the Commission released the *211/511 Assignment Order*. In this Report and Order, the Commission, among other things, assigned the abbreviated dialing code 511 to be used for access to traveler information services, and the abbreviated dialing code 211 to be used for access to community information and referral services. Five petitions for reconsideration of the *211/511 Assignment Order*, as it applies to CMRS providers, were filed. Because the petitions for reconsideration were filed some time ago, the passage of time and intervening developments may have rendered the records developed for those petitions stale. Moreover, some issues raised in the petitions for reconsideration may have become moot or irrelevant in light of intervening events.

For these reasons, the Wireline Competition Bureau requests that interested parties that filed petitions for reconsideration following the release of the *211/511 Assignment Order* identify issues from that order that remain unresolved now and supplement those petitions, in writing, to indicate which findings they still wish to be reconsidered. To the extent that intervening events may have materially altered the circumstances surrounding filed petitions or the relief sought by filing parties, those entities may refresh the record with new information or arguments related to their original filings that they believe to be relevant to the issues. The previously filed petitions will be deemed withdrawn and will be dismissed if parties do not indicate in writing an intent to pursue their respective petitions for reconsideration. The refreshed record will enable the Commission to undertake appropriate and expedited reconsideration of the implementation of its 211 and 511 assignments.

Interested parties may file supplemental comments updating their previously filed petitions for reconsideration no later than November 12, 2004. Oppositions or responses to these comments may be filed no later than November 19, 2004. All pleadings are to reference CC Docket No. 92–105. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Parties who choose to file by paper must file an original and four copies of each filing. One (1) courtesy copy should also be sent to Sheryl Todd, Wireline Competition Bureau, FCC, Room 5–B540, 445 12th Street, SW., Washington, DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The original petitions for reconsideration that parties filed in 2001 are available for inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.bcpiweb.com.*

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Dated: October 25, 2004.

Cheryl L. Callahan,

Assistant Chief, Wireline Competition Bureau.

[FR Doc. 04–24271 Filed 10–28–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–3327]

Announcement of Next Meeting Date and Agenda of Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice; announcement of meeting.

SUMMARY: This document announces the next meeting date and agenda of the Consumer Advisory Committee whose purpose is to make recommendations to the Federal Communications Commission (Commission) regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

DATES: The next meeting of the Committee will take place on Friday, November 19, 2004, from 9 a.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, (202) 418–2809 (voice), (202) 418–0179 (TTY) or e-mail: *scott.marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice* DA 04–3327 released October 21, 2004. The Commission announced the next meeting date and meeting agenda of its Consumer Advisory Committee.

Purpose and Functions

The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

Meeting Agenda

At its November 19, 2004 meeting, the Committee will (1) receive briefings by FCC staff regarding Agency activities; (2) receive a report and recommendations from its Broadband Working Group with regard to digital television and the Commission's DTV outreach campaign; (3) Receive a report and recommendations from its consumer Complaints, Education and Outreach working group regarding improvements to the Commission's quarterly report of informal complaints and inquiries; (4) Receive a report and recommendations from its competition Policy working group regarding consumer issues in competition policy; and (5) Receive a report and recommendations from its Homeland Security working group regarding emergency communications. The Committee may also receive a recommendation regarding renewal of the consumer advisory committee charter and membership. The full Committee may take action on any or all of these agenda items. The Committee will also receive a briefing on the latest wireless solutions for people who are blind or visually impaired.

A copy of the October 21, 2004, *Public Notice* is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac.* Meeting minutes will be available for public inspection at the FCC headquarters building.

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Meeting agendas and handouts will be provided in accessible format; sign language interpreters, open captioning, and assistive listening devices will be provided on site. The meeting will be webcast with open captioning at *http://www.fcc.gov/cgb/cac.* Request other reasonable accommodations for people with disabilities as early as possible; please allow at least 14 days advance notice. Include a description of the accommodation you will need including as much detail as you can. Also include a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

K. Dane Snowden,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–24272 Filed 10–28–04; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2004–B6]

Federal Management Regulation; Motor Vehicle Management

AGENCY: Office of Governmentwide Policy (MTV), GSA

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin reminds Fleet programs of Federal agencies that when replacing agency-owned vehicles under the Exchange/Sale provisions of the Federal Management Regulation (FMR), sale proceeds are retainable as provided under and in compliance with those provisions for purchasing replacement vehicles. As a source of funding for replacement vehicles additional to other Fleet program funding, the availability of sale proceeds should not be overlooked.

EFFECTIVE DATE: This bulletin is effective *October 22, 2004.*

FOR FURTHER INFORMATION CONTACT: Myles Schulberg, General Services Administration, Office of Governmentwide Policy (MTV), Washington, DC 20405; e-mail, *myles.schulberg@gsa.gov*, telephone (202) 208–7642.

SUPPLEMENTARY INFORMATION: Briefings by some agencies on their Fleet program to the General Services Administration Vehicle Management Policy Division have lacked assurance that the Fleet program, when replacing agency-ownedvehicles, under the Exchange/Sale provision of the FMR, has been retaining the sale proceeds, as prescribed in 41 CFRpart 102–39, for purchasing replacement vehicles.

Dated: October 22, 2004.

G. MARTIN WAGNER,

Associate Administrator,Office of Governmentwide Policy.

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2004–B6]

Federal Management Regulation; Motor Vehicle Management

TO: Heads of Federal agencies

SUBJECT: Proceeds from Sale of Agency-Owned Vehicles

1. *What is the purpose of this bulletin?* This bulletin is a reminder for the Fleet programs of Federal agencies that when replacing agency-owned vehicles under the Exchange/Sale provisions of the Federal Management Regulation (FMR), sale proceeds are retainable as provided under and in compliance with those provisions for purchasing replacement vehicles.

2. *What is the effective date of this bulletin?* This bulletin is effective October 22, 2004.

3. *When does this bulletin expire?* This bulletin will remain in effect until specifically cancelled.

4. *What is the background?* Briefings by some agencies on their Fleet program to the General Services Administration Vehicle Management Policy Division have lacked assurance that when replacing agency-owned vehicles under the Exchange/Sale provisions of the FMR, the Fleet program has been retaining the sale proceeds as prescribed in 41 CFR part 102–39, for purchasing replacement vehicles. As a source of funding for replacement vehicles additional to other Fleet program funding, the availability of sale proceeds should not be overlooked.

5. *What must I do as a result of this bulletin?* Within the Federal agencies, when replacing agency-owned vehicles under the Exchange/Sale provisions of the FMR, Fleet and Finance programs need work together to ensure retention of sale proceeds as prescribed in 41 CFR part 102–39, for replacement vehicles.

6. *Who should we contact for further information and/or to direct comments*

regarding proceeds from sale of agency-owned vehicles?

General Services Administration,Office of Governmentwide Policy,Vehicle Management Policy Division (MTV),Washington, DC 20405,Telephone Number: 202–501–1777,E-mail Address: *vehicle.policy@gsa.gov.*

[FR Doc. 04–24229 Filed 10–28–04; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy.

DATES: November 15, 2004, 8 a.m.–4 p.m. e.d.t.

ADDRESSES: The meeting will be held at HHS headquarters at 200 Independence Ave., SW., 20201, Room 705A.

Comments: The meeting will allocate time on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Jacob Kaplan, OASPE, 200 Independence Ave., SW., 20201, Room 447D. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Jacob Kaplan at (202) 401–6119, *jacob.kaplan@hhs.gov. Note:* Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting should call or e-mail Mr. Kaplan by November 11, 2004, so their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: On April 22, 2004, we published a notice announcing the establishment of and requesting nominations for individuals to serve on the Panel. The panel members are: Mark Pauly, Edwin Hustead, Alice Rosenblatt, Michael Chernew, David Meltzer, John Bertko, and William Scanlon.

Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate the long term rate of health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. Interested persons may observe the deliberations and discussions, but the Panel will not hear public comments during this time. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: October 25, 2004.

Michael J. O'Grady,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–24170 Filed 10–28–04; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Privacy and Confidentiality.

Time and Date: November 18, 2004, 9 a.m.–5 p.m.; November 19, 2004, 8:30 a.m.–12:30 p.m.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: On the first day of this meeting the Subcommittee will hear presentations and hold discussions on privacy and confidentiality issues in e-prescribing. On the morning of the second day the Subcommittee will focus on the impact of the HIPAA Security Rule on current and emerging technologies in medical equipment.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Amy Chapper, Lead Staff for Subcommittee on Privacy and Confidentiality, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, telephone (410) 786–0367; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 19, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–24219 Filed 10–28–04; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 69 FR 60400, dated October 8, 2004) is amended to reorganize the Division of Global Migration and Quarantine, National Center for Infectious Diseases.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the *Division of Global Migration and Quarantine (CR2)* and insert the following:

(1) Administers a national quarantine program to protect the United States against the introduction of diseases from foreign countries and the transmission of communicable disease between states; (2) administers an overseas program for the medical examination of immigrants, refugees, and as necessary other migrant populations destined for legal entry to the U.S., with inadmissible health conditions that would pose a threat to public health and impose a burden on public health and hospital facilities; (3) conducts surveillance, research, and prevention programs to prevent minimize morbidity and mortality among the globally mobile populations entering and leaving the United States; (4) maintains liaison with and provides information on global migration and quarantine matters to other Federal agencies, state and local health departments, and other stake holders; (5) provides liaison with international health organizations, such as the Pan American Health Organization and the World Health Organization, and participates in the development of international agreements affecting quarantine; (6) evaluates and provides technical support on the development and enforcement of policies necessary for implementation of federal quarantine authority; (7) conducts studies to provide new information about health hazards abroad, measures for their prevention, and the potential threat of disease introduction into the United States; and (8) provides logistic support to other programs of the Centers for Disease Control and Prevention in the distribution of requested biological agents and movement of biological specimens through U.S. ports of entry.

Delete in its entirety the functional statement for the *Office of the Director, (CR21)* and insert the following:

(1) Manages, directs, and coordinates the activities of the Division; (2) provides leadership in development of Division policy, program planning, implementation, and evaluation; (3) identifies needs and resources for new initiatives and assigns responsibilities for their development; (4) coordinates liaison with other Federal agencies, State and local health departments, and interested industries; (5) coordinates liaison with international health organizations; (6) provides administrative services, including procurement, property and supply management, travel arrangements, space and facilities maintenance, and timekeeper coordination; (7) provides budgeting and fiscal management for the Division; (8) provides personnel support to the Division, both for Civil Service and Commissioned Corps employees, and assures compliance with HRMO regulations for all personnel matters; and (9) reviews and evaluates all administrative services for both headquarters and Quarantine Stations and provides policy procedures and guidance on such matters.

Delete in its entirety the title and functional statement for the *Field Operations Branch (CR22)* and insert the following:

Quarantine and Border Health Services Branch (CR22). (1) Develops and implements strategies to monitor for diseases of public health interest arriving persons, animals, cargo, and conveyances at ports of entry to the United States and its possessions; (2) evaluates and revises public health preparedness activities at airports, seaports, and land crossings in the United States and its possessions; (3) reviews operations to assure the effective application of scientific data in implementing programs to monitor the importation of quarantinable and other specified diseases; (4) develops and initiates surveillance and other public health activities at sea, air, and land ports of entry to the United States and its possessions; (5) trains and supervises field staff in the epidemiologica, technical, management, and administrative aspects of quarantine operations; (6) works cooperatively with other agencies and organizations in the United States and abroad to implement, improve, and enhance division activities at ports of entry to the United States and its possessions; (7) provides technical consultation and public health training to federal inspection services to implement the division's activities, apply CDC regulations on quarantine, and ensure appropriate occupational safety and health protection for their staff; (8) collaborates with State and local health departments to prevent transmission and spread of quarantinable diseases and other diseases of public health significance associated with travel; (9) monitors arriving immigrants and refugees at ports of entry to the United States and its possessions and notifies State health departments on identified health conditions; (10) provides logistic support to other CDC programs and expedites the movement of persons, clinical specimens, lifesaving medications, and other materials through federal security; (11) serves as CDC's representative at U.S. ports of entry for operational issues related to bio security and emerging infections; and (12) administers Deratting Certification program.

Delete the title and functional statement for the *Surveillance and Epidemiology Branch (CRS23)* and insert the following:

Immigrant Refugee and Migrant Health Branch (CRS23). (1) Develops and maintains surveillance systems for infectious diseases among immigrant, refugee, and migrant populations entering the United States or designated for resettlement in the United States; (2) conducts infectious disease surveillance and epidemiological investigations in communities along the U.S.-Mexico border; (3) recommends appropriate, effective intervention and prevention strategies to decrease morbidity and mortality among globally mobile populations and to prevent entry of disease into the United States; (4) performs epidemiologic investigations and scientific research projects related to health issues for immigrant, refugee, and migrant populations; (5) develops, reviews, and evaluates operations in the United States and abroad involving immigrant and refugee medical examination activities; (6) conducts enhanced refugee medical screening examinations; (7) responds to refugee resettlement emergencies, including the provision of technical assistance regarding clinical management and effective interventions to prevent and control infectious diseases in this setting; (8) conducts a continuing review of medical screening procedures to assure the most effective application of current medical practices; administers and monitors activities related to the overseas and domestic medical examinations of immigrants and refugees, convening boards of medical officers to reexamine immigrants and refugees, when necessary, and preparing, publishing, and distributing manuals for examining physicians; (9) works cooperatively and in concert with other Federal and international agencies, voluntary agencies, and foreign governments, both in the United States and abroad, in administering the immigrant and refugee medical screening program; (10) establishes, maintains, and evaluates medical inspection and notification procedures regarding immigrants and refugees, providing coordination and liaison with local and state health departments on the follow-up of those with serious disease or mental problems, in particular notifiable diseases such as tuberculosis; (11) establishes and maintains procedures to process requests for waivers of inadmissible medical conditions; (12)

provides scientific and technical support to the operation and regulatory responsibilities of the Division; and (13) provides liaison and coordination of efforts with counterparts in other divisions and centers of CDC, as well as national and international agencies involved in addressing and preventing infectious diseases among globally mobile populations.

Geographic Medicine and Health Promotion Branch (CR24). (1) Through the GeoSentinel Network develops geographic-specific infectious disease risk profiles among mobile populations; (2) coordinates and provides immunization data and recommends appropriate and effective intervention and prevention strategies to decrease morbidity and mortality among international travelers; (3) develops and issues vaccination documents and validation stamps in accordance with the International Health Regulations; (4) conducts surveillance for and assists in investigations of adverse events following administration of traveler vaccines; (5) alerts appropriate disease-specific CDC programs about possible imported cases if disease and supports the relevant program to investigate these events; (6) monitors and analyzes reports of health threats overseas and issues travel notices, alerts and advisors when appropriate; (7) notifies the World Health Organization of the incidence of quarantinable diseases in the United States, as required by the International Health Regulations; (8) inspects shipments of nonhuman primates to ensure compliance with CDC regulations regarding quarantine, conditions of shipment and occupational safety and health of employees exposed to primates; (9) works to decrease the risk of importing zoonotic diseases of public health significance to humans via animals and cargo; (10) performs epidemiologic investigations and scientific research projects among U.S. travelers and imported animals; (11) periodically conducts active surveillance for infectious diseases among imported animals; (12) provides scientific and technical support to the operation and regulatory responsibilities of the Division; and (13) provides liaison and coordination of efforts with counterparts in other divisions of CDC, state and local health authorities, the travel industry, as well as national and international agencies involved in addressing and preventing infectious diseases among international travelers and translocated animals.

Dated: October 19, 2004.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–24213 Filed 10–28–04; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0436]

Agency Information Collection Activities: Proposed Collection; Comment Request; Medical Device Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for medical device registration and listing.

DATES: Submit written and electronic comments on the collection of information by December 28, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Dockets Management Branch (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: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (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.

Medical Device Registration and Listing—21 CFR Parts 807.22, 807.31, and 807.40 (OMB Control No. 0910–0387—Extension)

Section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) requires domestic establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution register their establishments and list the devices they manufacture with FDA. This is accomplished by completing FDA Form 2891 ''Registration of Device Establishment'' and FDA Form 2892 ''Medical Device Listing.'' The term ''device'' is defined in section 201(h) of the act (21 U.S.C. 321) and includes all in vitro diagnostic products and in vitro diagnostic biological products not subject to licensing under section 351 of the Public Health Service Act (42 U.S.C. 262). The FDA Modernization Act of 1997 (FDAMA) added a requirement for foreign establishments to appoint a United States agent and submit the information to FDA on Form 2891 as part of its initial and updated registration information. In addition, each year, active, registered establishments must notify FDA of changes to the current registration and

device listing for the establishment. Annual changes to current registration information are preprinted on FDA Form 2891a and sent to registered establishments. The form must be sent back to FDA's Center for Devices and Radiological Health, even if no changes have occurred. Changes to listing information are submitted on Form 2892.

Under § 807.31 (21 CFR 807.31), each owner or operator is required to maintain an historical file containing the labeling and advertisements in use on the date of initial listing, and in use after October 10, 1978, but before the date of initial listing. The owner or operator must maintain in the historical file any labeling or advertisements in which a material change has been made anytime after initial listing, but may discard labeling and advertisements from the file 3 years after the date of the last shipment of a discontinued device by an owner or operator. Along with the recordkeeping requirements above, the owner or operator must be prepared to submit to FDA all labeling and advertising mentioned above (§ 807.31(e)).

Section 807.40 describes the role of the United States agent. The U.S. agent must reside or have a physical place of business in the United States, and each foreign establishment must submit U. S. agent information as part of its initial and updated registration process.

The information collected through these provisions is used by FDA to identify firms subject to FDA's regulations and is used to identify geographic distribution in order to effectively allocate FDA's field resources for these inspections and to identify the class of the device that determines the inspection frequency. When complications occur with a particular device or component, manufacturers of similar or related devices can be easily identified.

The likely respondents to this information collection will be domestic and foreign device establishments and U.S. agents who must register and submit a device list to FDA (e.g., establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution).

FDA estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden

Table 1A.—Estimated Year 1 Annual Reporting Burden[1]

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
807.22(a) and 807.40	2891 Establishment of Registration	2,900	1	2,900	.25	725
807.22(b)	2892 Medical Device Listing	4,400	1	4,400	.50	2,200
807.22(a) and 807.40	2891a Annual Registration of Medical Device Establishment	25,100	1	25,100	.25	6,275
807.31(e)		200	1	200	.50	100
Total Year 1 Burden Hours						9,300

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1B.—Estimated Subsequent Years Annual Reporting Burden[1]

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours Per Response	Total Hours
807.22(a) and 807.40	2891 Registration of Establishment	3,100	1	3,100	.25	775
807.22(b)	2892 Medical Device Listing	4,600	1	4,600	.50	2,300
807.22(a) and 807.40	2891a Annual Registration of Medical Device Establishment	25,100	1	25,100	.25	6,275
807.31(e)		200	1	200	.50	100
Total Year 2 and 3 Burden Hours						9,450

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours Per Recordkeeper	Total Hours
807.31	16,200	4	64,800	.50	32,400
Total Burden Hours					32,400

[1]The burdens are explained as follows:

The annual reporting burden hours to respondents for registering establishments and listing devices is estimated to be 9,450 hours, and recordkeeping burden hours for respondents is estimated to be 32,400 hours. The estimates cited in the tables above are based primarily upon the annual FDA accomplishment report, which includes actual FDA registration and listing figures from fiscal year (FY) 2003. These estimates are also based on FDA estimates of FY 2003 data from current systems, conversations with industry and trade association representatives, and from internal review of the documents referred to in the previous tables.

According to 21 CFR part 807, all owners/operators are required to list, and establishments and U.S. agents are required to register. Each owner/operator has an average of two establishments, according to statistics gathered from FDA's registration and listing database. The database has 25,100 active establishments listed in it. Based on past experience, the agency anticipated that approximately 7,300 registrations will be processed during the first year, and 3,100 thereafter. FDA anticipates reviewing 200 historical files annually.

Dated: October 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24192 Filed 10–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 30, 2004, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512513. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on premarket approval application for a device intended for use as an adjunct to sutured dural repair during cranial surgery to provide watertight closure. Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: On November 30, 2004, from 8:30 a.m. to 5 p.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 9, 2004. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 30, 2004, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to pending issues and applications.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA 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 AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 22, 2004.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 04–24191 Filed 10–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0453]

Draft Revised Compliance Policy Guide "Sec. 560.400—Imported Milk and Cream—Federal Import Milk Act (CPG 7119.05);" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft revision of the compliance policy guide (CPG) entitled "Sec. 560.400—Imported Milk and Cream—Federal Import Milk Act." The draft CPG provides guidance on the

applicability of the Federal Import Milk Act (FIMA) to imported milk and cream.

DATES: Submit written or electronic comments on the draft revised CPG by November 29, 2004. General comments on agency guidance documents are welcome any time.

ADDRESSES: Submit written requests for single copies of the draft revision of the CPG entitled ''Sec. 560.400—Imported Milk and Cream—Federal Import Milk Act'' to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 240–632–6861. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Esther Lazar, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1485, FAX: 301–436–2632.

SUPPLEMENTARY INFORMATION:

I. Background

The FIMA (21 U.S.C. 141 *et seq.*) prohibits the importation into the United States of milk and cream without a valid permit from the Secretary of Health and Human Services. FDA is revising the CPG to clarify and update its policy regarding which dairy products require permits under the FIMA. As explained in the draft CPG, FDA intends to consider the following dairy products to be subject to the FIMA's permit requirement for importation into the United States:

- Milk, lowfat milk, skim milk, fortified milk, flavored milk, concentrated milk, evaporated milk, sweetened condensed milk, ultra filtered milk.
- Cream, half-and-half, heavy cream, light cream, and light whipping cream.

FDA does not intend to require a FIMA permit for the following dairy products:

- Sour cream, cultured milk, acidified milk, yogurt, cheese, ice cream, and eggnog.
- Dried milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, and other dehydrated milk products.
- Any dairy product for which a permit is otherwise required, if it has been processed and packaged in hermetically sealed containers so as to be commercially sterile in accordance with the requirements of 21 CFR 108.35 and 21 CFR part 113.

FDA has adopted good guidance practices (GGPs) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (21 CFR 10.115). The draft guidance is being issued as a level 1 draft guidance consistent with GGPs. The draft revised CPG represents the agency's current thinking on the applicability of the FIMA to imported milk and cream. 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 statues and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified 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.

III. Electronic Access

A copy of the draft revised CPG may be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs home page includes the draft revised CPG and may be accessed at *http://www.fda.gov/ora* under ''Compliance Reference.''

Dated: October 22, 2004.

John Marzilli,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 04–24153 Filed 10–28–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request Survey of Colorectal Cancer Screening Policies, Programs, and Systems in U.S. Health Plans

SUMMARY: In compliance with the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget for review and approval.

Proposed Collection: Title: Survey of Colorectal Cancer Screening Policies, Programs, and Systems in U.S. Health Plans. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will obtain information on policies, programs, and practices for colorectal cancer screening among health plans in the U.S. The purpose of the study is to assess (1) Health plan policies, programs, and practices for colorectal cancer screening; (2) health plan activities in response to the National Committee on Quality Assurance's new Health Employer Data Information Set measure for colorectal cancer screening; and (3) characteristics of health plans and plan policies and activities that may be associated with higher rates of colorectal cancer screening. A questionnaire will be administered by mail or Internet using a national sample of health plans. Study participants will be health plan medical directors or administrators, and they will select their preferred response mode. Burden estimates are as follows:

Estimated number respondents	Estimated number responses per respondent	Average burden hours per response	Estimated total annual burden hours
520	1	0.333	173

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Send comments to Carrie N. Klabunde, Ph.D., Epidemiologist, National Cancer Institute, EPN 4005, 6130 Executive Boulevard, Bethesda, Maryland 20892–7344. Telephone: (301) 402–3362; Fax: (301) 435–3710 E-mail: *ck97b@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 18, 2004

Rachelle Ragland-Green,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 04–24165 Filed 10–28–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mouse Monoclonal Antibody (4G11) Against Insulin-Like Growth Factor I Receptor

Peter Nissley, Peta-Gay Jackson-Booth, Cheryl Terry, Brett Lackey, Martyna Lopaczynska (NCI)

DHHS Reference No. E–342–2004/0–US–01

Licensing Contact: John Stansberry; (301) 435–5236; *stansbej@mail.nih.gov.*

The insulin-like growth factor I receptor (IGF–IR) is emerging as a molecular target for cancer treatment. Prospective studies in humans provide evidence for a relationship between circulating levels of both IGF–I and IGF binding protein 3 (IGFBP–3) and the risk for the development of cancers of the prostate, breast, lung, and colon. Many human cancers express or over-express components of the IGF signaling pathway, in particular IGF–II and the IGF–I receptor. This technology describes a mouse monoclonal antibody that binds the insulin-like growth factor I receptor. The IGF–IR monoclonal antibody 4G11 blocks binding of IGF–I to its receptor and promotes down regulation of the receptor in MCF–7 breast cancer cells, MG–63 osteosarcoma cells and a panel of colon cancer cells. Additionally, 4G11 stimulated down-regulation of the IGF–I receptors in MCF–7 cells results in inhibition of Akt and MAPK activation by IGF–I. This monoclonal antibody has utility as a laboratory reagent for immunoprecipitations, and as an inhibitor of the IGF–I signaling pathway. A humanized form of monoclonal antibody 4G11 would potentially have utility as a therapeutic to treat a variety of cancers in which IGF–IR signaling has been shown to be important. This research is partially described in Horm Metab Res 2003; 35: 850–856.

Beta-Glucuronidase Cleavable Prodrugs of O6-Alkylguanine-DNA Alkyltransferase Inactivators

Robert C. Moschel *et al.* (NCI)

U.S. Provisional Application filed 08 Sep 2004 (DHHS Reference No. E–307–2004/0–US–01)

Licensing Contact: George Pipia; (301) 435–5560; *pipiag@mail.nih.gov.*

The present invention relates to prodrugs of inactivators of O6-alkylguanine-DNA alkyltransferase. The prodrugs are cleaved by the beta-glucuronidase enzyme found in tumor cells or co-administered to the patient, and the drugs are targeted for use in cancer treatment in combination with antineoplastic alkylating agent such as 1,3-bis(2-chloroethyl)-1-nitrosouria or temozolomide.

Transcytosis of Adeno-Associated Viruses

John A. Chiorini and Giovanni Di Pasquale (NIDCR)

U.S. Provisional Application filed 08 Sep 2004 (DHHS Reference No. E–298–2004/0–US–01)

Licensing Contact: Jesse Kindra; (301) 435–5559; *kindraj@mail.nih.gov.*

The invention relates to a method for delivering nucleic acids to a variety of cells including those of the gut, kidney, lung and central nervous system. The underlying cells of such organs are covered by a barrier of endothelial or epithelial cells which can limit the transfer of nucleic acids, or other potentially therapeutic agents, to the underlying target cells. To overcome this limitation, the method employs certain members of the parvovirus family to transcytose the barrier cells. During transcytosis, the virus passes through these barrier cells and can infect cells of the underlying layer. Therefore, this method could facilitate the transfer of nucleic acids to cells that currently available viral vectors are unable to reach.

The method could be applied to the treatment of neurodegenerative diseases such as Parkinson's, Alzheimer's, Huntington's, lysosomal storage diseases, the dominant spinal cerebellar ataxias, and Krabbe's disease without the need for stereotactic injection. The method could potentially also be used in the treatment of genetic muscle disorders such as muscular dystrophy. Several of the viruses described in the invention are serologically distinct and could be used in patients who have developed an immune response to other vectors.

Multimeric Protein Toxins to Target Cells Having Multiple Identifying Characteristics

Stephen Leppla (NIAID), Shi-hui Liu (NIAID), and Thomas Bugge (NIDCR)

U.S. Provisional Application No. 60/543,417 filed 09 Feb 2004 (DHHS Reference No. E–059–2004/0–US–01)

Licensing Contact: Brenda Hefti; (301) 435–4632; *heftib@mail.nih.gov.*

This technology relates to multimeric bacterial protein toxins which can be used to specifically target cells. Specifically, this is a modified recombinant anthrax toxin protective antigen (PrAg) that has been modified in several ways. First, the PrAg can be activated both by a metalloproteinase (MMP) and by urokinase plasminogen activator (uPA). Second, the native PrAg

lethal factor (LF) binding site has been modified so that only a modified PrAg comprising two different monomers can bind anthrax LF. When administered with an effector component, the recombinant anthrax toxins are toxic only to cells expressing both a MMP and uPA on their surface. This technology is therefore useful for selective methods of treating cancers, because many cancer cells express multiple cell-surface proteases.

Novel Human Cancer Antigen, NY ESO–1/CAG–3, and Gene Encoding Same

Rong-fu Wang (EM), Steven A. Rosenberg (NCI)

U.S. Provisional Application No. 60/061,428 filed 08 Oct 1997 (DHHS Reference No. E–265–1997/0–US–01); PCT Application No. PCT/US98/19609 filed 21 Sep 1998, which published as WO 99/18206 on 15 Apr 1999 (DHHS Reference No. E–265–1997/0–PCT–02); U.S. Patent Application No. 09/529,206 filed 21 Sep 1998 (DHHS Reference No. E–265–1997/0–US–04)

Licensing Contact: Jesse Kindra; (301) 435–5559; *kindraj@mail.nih.gov.*

The current invention embodies the identification, isolation and cloning of a gene encoding a novel tumor antigen, NY ESO–1/CAG–3, as well as cancer peptides thereof and antigenic cancer epitopes contained within the cancer peptides. This novel antigen is recognized by cytotoxic T lymphocyte clones derived from the TIL586 (tumor infiltrating lymphocyte) cell line in an HLA restricted manner.

The inventors believe that cancer peptides which are encoded by the NY ESO–1/CAG–3 gene represent potential cancer vaccines, protecting an individual from development of cancer by inhibiting the growth of cells or tumors which express the NY ESO–1/CAG–3 antigen. Also embodied in the invention are pharmaceutical compositions comprising the NY ESO–1/CAG–3 antigen, peptide, or an antigenic cancer epitope thereof in combination with one or more immunostimulatory molecules. These compositions represent potential anticancer therapeutics, stimulating NY ESO–1/CAG–3-specific T cells to elicit an anti-cancer immunogenic response and thereby eliminating or reducing the cancer. While these vaccines and pharmaceutical compositions may be developed for use against a variety of cancers, data obtained to date indicate that they may be of particular value for use against melanoma.

Methods for diagnosing cancer via the detection of NY ESO–1/CAG–3 are also embodied in the invention.

Method for Inhibiting Angiogenesis

Elise C. Kohn, Lance A Liotta, and Riccardo Alessandro (NCI)

U.S. Patent No. 5,744,492 issued 28 Apr 1998 (expires 28 Apr 2015) (DHHS Reference No. E–220–1993/1–US–01)

Licensing Contact: John Stansberry; (301) 435–5236; *stansbej@mail.nih.gov* and

Combinatorial Therapy for Protein Signaling Diseases

Arpita Mehta (NCI), Lance Liotta (NCI), Emmanuel Petricoin (FDA)

U.S. Provisional Application No. 60/453,629 filed 10 Mar 2003 (DHHS Reference No. E–039–2003/0–US–01)

Licensing Contact: Michael Shmilovich; (301) 435–5019; *shmilovm@mail.nih.gov.*

Angiogenesis is a composite of regulated proliferation and regulated invasion occurring in a variety of normal and pathologic conditions. In this invention, the claimed compound and its related analogs are useful for inhibiting angiogenesis in a host and offer a novel approach to the treatment of cancer, diabetic retinopathy, hemangiomata, vasculidities, macular degeneration and other disease associate with angiogenesis. Additionally, the compound has shown efficacy at lower doses when co-administered with other anti-angiogenesis agents.

Refer to issued patent 5,744,492 (April 28, 1998), and journal articles: *PNAS* (1995) 92(5):1307–11, and *In Vivo* (1996) 10(2):153–60.

Dated: October 22, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–24166 Filed 10–28–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Interagency Autism Coordinating Committee

The National Institutes of Health (NIH) hereby announces a meeting of the Interagency Autism Coordinating Committee (IACC) to be held on November 19, 2004, on the NIH campus in Bethesda, Maryland.

The Children's Health Act of 2000 (Pub. L. 106–310), Title I, Section 104, mandated the establishment of an IACC to coordinate autism research and other efforts within the Department of Health and Human Services. In April 2001, Secretary Tommy Thompson delegated the authority to establish the IACC to the NIH. The National Institute of Mental Health (NIMH) at the NIH has been designated the lead for this activity.

The IACC meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee.

Date: November 19, 2004.

Time: 9 a.m.–4:30 p.m.

Agenda: Discussion of autism activities across Federal agencies.

Place: National Institutes of Health, 31 Center Drive, Building 31, Conference Room 10 (6th floor), Bethesda, Maryland 20892.

Contact Person: Ann Wagner, Ph.D., Division of Services and Intervention Research, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 7142, MSC 9633, Bethesda, Maryland 20892. E-mail: *awagner@mail.nih.gov*. Phone: 301–443–4283.

Any member of the public interested in presenting oral comments to the Committee may notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Presentations may be limited to 5 minutes; both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding his/her statement to the contact person listed on this notice. The statement should include the name, address, telephone number, and, when applicable, the business or professional affiliation of the interested person.

Information about the meeting and online registration forms are also available on-line on the NIMH home page at *http://www.nimh.nih.gov/autismiacc/index.cfm*.

Dated: October 20, 2004.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 04–24168 Filed 10–28–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Dengue Tetravalent Vaccine Containing a Common 30 Nucleotide Deletion in The 3′–UTR of Dengue Types 1,2,3, And 4

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a an exclusive license to practice the following invention as embodied in the following patent applications: (1) E–120–2001, Whitehead *et al.*, ''Development of Mutations Useful for Attenuating Dengue Viruses and Chimeric Dengue Viruses'', U.S. Provisional Patent Application 60/293,049, filed May 22, 2001, PCT/US02/16308, filed May 22, 2002, U.S. Patent Application 10/719,547, filed November 21, 2003, European Patent Application 02739358.6, filed May 22, 2002, Canadian Patent Application 2448329, filed May 22, 2002, Indian Patent Application 2814DELNP2003, filed May 22, 2002, Australian Patent Application 2002312011, filed May 22, 2002, and Brazilian Patent Application PI0209943.8, filed May 22, 2002, and (2) E–089–2002, ''Dengue Tetravalent Vaccine Containing a Common 30 Nucleotide Deletion in The 3′–UTR of Dengue Types 1,2,3, And 4, or Antigenic Chimeric Dengue Viruses 1,2,3, And 4'', U.S. Provisional Applications 60/377,860, filed May 3, 2002, 60/436,500, filed December 23, 2002, PCT/US03/13279, filed April 25, 2003, to Fundaco Butantan, having a place of business in Sao Paulo, Brazil. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before December 28, 2004, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: *ps193c@nih.gov*; Telephone: (301) 496–7056, ext. 268; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The global prevalence of dengue has grown dramatically in recent decades. The disease is now endemic in more than 100 countries in Africa, North and South America, the Eastern Mediterranean, Southeast Asia and the Western Pacific. Southeast Asia and the Western Pacific are most seriously affected. Before 1970 only nine countries had experienced Dengue Hemorrhagic Fever (DHF) epidemics, a number that had increased more than four-fold by 1995. WHO currently estimates there may be 50 million cases of dengue infection worldwide every year.

The methods and compositions of this invention provide a means for prevention of dengue infection and dengue hemorrhagic fever (DHF) by immunization with attenuated, immunogenic viral vaccines against dengue. The vaccine is further described in Blaney JE *et al.*, ''Mutations which enhance the replication of dengue virus type 4 and an antigenic chimeric dengue virus type 2/4 vaccine candidate in Vero cells,'' Vaccine 2003 Oct 1;21(27–30):4317–27 and Whitehead SS *et al.*, ''A live, attenuated dengue virus type 1 vaccine candidate with a 30-nucleotide deletion in the 3′ untranslated region is highly attenuated and immunogenic in monkeys,'' J. Virol. 2003 Jan;77(2):1653–7.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to live attenuated vaccines against dengue infections in humans. The Licensed Territory may be limited to Brazil.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. 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: October 22, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–24167 Filed 10–28–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Public Health Service; Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the Federal Register.

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members: James L. Stone, Chairperson; Daryl W. Kade; Douglas Morgan; Kathryn Power.

For further information about the SAMHSA Performance Review Board, contact the Division of Management Systems, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 3–1017, Rockville, Maryland 20857, telephone (240) 276–1124 (not a toll-free number).

Dated: October 4, 2004.

Charles G. Curie,

Administrator, SAMHSA.

[FR Doc. 04–24155 Filed 10–28–04; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1549–DR]

Alabama; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1549–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Cherokee County for Public Assistance.

Bullock, Houston, and Jackson Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24180 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1561–DR]

Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1561–DR), dated September 26, 2004, and related determinations.

EFFECTIVE DATE: October 20, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2004:

Putnam County for Public Assistance (already designated for Individual Assistance).

Hillsborough and Pinellas Counties for Public Assistance [Categories C–G] (already designated for Public Assistance [Categories A and B], including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours, and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24184 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1548–DR]

Louisiana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1548–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened. The incident period for this declared disaster is now September 13, 2004, through and including September 26, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24179 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1550–DR]

Mississippi; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1550–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: October 20, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Adams, Amite, Claiborne, Copiah, Franklin, Hinds, Jefferson, Lawrence, Lincoln, Pike, Rankin, Scott, Simpson, Warren, and Wilkinson Counties for emergency protective measures (Category B) under the Public Assistance Program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24181 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1563–DR]

New Jersey; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Jersey (FEMA–1563–DR), dated October 1, 2004, and related determinations.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Jersey is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 2004:

Hunterdon County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24185 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1564–DR]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1564–DR), dated October 1, 2004, and related determinations.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 2004:

Niagara and Orange Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24186 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1565–DR]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1565–DR), dated October 1, 2004, and related determinations.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 2004:

Schoharie, Steuben, and Tioga Counties for Public Assistance.

Broome, Chenango, Delaware, Orange, Sullivan, and Ulster Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24188 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1556–DR]

Ohio; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1556–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Lawrence County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24182 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Elk, Lawrence, Potter, Somerset, and Sullivan Counties for Public Assistance (already designated for Individual Assistance).

Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Bucks, Butler, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Cumberland, Dauphin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Susquehanna, Tioga, Union, Washington, Wayne, Westmoreland, Wyoming, and York Counties for Categories C–G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24183 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1568–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1568–DR), dated October 7, 2004, and related determinations.

EFFECTIVE DATE: October 22, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 7, 2004:

Unicoi County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households

Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24189 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1570–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1570–DR), dated October 18, 2004, and related determinations.

EFFECTIVE DATE: October 18, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 18, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from severe storms and flooding from the remnants of Hurricane Jeanne, beginning on September 27, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Marianne Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

The independent cities of Salem and Roanoke, and the counties of Alleghany, Craig, Floyd, Giles, Montgomery, Patrick, and Roanoke for Individual Assistance.

All jurisdictions within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–24190 Filed 10–28–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4900–FA–25]

Announcement of Funding Awards for Fiscal Year 2004 Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: This document identifies the entities selected for funding under the Fiscal Year 2004 Historically Black Colleges and Universities program (HBCUs). The HBCUs program assists Historically Black Colleges and Universities in expanding their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG). This notice is published in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities program was enacted under Section 107 of the CDBG appropriation for Fiscal Year 2004, as part of the ''Veterans Administration, HUD and Independent Agencies Appropriations Act of 2004'' and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HBCU program provides funds for a wide range of CDBG-eligible activities, including housing rehabilitation and financing, property

demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog Federal Domestic Assistance number for this program is 14.237.

On May 14, 2004 (69 FR 27033), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $9.5 million in Fiscal Year 2004 for the HBCU program. Of this amount, $1.4 million was made available to HBCU applicants that had not been funded in the past (applicants could request up to $340,000) and $7.6 million to HBCU applicants that had been previously funded (applicants could request between $340,000 to $550,000). The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2004 Historically Black Colleges and Universities Program Funding Competition, by Institution, Address, and Grant Amount

Region III

1. University of Maryland Eastern Shore, Dr. Joseph O. Arumala, University of Maryland Eastern Shore, Backbone Road, Princess Anne, MD 21853. Grant: $340,000.

2. West Virginia State University, Ms. Jenny Fertig, West Virginia State University, P.O. Box 1000, 835 Sullivan Hall East, Kanawha, WV 25112. Grant: $550,000.

Region IV

3. Alabama State University, Dr. William Brock, Alabama State University, 915 South Jackson Street, Montgomery, AL 36104. Grant: $548,339.

4. Savannah State University, Dr. Shirley Geiger, Savannah State University, 3219 College Street, Savannah, GA 31404. Grant: $550,000.

5. Benedict College, Mr. Larry Salley, Benedict College, 1600 Harden Street, Columbia, SC 29204. Grant: $550,000.

6. Allen University, Ms. Marian Thompson, Allen University, 1530 Harden Street, Columbia, SC 29204. Grant: $550,000.

7. North Carolina A&T State University, Dr. Musibau Shofoluwe, North Carolina A&T State University, 1601 East Market Street, Greensboro, NC 27411. Grant: $548,174.

8. Florida A&M University, Ms. Patricia W. McGill, Florida A&M University, Suite 400 Foote-Hilyer, Administration Center, Tallahassee, FL 32307. Grant: $550,000.

9. Livingstone College, Mrs. Grace Adams-Square, Livingstone College, 701 West Monroe Street, Salisbury, NC 28144. Grant: $340,000.

10. Hinds Community College-Utica Campus, Mr. Bobby James Pamplin, Hinds Community College—Utica Campus, P.O. Box 1094–HCC, Utica, MS 39175. Grant: $550,000.

11. Claflin University, Mr. Leon Brunson, Claflin University, 400 Magnolia Street, Orangeburg, SC 29115. Grant: $550,000.

Region VI

12. University of Arkansas at Pine Bluff, Mr. Henry Aaron Golatt, University of Arkansas at Pine Bluff, 1200 North University Drive, Mail Slot 4943, Pine Bluff, AR 71601. Grant: $550,000.

13. Southern University at Shreveport, Ms. Jeanette H. Williams, Southern University at Shreveport, 3050 Martin Luther King Jr. Boulevard, Shreveport, LA 71107. Grant: $550,000.

Dated: October 20, 2004.

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

[FR Doc. E4–2917 Filed 10–28–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by

GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Ms. Audrey C. Ormerod, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, 600 Army Pentagon, Washington, DC 20310–0600; (703) 601–2520; Energy: Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–4548; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; Navy: Mr. Charles C. Cocks, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: October 21, 2004.

Mark R. Johnston,

Director, Office of Special Needs, Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 10/29/2004

Suitable/Available Properties

Buildings (by State)

Oklahoma

Federal Building
207 North 4th
Hugo Co: Choctaw OK 74743–3817
Landholding Agency: GSA
Property Number: 52400440004
Status: Excess
Comment: 16, 484 sq. ft., most recent use—office, U.S. Postal Service will vacate FY2006
GSA Number: 7–G–OK–0569

Social Security Admin.
216 SW First Street
Ardmore Co: Carter OK 73401–
Landholding Agency: GSA
Property Number: 54200440005
Status: Surplus
Comment: 5284 sq. ft., most recent use—office
GSA Number: 7–G–OK–0556

Texas

Social Security Admin.
810 Travis Street
Sherman Co: Grayson TX 75090–
Landholding Agency: GSA
Property Number: 54200440006
Status: Surplus
Comment: 5623 sq. ft., most recent use—office will be vacate FY2005
GSA Number: 7–G–TX–1074

Suitable/Unavailable Properties

Buildings (by State)

Georgia

East Parcel
Boyett Village Family
Housing Complex
Maple Avenue
Albany GA
Location: republished
Landholding Agency: GSA
Property Number: 54200410003
Status: Surplus
Comment: 119 residential units & support facilities, possible lead based paint, utility upgrade required by local utility commission (estimates range from $1.6m to $2.7 million for entire Boyett Village)
GSA Number: 4–N–GA–581B

Hawaii

Bldg. 1142
Naval Air Station
Kalaeloa Co: HI 86707–
Landholding Agency: Navy
Property Number: 21200440001
Status: Unutilized
Comment: 29657 sq. ft., most recent use—office/storage

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 05296
Redstone Arsenal
Madison Co: AL 35898–5000
Landholding Agency: Army
Property Number: 21200440001
Status: Unutilized
Reasons: Secured area, extensive deterioration

Bldg. 311
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200440002
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 1011
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200440003
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 7204
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200440004
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 40114
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency:
Property Number: 21200440005
Status: Unutilized
Reasons: Extensive deterioration

California

Bldgs. 905, 910, 911
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 21200440006
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 924, 931, 940
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency:
Property Number: 21200440007
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 00636
Parks Reserve Forces
Dublin Co: Alameda CA 94568–
Landholding Agency: Army
Property Number: 21200440008
Status: Unutilized
Reasons: Extensive deterioration

Georgia

Bldg. 09226
Fort Benning
Ft. Benning Co: Chattachoochee GA 31905–
Landholding Agency: Army
Property Number: 21200440009
Status: Unutilized
Reasons: Extensive deterioration

7 Bldgs.
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Location: OT001, 003, 004, 007, 009, 017, 029
Landholding Agency: Army
Property Number: 21200440010
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 02404, 02408
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200440011
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 21802 thru 21807
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200440012
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 33513, 39105, 39114
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200440013
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 81102
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200440014
Status: Unutilized
Reason: Extensive deterioration

Hawaii

71 Tunnels
Aliamanu
Honolulu Co: HI 96818–
Landholding Agency: Army
Property Number: 21200440015
Status: Unutilized
Reason: Contamination

10 Tunnels
Aliamanu
Honolulu Co: HI 96818–
Landholding Agency: Army
Property Number: 21200440016
Status: Unutilized
Reason: Contamination

49 Tunnels
Aliamanu
Honolulu Co: HI 96818–
Landholding Agency: Army
Property Number: 21200440017
Status: Unutilized
Reason: Contamination

Indiana

Bldgs. 0308A
Newport Chemical Depot
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 21200440019
Status: Excess
Reason: Secured area

Iowa

Bldgs. 00677, 00671
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52601–
Landholding Agency: Army
Property Number: 21200440018
Status: Excess
Reason: Secured area

Kansas

Bldgs. 450, 474
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200440020
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Leavenworth
1811, 1812, 1816, 1817
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200440021
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Leavenworth
1813, 1814, 1815, 1818
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200440022
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
1819, 1820, 1822, 1826
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200440023
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Leavenworth
1821, 1823–1825, 1827
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200440024
Status: Unutilized
Reason: Extensive deterioration

Kentucky

4 Bldgs.
Fort Knox
02015, 02426, 06099, 09614
Hardin Co: KY 40121–
Landholding Agency: Army
Property Number: 21200440025
Status: Unutilized

Reason: Extensive deterioration

Bldg. 07738
Fort Knox
Hardin Co: KY 40121–
Landholding Agency: Army
Property Number: 21200440026
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 00664
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02040
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440028
Status: Unutilized
Reason: Extensive deterioration

Bldg. E3526
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 03854
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200440030
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldg. 00714
Selfridge Air Natl Guard Base
Macomb Co: MI 48045–
Landholding Agency: Army
Property Number: 21200440032
Status: Unutilized
Reason: Extensive deterioration

New Jersey

Bldg. 00202
Fort Monmouth
Monmouth Co: NJ 07703–
Landholding Agency: Army
Property Number: 21200440033
Status: Unutilized
Reason: Extensive deterioration

New Mexico

31 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Landholding Agency: Army
Property Number: 21200440034
Status: Excess
Reason: Extensive deterioration

7 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Location: 908, 910, 928, 930, 932, 934, 936
Landholding Agency: Army
Property Number: 21200440035
Status: Excess
Reason: Extensive deterioration

18 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Location: 10042–10046, 10050–10052, 10054–10055, 10060–10061, 10064–10065, 10068–10069, 10041, 10101
Landholding Agency: Army
Property Number: 21200440036
Status: Excess
Reason: Extensive deterioration

12 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Location: 10122, 10132, 10134, 10150, 10152, 10170, 10172, 10200, 10202, 10100, 10102, 10120
Landholding Agency: Army
Property Number: 21200440037
Status: Excess
Reason: Extensive deterioration

4 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Location: 10230, 10231, 10232, 10233
Landholding Agency: Army
Property Number: 21200440038
Status: Excess
Reason: Extensive deterioration

34 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Landholding Agency: Army
Property Number: 21200440039
Status: Excess
Reason: Extensive deterioration

9 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Location: 11103, 11109, 11119, 11123, 11127, 11135, 11143, 11172, 11175
Landholding Agency: Army
Property Number: 21200440040
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Location: 11104, 11116, 11128, 11155, 11151, 11159
Landholding Agency: Army
Property Number: 21200440041
Status: Excess
Reason: Extensive deterioration

28 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Landholding Agency: Army
Property Number: 21200440042
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Location: 12210, 12212, 12214, 12216, 12218, 12228
Landholding Agency: Army
Property Number: 21200440043
Status: Excess
Reason: Extensive deterioration

8 Bldgs.
White Sands Missile Range
Dona Ana Co: NM 88002–
Location: 12229, 12242, 12243, 12245, 12246, 12230, 12241, 12244
Landholding Agency: Army
Property Number: 21200440044
Status: Excess
Reason: Extensive deterioration

Bldg. 31010
White Sands Missile Range
Dona Ana Co: NM 88002–
Landholding Agency: Army
Property Number: 21200440045
Status: Excess
Reason: Extensive deterioration

New York

Bldgs. 629, 2041, 2215
Fort Drum
Jefferson Co: NY 13602–
Landholding Agency: Army
Property Number: 21200440046
Status: Unutilized
Reason: Extensive deterioration

North Carolina

3 Bldgs.
Fort Bragg
Cumberland Co: NC 28310–
Location: A3968, A3969, A4650
Landholding Agency: Army
Property Number: 21200440047
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Bragg
Cumberland Co: NC 28310–
Location: D2420, D2617, D2822, D2826
Landholding Agency: Army
Property Number: 21200440048
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Bragg
Cumberland Co: NC 28310–
Location: H4583, H4584, H4586, H4786, H5082
Landholding Agency: Army
Property Number: 21200440049
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 09039, 09134
Fort Bragg
Cumberland Co: NC 28310–
Landholding Agency: Army
Property Number: 21200440050
Status: Unutilized
Reason: Extensive deterioration

Bldgs. P4443, P4544
Fort Bragg
Cumberland Co: NC 28310–
Landholding Agency: Army
Property Number: 21200440051
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

Bldgs. MA050, MA070
Regional Training Institute
Oklahoma City Co: OK 73111–
Landholding Agency: Army
Property Number: 21200440052
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Bldgs. 01003, 01011, 01012
Tobyhanna Army Depot
Monroe Co: PA 18466–
Landholding Agency: Army
Property Number: 21200440053
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 01023–01024
Tobyhanna Army Depot
Monroe Co: PA 18466–
Landholding Agency: Army
Property Number: 21200440054
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00035, 00045
Carlisle Barracks
Cumberland Co: PA 17013–
Landholding Agency: Army
Property Number: 21200440055
Status: Excess
Reason: Extensive deterioration

Bldgs. 00317, 00608
Carlisle Barracks
Cumberland Co: PA 17013–
Landholding Agency: Army
Property Number: 21200440056
Status: Excess
Reason: Extensive deterioration

South Carolina

Bldg. 122–R
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 412200440009
Status: Unutilized
Reason: Secured area

Bldg. 151–2R
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 412200440010
Status: Unutilized
Reason: Secured area

Bldg. 740–001A
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 412200440011
Status: Unutilized
Reason: Secured area

Tennessee

Bldgs. 2440, 2632, 2640
Fort Campbell
Montgomery Co: TN 42223–
Landholding Agency: Army
Property Number: 21200440057
Status: Unutilized
Reason: Extensive deterioration

Bldg. 75011
Fort Campbell
Montgomery Co: TN 42223–
Landholding Agency: Army
Property Number: 21200440058
Status: Unutilized
Reason: Extensive deterioration

31 Bldgs.
Milan Army Ammo Plant
Q0001–Q00029, Q0031–Q0032
Carroll Co: TN 38358–
Landholding Agency: Army
Property Number: 21200440059
Status: Excess
Reason: Extensive deterioration

Bldgs. Q0033–Q0053
Milan Army Ammo Plant
Carroll Co: TN 38358–
Landholding Agency: Army
Property Number: 21200440060
Status: Excess
Reason: Extensive deterioration

Bldgs. Q0060–Q0061
Milan Army Ammo Plant
Carroll Co: TN 38358–
Landholding Agency: Army
Property Number: 21200440061
Status: Excess
Reason: Extensive deterioration

Bldg. J0105
Milan Army Ammo Plant
Carroll Co: TN 38358–
Landholding Agency: Army
Property Number: 21200440062
Status: Excess
Reason: Extensive deterioration

Utah

Bldgs. 3000 thru 3011
Tooele Army Depot
Tooele Co: UT 84074–
Landholding Agency: Army
Property Number: 21200440063
Status: Unutilized
Reason: Secured area

12 Bldgs.
Tooele Army Depot
Tooele Co: UT 84074–
Landholding Agency: Army
Property Number: 21200440064
Status: Unutilized
Reason: Secured area

Bldg. 01237
Tooele Army Depot
Tooele Co: UT 84074–
Landholding Agency: Army

Property Number: 21200440065
Status: Unutilized
Reason: Secured area

Land (by State)

Maryland

15 acres
Ft. Meade
Ft. Meade Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21200440031
Status: Unutilized
Reason: Secured area

[FR Doc. 04–24048 Filed 10–28–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, November 12, 2004, 1:30 p.m. to 4 p.m.

ADDRESSES: Bucks County Audubon Society, Honey Hollow Environmental Education Center, 6324 Upper York Road, New Hope, PA 18938.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988, and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton, PA 18042. (610) 923–3548.

Dated: October 22, 2004.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 04–24214 Filed 10–28–04; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Wild and Scenic Rivers System; Westfield River, Massachusetts

AGENCY: Office of the Secretary, DOI.

ACTION: Approval of application.

SUMMARY: The Secretary of Interior hereby announces approval of an application by the Governor of Massachusetts to expand the designation of the Westfield River, Massachusetts and tributaries as a State- and local-administered component of the National Wild and Scenic Rivers System. The effect of this action will be that 34.8 miles of river will be added to the previously designated 43.3 miles. The river and affected lands will continue to be administered by State and local authorities without expense to the United States.

FOR FURTHER INFORMATION CONTACT: Jamie Fosburgh, National Park Service, Northeast Region, 15 State Street, Boston, MA 02109, (617) 223–5191 (*Jamie_Fosburgh@nps.gov*).

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted the Secretary of the Interior by section 2(a)(ii) of the Wild and Scenic Rivers Act (16 U.S.C. 1273(a)(ii)), and upon proper application of the Governor of the Commonwealth of Massachusetts, 34.8 miles of the Westfield River, its three branches, and headwater tributaries are hereby added to the 43.3 miles of the Westfield River previously designated as State-administered components of the National Wild and Scenic Rivers System on November 16, 1993.

On April 26, 2002, the Governor of the Commonwealth of Massachusetts petitioned the Secretary of the Interior to add 34.8 miles of the Westfield River and tributaries to the National System. These river segments had been designated a Local Scenic River on December 5, 2001, pursuant to the Massachusetts Scenic and Recreational Rivers Act. In response to the Governor's request, the National Park Service conducted a complete review of the State application and documents associated with the designation decision. As a result of that review, the Secretary has determined that 34.8 miles of the Westfield and its tributaries should be designated as a State-administered component of the National Wild and Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act (WSRA).

The State of Massachusetts has fulfilled the requirement of the WSRA by designating these segments as ''Local Scenic River'' and by adopting a program of action that will adequately protect the river from adverse State actions. The National Park Service evaluation of the river concluded that these segments of the Westfield River meet the criteria for wild, scenic, and recreational classification under the WSRA. Accordingly, the following river segments are classified as wild, scenic, or recreational pursuant to section 2(b) of the WSRA to be administered by State and local government: *Wild:* Shaker Mill Brook, 2.6 miles from Brooker Hill Road in Becket to its headwaters. *Scenic:* Upper East Branch, 6.6 miles from the Windsor/Cummington town line to its confluence; Upper East Branch Tributaries—Drowned Land Brook, 1.5 miles; Center Brook, 2.5 miles; and Windsor Jambs Brook, 1.3 miles; and Headwater Tributaries of the West Branch—Shaker Mill Brook, 1.2 miles from Brooker Hill Road in Becket to its confluence; Depot Brook, 4.5 miles; Savery Brook, 2.9 miles; Watson Brook, 1.9 miles; and Center Pond Brook, 1.6 miles from Center Pond to its confluence.

Recreational: Lower Middle Branch, East Branch, and Main Stem, 3.2 miles in the Town of Huntington and the Upper East Branch, 5.0 miles from its confluence with Sykes Brook to its confluence with the West Branch.

This action is taken following public involvement and consultation with the Departments of Agriculture, Army, Energy, and Transportation, the Federal Energy Regulatory Commission, and the U.S. Environmental Protection Agency as required by section 4(c) of the WSRA. A 45-day period for public comment on the State's application and river management plan of the proposed national designation was provided from April 10, 2003, to May 27, 2003. All comments received have been carefully considered. A 30-day period of public comment on the environmental assessment was provided from May 4, 2004, to June 4, 2004. No comments were received on the Environmental Assessment.

Notice is hereby given that, effective upon this date, the above-described river segments are approved for inclusion in the National Wild and Scenic Rivers System to be administered

by the Commonwealth of Massachusetts and local jurisdictions.

Dated: September 28, 2004.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 04–24174 Filed 10–28–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0095; Endangered and Threatened Wildlife, 50 CFR 17.84, Experimental Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Fish and Wildlife Service (We/Service) is requesting OMB to extend an existing approval to collect information on some experimental populations of threatened and endangered wildlife, as described below. We will use the information that we collect to monitor the success of reintroduction efforts and recovery efforts in general.

DATES: You must submit comments on or before November 29, 2004.

ADDRESSES: Send your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or at *OIRA_Docket@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, 4401 North Fairfax Drive, MS 222–ARLSQ, Arlington, Virginia 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirement or explanatory information, contact Hope Grey, Information Collection Clearance Officer, at the address or fax number listed above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: We have sent a request to OMB to renew approval of the information collection requirements for Endangered and Threatened Wildlife, Experimental Populations. Currently we have approval from OMB to collect information under OMB Control Number 1018–0095, which expires on October 31, 2004. We are requesting a 3-year term of approval for this information collection activity. Federal agencies 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. OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). Following our submittal, OMB has up to 60 days to approve or disapprove our information collection renewal; however, they may respond as early as 30 days after our submittal. Therefore, to ensure consideration, send your comments and suggestions to OMB by the date listed in the **DATES** section near the beginning of this notice.

On July 29, 2004, we published a 60-day notice on this information collection requirement in the **Federal Register** (69 FR 45341) and invited public comment. The comment period ended on September 27, 2004. We received one comment from an individual who opposed collecting depredation information from certain groups of individuals, such as hunting or trapping clubs. We cannot exclude any group or individual from reporting information that they believe may be related to this information collection. The commenter did not address the appropriateness of the information or the burden hours. Therefore, we have not made any changes to our information collection requirements.

Section 9 of the Endangered Species Act of 1973 (ESA) describes prohibited acts involving threatened or endangered species (16 U.S.C. 1538(a)(1)(B)). Information collection and reporting to the Service is required for some experimental populations established under section 10(j) of the Endangered Species Act of 1973 (ESA), as amended. We collect three major categories of information under the experimental population regulations (50 CFR 17.84):

(1) General take or removal. General take or removal information refers to human-related mortality including unintentional taking incidental to otherwise lawful activities (*e.g.*, highway mortalities), take in defense of human life, take related to defense of property (if authorized), or take in the form of authorized harassment. Most contacts related to this type of information collection are sightings of experimental animals or the inadvertent discovery of an injured or dead individual.

(2) Depredation-related take. Depredation-related take refers to take for management purposes where livestock depredation has been documented and may include authorized harassment or lethal take of experimental animals in the act of attacking livestock. The information collected for this type of take is necessary for follow-up reports after the Service has authorized harassment or lethal take of experimental animals in relation to confirmed instances of livestock depredation or in defense of human life.

(3) Collection of specimens or the recovery of dead animals that are part of an experimental population. Specimen collection is for the purpose of documenting incidental or authorized scientific collection. Most of the information collection requirements for this take pertain primarily to the reporting of sightings of experimental population animals or the inadvertent discovery of an injured or dead individual. The information collected is necessary for follow-up reports when we have authorized take of experimental animals for specimen collection.

Because individuals of designated experimental populations for species listed as threatened or endangered under the ESA are categorically protected, documentation of human-related mortalities, recovery of dead specimens, and other types of take related to the status of experimental populations are important for monitoring the success of reintroduction efforts and recovery efforts in general. To minimize potential conflict with humans, which could undermine recovery efforts, livestock depredations connected with some experimental populations of listed species require prompt attention to (1) determine the location, timing, and nature of the predatory behavior involved, (2) accurately determine the species responsible for a livestock kill, and (3) apply necessary control measures.

In cooperation with the United States Department of Agriculture, Animal Plant and Health Inspection Service, Division of Wildlife Services, or other cooperating Federal agencies, we rely on prompt public reporting of depredation in order to resolve livestock related problems. Therefore, a time sensitive requirement for reporting problems (generally within 24 hours) to the appropriate Service office is necessary. Cooperating Federal agencies provide the vast majority of the information collected by the Service as a result of experimental population regulations.

However, some of the information is provided by the public. Information collection is achieved primarily by means of telephone calls from members of the public to Service offices specified in the individual regulations (some may choose to use facsimile or electronic mail). Reporting parties include, but are not limited to, individuals or households, farms, businesses, and other nonprofit organizations. We collect the following information:

(a) Name, address, and phone number of the reporting party.

(b) Type of incident.

(c) Location and time of the incident.

(d) Species of experimental population involved.

(e) Description of circumstances related to the incident.

The reporting of specimen collections, recovery, and dead individuals from experimental populations is important to our efforts to monitor these individuals and for other scientific purposes. Because the number of reports generated annually by the general public (rather than cooperating agencies or separately permitted individuals) under the experimental population regulations is extremely small (far less than one report per year, per rule) and to assure thorough documentation of results, we estimate the number of expected reports to assume a maximum number per year based on allowance for increased population size and public awareness of experimental populations. Several of the existing experimental populations described under 50 CFR 17.84 contain information collection requirements. This information collection would also apply to any future experimental populations that become established that require the same types of reports as listed above.

Title: Endangered and Threatened Wildlife, 50 CFR 17.84, Experimental populations.

OMB Control Number: 1018–0095.

Form Numbers: None.

Frequency: Occasionally.

Description of Respondents: Private individuals, households, businesses, nonprofit organizations, and farms.

Total Annual Responses: 62.

Total Annual Burden Hours: 15.5 hours.

Type of report	Number of respondents	Average time required per report (minutes)	Total annual burden (hours)
General take or removal	20	15	5
Depredation related take	22	15	5.5
Specimen collection	20	15	5

We again invite comments concerning this information collection on: (1) Whether or not the collection of information is necessary for the proper performance of our native endangered and threatened species management functions, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the 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. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: October 20, 2004.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–24207 Filed 10–28–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL; WYW151643]

Notice of Availability of the Record of Decision for the South Powder River Basin Coal Final Environmental Impact Statement, West Antelope Lease by Application Tract, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the South Powder River Basin Coal Final Environmental Impact Statement (FEIS); West Antelope Lease by Application Tract.

ADDRESSES: The document will be available electronically on the following Web site: *http://www.wy.blm.gov/*. Copies of the ROD are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming.
- Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Janssen, Wyoming Coal Coordinator, (307) 775–6206 or Ms. Mavis Love, Land Law Examiner (307) 775–6258. Both Mr. Janssen's and Ms. Love's offices are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: As stated in the FEIS, a ROD will be issued for each of the five Federal coal tracts considered for leasing in the South Powder River Coal FEIS. The ROD covered by this Notice of Availability is for the West Antelope coal tract (WYW151643) and addresses leasing an estimated 202.3 million tons of in-place Federal coal administered by the BLM Casper Field Office underlying approximately 2,809.13 acres of private surface land in Converse County, Wyoming. The ROD approves Alternative 3 as the selected alternative. A competitive lease sale will be announced in the **Federal Register** at a later date.

Because the Assistant Secretary of the Interior, Land and Minerals Management, has concurred in this decision, it is not subject to appeal to the Interior Board of Land Appeals as provided in 43 CFR part 4. This decision is the final action of the Department of the Interior.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 04–23594 Filed 10–28–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–05–1420–BJ]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat (in 2 sheets) representing the dependent resurvey of a portion of the second guide meridian east, a portion of the north boundary, a portion of the subdivisional lines, portions of general number 19 and mineral survey no. 4313 A, and a portion of Sunrise No. 12 mining claim and subdivision of sections 1 and 2, Township 18 South, Range 10 East, accepted August 11, 2004, and officially filed August 13, 2004, for Group 932 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 9 and 10, in Townships 10 North, Range 22 East, accepted August 17, 2004, and officially filed August 26, 2004, for Group 919 Arizona.

The plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the sixth standard parallel north, (south boundary), Township 25 North, Range 25 East, accepted August 13, 2004, and officially filed August 19, 2004, for Group 886 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (in 3 sheets) representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 9, 10 and 14, Township 18 South, Range 29 East, accepted June 29, 2004, and officially filed July 9, 2004, for Group 884 Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of portions of the Arizona-New Mexico State Line between the 96 mile post and the 113 mile post and between the 113 1.2 mile post and the 115 mile post, Township 23 North, Range 31 East, and Township 24 and 25 North, Range 31 East accepted July 2, 2004, and officially filed July 15, 2004, for Group 880 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the resurvey of the south boundary and survey of the subdivisional lines Township 24 North, Range 31 East, accepted July 30, 2004, and officially filed August 6, 2004, for Group 880 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the portion of the sixth standard parallel north, a portion of the subdivisional lines and the subdivision of section 12 in Township 25 North, Range 30 East, accepted May 18, 2004, and officially filed May 26, 2004, for Group 880 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the sixth standard parallel north, and the west and a portion of the north boundaries and the survey of the subdivisional, Township 25 North, Range 31 East, accepted July 2, 2004, and officially filed July 15, 2004, for Group 880 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, P.O. Box 1552, Phoenix, Arizona, 85001–1552.

Dated: October 6, 2004.

Stephen K. Hansen,

Acting Cadastral Chief.

[FR Doc. 04–24156 Filed 10–28–04; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Big Thicket National Preserve

SUMMARY: This notice announces a revision to the boundary of Big Thicket National Preserve to include three parcels of land. Two were donated by the Lower Neches Valley Authority and one donated by Thomas E. Nevinger and Joyce Rash Nevinger. The National Park Service has determined that this boundary revision will make a significant contribution to the purpose for which the preserve was created.

DATES: The effective date of this Order is the date of the **Federal Register** publication in which this Order appears.

FOR FURTHER INFORMATION CONTACT: Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, TX 77701, or by telephone at (409) 839–2689.

SUPPLEMENTARY INFORMATION: Section 1 of Act of October 11, 1974, Pub. L. 93–439, 88 Stat. 1254, codified as amended at 16 U.S.C. 698 (1994), authorizes the Secretary of the Interior to accept title to any land or interests in land located outside the boundaries of the Big Thicket National Preserve which any private person, organization, or public or private corporation may offer to donate to the United States if he finds that such lands would make a significant contribution to the purpose for which the preserve was created. Pursuant to the above-cited act, the boundary of the Menard Creek Corridor Unit of the preserve is being revised to include those lands donated by Thomas E. Nevinger and Joyce Rash Nevinger comprised of Tract 127–09 containing 1.10 acres of land, within Liberty County, Texas, depicted on land acquisition status map, segment 127 having drawing number 175–30,005. The boundary of the Beaumont Unit of the preserve is being revised to include those lands donated by Lower Neches Valley Authority comprised of Tract 193–07 containing 333.88 acres and Tract 193–08 containing 27.64 acres as depicted on land acquisition status map, segment 193 having drawing number 175–30,009. These maps are on file at the Office of the National Park Service, Land Resources Program Center,

Intermountain Region and the Office of the Superintendent, Big Thicket National Preserve.

Dated: August 3, 2004.

William D. Shaddox,

Regional Director, Intermountain Region.

[FR Doc. 04–24171 Filed 10–28–04; 8:45 am]

BILLING CODE 4312–CB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Decision Notice and Finding of No Significant Impact (FONSI) for the Proposal To Rehabilitate the Bridge Over the North Entrance to Ronald Reagan Washington National Airport on the George Washington Memorial Parkway, Virginia

AGENCY: National Park Service.

ACTION: Availability of the Decision Notice and FONSI for the proposal to Rehabilitate the Bridge over the North Entrance to Ronald Reagan Washington National Airport on the George Washington Memorial Parkway, Virginia.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the availability of the Decision Notice and FONSI for the Rehabilitation of the Bridge over the North Entrance to Ronald Reagan Washington National Airport. The Decision Notice and FONSI identifies Alternative B as selected by the NPS for action. It is the preferred and environmentally preferred alternative in the Environmental Assessment. Under this alternative, the NPS, in cooperation with the Federal Highway Administration, will rehabilitate the historic bridge over the north entrance to Ronald Reagan Washington National Airport on the George Washington Memorial Parkway (GWMP). The rehabilitation of the bridge includes the replacement of the bridge decking, replacement of guardrails and railings, and construction of a shoulder extension to realign the Mount Vernon Trail. The shoulder extension and trail realignment will allow the NPS to spatially and physically separate trail users from northbound traffic on the GWMP.

DATES: The Environmental Assessment, upon which the decision and FONSI were made, was available for public comment for 30 days on April 19, 2004. One response was received and addressed on the document.

ADDRESSES: The Decision Notice and FONSI will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, Virginia. The FONSI can also be viewed on the GWMP Web site at *http://www.nps.gov/gwmp.*

SUPPLEMENTARY INFORMATION: The Decision Notice and FONSI completes the Environmental Assessment process.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Koenen (703) 289–2540.

Dated: September 3, 2004.

Jon James,

Deputy Superintendent, George Washington Memorial Parkway.

[FR Doc. 04–24173 Filed 10–28–04; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., November 22, 2004 at the King Kamehameha's Kona Beach Hotel, Marina Room, Kailua-Kona, Hawaii.

The agenda will include planning for Live-In Center Workshop and discussion on the park's boundary. There will also be a visit to the park if time permits.

The meeting is open to the public. The hotel is accessible to persons with disabilities. Disabled persons requiring special assistance should contact the Superintendent at (808) 329–6881 ext 7, 7 days prior to the meeting.

Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: September 24, 2004.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 04–24175 Filed 10–28–04; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 2, 2004. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 15, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

GEORGIA

Fulton County

United States Post Office, Federal Annex, 77 Forsyth St., Atlanta, 04001217.

MARYLAND

Queen Anne's County

Centreville Historic District, Roughly bounded by Corsica R, Chesterfield Ave, Liberty St, Banio Ln, Railroad Ave, town limits and Mill Stream, Centreville, 04001218.

MASSACHUSETTS

Franklin County

Northfield Center Cemetery, W terminus of Parker Ave., Northfield, 04001220.

Middlesex County

First Burial Ground, Park St. near Centre St., Woburn, 04001222.

West Parish Burying Ground, River and Cherry Sts., Newton, 04001221.

Suffolk County

Forest Hills Cemetery, 95 Forest Hills Ave., Boston, 04001219.

MISSOURI

Greene County

Berry Cemetery, 1431 W. Farm Rd. 74, Ash Grove, 04001224.

Jackson County

Kelley—Reppert Motor Company Building, 422 Admiral Blvd., Kansas City, 04001223.

PENNSYLVANIA

Berks County

Queen Anne Historic District, Roughly bounded by Robeson St., North Third St., RR Tracks and Clinton St. Reading, 04001227.

Dauphin County

Harrisburg Polyclinic Hospital, 2601 N. Third St., Harrisburg, 04001225.

Philadelphia County

Marine Corps Depot of Supplies, Schuykill Warehouse, 700–734 Schuykill Ave., Philadelphia, 04001228.

Upper Roxborough Historic District (Boundary Increase), Upper: roughly bounded by Cathedral, Harner, Lare, Summitt, Eva; Lower: roughly bounded by Eva, Dearnley and Shawmont, Philadelphia, 04001226.

RHODE ISLAND

Newport County

St. George's School—Church of St. George, Little Chapel, and Memorial Schoolhouse, 372 Purgatory Rd., Middletown, 04001235.

TENNESSEE

Houston County

Erin Limekilns, (Lime Industry of Houston County, Tennessee MPS) 708 McMillan St., Erin, 04001230.

Quarry Limekiln, (Lime Industry of Houston County, Tennessee MPS) TN 49, approx 0.25 mi. E of Denmark Rd., Erin, 04001229.

Knox County

Morton, Benjamin, 4084 Kingston Pike, Knoxville, 04001231.

Morton, Benjamin, House, (Knoxville and Knox County MPS) 4084 Kingston Pike, Knoxville, 04001233.

TEXAS

El Paso County

Montana Avenue Historic District, 1000 through 1500 Blks of Montana Ave., El Paso, 04001232.

WYOMING

Sheridan County

Sheridan Railroad Historic District, 201–841 Broadway, 508–955 N. Gould, Sheridan, 04001234.

[FR Doc. 04–24157 Filed 10–28–04; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–498]

In the Matter of Certain Insect Traps; Notice of Commission Determination To Terminate the Investigation in Its Entirety on the Basis of a Settlement Agreement; Request for Written Submissions on Remedy, the Public Interest, and Bonding With Respect to a Respondent Found in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation on the basis of a settlement agreement. Notice is also hereby given that the Commission is requesting briefing on remedy, the public interest, and bonding with respect to a respondent found in default.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Ph.D., Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by American Biophysics Corporation (''ABC'') of Greenwich, Rhode Island. 68 FR 53752 (September 12, 2003). ABC alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain insect traps by reason of infringement of claims 1 and 32 of U.S. Patent No. 6,145,243 (hereinafter ''the '243 patent''). The complaint named Ferrellgas, LP, of Liberty, Missouri as respondent.

On December 8, 2003, the administrative law judge (''ALJ'') issued an initial determination (''ID'') amending the complaint and notice of investigation to add Blue Rhino Global Sourcing, LLC, of Winston-Salem, North Carolina, Guangdon Dong Fang Imp. & Exp. Corp. of Shenzhen, China, and Lentek International, Inc. of Kissimmee, Florida (''Lentek'') as respondents.[1] This ID was not reviewed by the Commission. *See* Order No. 5 Initial Determination; Notice of Commission Decision Not To Review, 69 FR 2003 (2004).

On April 19, 2004, the ALJ issued an ID, which was not reviewed by the Commission, finding respondent Lentek in default. *See* Order No. 11 Initial Determination (April 19, 2004); Notice of Commission Decision Not To Review (May 19, 2004).

On September 10, 2004, the ALJ issued his final initial determination (''ID'') finding no violation of section 337 based on a finding of no infringement of claims 1 and 32 of the '243 patent by the remaining respondents, Ferrellgas, LP, Blue Rhino Consumer Products, LLC, Blue Rhino Global Sourcing, LLC, and Guangdon Dong Fang Imp. & Exp. Corp. (collectively ''Ferrellgas/BlueRhino/GDF''). On September 22, 2004, ABC and Ferrellgas/BlueRhino/GDF filed a joint motion for an extension of time in which to file their petitions for review of the ALJ's final ID. On September 24, 2004, the ALJ issued a recommended determination on remedy and bonding with respect to respondents Ferrellgas/BlueRhino/GDF.

Meanwhile, on September 23, 2004, the Commission granted all parties their request for an extension and extended the deadline for determining whether to review the final ID until October 1, 2004.

On September 30, 2004, ABC and respondents, Ferrellgas/Blue Rhino/GDF, filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. The Commission found that there was no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on a settlement agreement is generally in the public interest. Accordingly, the joint motion

[1] On April 16, 2004, CPD Associates, Inc., merged with Blue Rhino Corp. On April 20, 2004, Blue Rhino Corp., converted into a Delaware limited liability company called Blue Rhino, LLC. Immediately thereafter, on April 21, 2004, Blue Rhino, LLC merged into Ferrellgas, LP.

to terminate the investigation was granted.

With respect to respondent Lentek, section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission Rule 210.16(c), 19 CFR 210.16(c), authorizes the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, the ALJ found respondent Lentek in default and this decision was not reviewed by the Commission. As a result, ABC requested issuance of (a) a permanent exclusion order excluding from entry into the United States all of Lentek's ''Mosquito Trap'' products that infringe the claims of the asserted patents; and (b) a permanent cease and desist order prohibiting the importation into the United States, the sale for importation or sale within the United States after importation of all of Lentek's ''Mosquito Trap'' products that infringe the claims of the asserted patents.

The Commission may issue an order that could result in the exclusion of Lentek's ''Mosquito Trap'' products from entry into the United States, and/or issue one or more cease and desist orders that could result in Lentek being required to cease and desist from engaging in unfair acts in the importation and sale of ''Mosquito Trap'' products. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, *see* In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the September 24, 2004, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on November 8, 2004. Reply submissions must be filed no later than the close of business on November 15, 2004. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16(c) and 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.21).

By order of the Commission.

Issued: October 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24206 Filed 10–28–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1088 (Preliminary)]

Polyvinyl Alcohol From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of polyvinyl alcohol, provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2] [3]

Background

On September 7, 2004, a petition was filed with the Commission and Commerce by Celanese Chemicals Ltd., Dallas, TX, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of LTFV imports of polyvinyl alcohol from Taiwan. Accordingly, effective September 7, 2004, the Commission instituted antidumping duty investigation No. 731–TA–1088 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 15, 2004 (69 FR 55653). The conference was held in Washington, DC, on September 28,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Hillman did not participate in this investigation.

[3] Chairman Koplan and Commissioner Miller dissented, having determined that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly LTFV imports of polyvinyl alcohol from Taiwan.

2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 22, 2004. The views of the Commission are contained in USITC Publication 3732 (October 2004), entitled Polyvinyl Alcohol from Taiwan: Investigation No. 731–TA–1088 (Preliminary).

By order of the Commission.

Issued: October 25, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24205 Filed 10–28–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[EOIR No. 149]

Executive Office for Immigration Review; Notice Extending Period To File Motions To Reopen Under the *Barahona-Gomez* v. *Ashcroft* Settlement

AGENCY: Executive Office for Immigration Review (''EOIR''), Justice.

ACTION: Notice.

SUMMARY: This notice is to inform all parties that the motion to reopen period as defined in section (II)(B)(4) of the settlement agreement in *Barahona-Gomez* v. *Ashcroft*, 243 F. Supp. 2d 1029 (N.D. Cal. 2002), was extended to March 20, 2005. The full settlement agreement can be found at 243 F. Supp. 2d 1029 (N.D. Cal. 2002), and also is reproduced on the EOIR Web site at *http://www.usdoj.gov/eoir.* The settlement agreement initially provided that the motion to reopen period was for eighteen (18) months from the date the Advisory Statement was published in the **Federal Register**. The Advisory Statement providing notice of the settlement was published in the **Federal Register** on March 20, 2003. See 68 FR 13727. The motion to reopen period was to close on September 20, 2004. Under section (II)(B)(4) of the settlement agreement, if any eligible class member filed a motion to reopen proceedings under the settlement agreement within six months prior to September 20, 2004, the motion to reopen period is extended for an additional 180 days. This notice acknowledges that the deadline date was extended to March 20, 2005.

DATES: The deadline for filing motions to reopen under the settlement agreement was extended to March 20, 2005.

FOR FURTHER INFORMATION CONTACT: MaryBeth Keller, General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470.

Dated: October 15, 2004.

Kevin D. Rooney,

Director, Executive Office for Immigration Review.

[FR Doc. 04–24208 Filed 10–28–04; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), this is notice that on May 25, 2004, Cambrex North Brunswick Inc., Technology Centre of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal and on June 11, 2004 by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed:

Drug	Schedule
N-Ethylamphetamine (1475)	I
Tetrahydrocannabinols (7370)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Morphine (9300)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (ODLR) and must be filed no later than December 28, 2004.

Dated: October 1, 2004.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–24154 Filed 10–28–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

EZRX, LLC Revocation of Registration

On May 17, 2004, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause and Immediate Suspension of Registration to EXRX, LLC (EZRX) of Union, New Jersey. EZRX was notified of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, BE8488783, as a retail pharmacy, and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f) and 824(a)(4) for reason that its continued registration would be inconsistent with the public interest. EZRX was further notified that its DEA registration was immediately suspended as an imminent danger to the public health and safety pursuant to 21 U.S.C. 824(d).

The Order to Show Cause and Immediate Suspension alleged in sum, that EZRX was engaged in illegally dispensing controlled substances as part of a scheme in which controlled substances were dispensed by EZRX based on Internet orders placed by customers and approved by associated physicians, based solely on their review of Internet questionnaires and without personal contact, examination or bona fide physician/patient relationships. Such prescriptions were not issued ''in the usual course of professional treatment'' and violated 21 CFR 1306.04 and 21 U.S.C. 841(a). This action was part of a nationwide enforcement operation by DEA titled Operation Pharmnet, which targeted online suppliers of prescription drugs, including owners, operators, pharmacists and doctors, who have illegally and unethically been marketing controlled substances via the Internet.

According to the investigative file on May 26, 2004, the Order to Show Cause and Immediate Suspension of Registration was personally served by Special Agents and Diversion Investigators of the DEA at EZRX's registered premises in Union, New Jersey. More than thirty days have passed since the Order to Show Cause

and Immediate Suspension of Registration was served on EZRX and DEA has not received a request for hearing or any other reply from EZRX or anyone purporting to represent it in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause and Immediate Suspension of Registration to EZRX, and (2) no request for hearing having been received, concludes that EZRX is deemed to have waived its hearing right. See David W. Linder, 67 FR 12,579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds EZRX is currently registered with DEA as a retail pharmacy under DEA Registration, BE8488783 to dispense Schedule II through V Controlled Substances. That registration expires on August 31, 2006. The owners of EZRX are Frank C. Hernandez and his wife, Amada Hernandez.

In 2003, the DEA Miami Field Division initiated regulatory investigations of C&H Wholesale, Inc. (C&H) and Lifeline Pharmacy, Inc. (Lifeline). C&H was registered with DEA as a distributor of Schedule II through V controlled substances and Lifeline was registered as a retail pharmacy of the same substances. Both companies are owned by Mr. and Mrs. Hernandez and the registered premises they occupy are physically connected and share floor space with the Hernandez' non-drug businesses.

During the regulatory examination of C&H, it was discovered that C&H was distributing controlled substances almost exclusively to South Florida pharmacies, including Lifeline, which were filling Internet controlled substance prescriptions. The majority of distributions were for Schedule III and IV controlled substance weight loss medications including, but not limited to substantial quantities of phentermine, phendimetrazine tartrate, Dexedrine and tenuate.

On October 10, 2003, as a result of investigative findings that C&H and Lifeline were facilitating and dispensing controlled substances by virtue of prescriptions issued not for legitimate medical purposes and not in the usual course of professional medical practice, the then-Acting Deputy Administrator issued orders to show cause to C&H and Lifeline and immediately suspended their registrations on grounds that the posed an immediate threat to the public health and safety.

Subsequent investigation by Miami DEA investigators revealed that on August 21, 2003, the same day a federal search warrant was being executed on Lifeline's Florida premises, Mr. Hernandez filed a new application for registration on behalf of EZRX, as a retail pharmacy in New Jersey. That application was inadvertently routinely processed in New Jersey while the Miami investigation was still in process and it was approved on September 9, 2003. Later, in the course of document review, DEA Miami investigators found paperwork indicating Mr. and Mrs. Hernandez were the owners of EZRX and that two Florida employees, Mr. Hernandez' nephew and wife, were also key employees of the New Jersey retail pharmacy.

On November 6, 2003, DEA Miami investigators made an undercover buy from a Florida-based website. Using a fictitious name and an undercover Internet e-mail account and computer, investigators placed an order for Bontril, a Schedule IV controlled substance weight loss medication. After filling out a medical questionnaire on the website and sending a money order to an affiliated company, E.V.A. Global, Inc., a package was received at the undercover address via Federal Express. It was shipped by EZRX on November 11, 2003, from its registered address and contained 89 Bontril SR 105mg capsules. The prescription label indicated it had been dispensed by EZRX and the issuing physician was an individual, later identified as a DEA registrant, who had prescribed controlled substances during similar undercover purchases made through Lifeline. There was no contact between the prescribing physician and the undercover investigator, other than transmission of the Internet questionnaire.

Another physician involved with Internet prescribing thorough E.V.A. Global, Inc. was interviewed by investigators and described the process. He would access a web site provided him by E.V.A. Global, Inc., where customers' medical questionnaires would be posted. The physician would access the questionnaires one at a time, review the questionnaire and either approve or deny the prescription request. He did not have the ability to suggest an alternative drug or an alternate amount and there was never any contact between the physician and either the ''patient'' or the dispensing pharmacy.

It was determined that from September through November 2003, EZRX ordered in excess of 300,000 dosage units of Schedule III and IV controlled substances, including the controlled substances commonly sold through websites affiliated with E.V.A. Global, Inc., to include phentermine, Ionamin, Meridia, Didrex, phendimetrazine tartrate and Ambien.

The Controlled Substances Act (CSA) establishes a ''closed system'' of distribution that regulates the movement of controlled substance prescription medications from importation or manufacture through their delivery to the ultimate user patient via the dispensing, administering or prescribing, pursuant to the lawful order of a practitioner. The regulations implementing the CSA explicitly describe the parameters of a lawful prescription as follows: ''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a).

Prescriptions issued not in the ''usual course of professional treatment'' are not ''prescriptions'' for purposes of the CSA and individuals issuing and filling such purported prescriptions are subject to the penalties for violating the CSA's controlled substances provisions.

In *United States* v. *Moore,* 423 U.S. 122 (1975), the Supreme Court held that, ''Implicit in the registration of a physician is the understanding that he is authorized only to act 'as a physician'.'' Id., at 141. In Moore the court implicitly approved a jury instruction that acting ''as a physician'' is acting ''in the usual course of a professional practice and in accordance with a standard of medical practice generally recognized and accepted in the United States.'' Id., at 138–139; see, *United States* v. *Norris,* 780 F.2d 1207, 1209 (5th Cir. 1986).

Responsible professional organizations have issued guidance in this area. The American Medical Association's guidance for physicians on the appropriate use of the Internet in prescribing medication (H–120.949 Guidance for Physicians on Internet Prescribing) states:

''Physicians who prescribe medications via the Internet shall establish, or have established, a valid patient-physician relationship, including, but not limited to, the following components. The physician shall:

i. Obtain a reliable medical history and perform a physical examination of the patient, adequate to establish the diagnosis for which the drug is being prescribed and to identify underlying

conditions and/or contraindications to the treatment recommended/provided;

ii. Have sufficient dialogue with the patient regarding treatment options and the risks and benefits of treatment(s);

iii. As appropriate, follow up with the patient to assess the therapeutic outcome;

iv. Maintain a contemporaneous medical record that is readily available to the patient and, subject to the patient's consent, to his or her other health care professionals; and

v. Include the electronic prescription information as part of the patient medical record.''

In April 2000, the Federation of State Medical Boards adopted Model Guidelines for the Appropriate use of the Internet in Medical Practice, which states, in pertinent part, that:

> Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (face-to-face) settings. Treatment, including issuing a prescription, based solely on an online questionnaire or consultation does not constitute an acceptable standard of care.

The CSA regulations establish certain responsibilities not only on individual practitioners who issue prescriptions for controlled substances, but also on pharmacists who fill them. A pharmacist's ''corresponding responsibility'' regarding the proper dispensing of controlled substances is explicitly described in 21 CFR 1306.04(a). It provides:

> A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

In an April 21, 2001, policy statement, entitled, Dispensing and Purchasing Controlled Substances Over the Internet, 66 FR 21,181 (2001), DEA delineated certain circumstances in which prescribing over the Internet is unlawful. The policy provides, inter alia, that a controlled substance should not be issued or dispensed unless there was a bona fide doctor/patient relationship. Such a relationship required that the patient has a medical complaint, a medical history be taken, a physical examination performed, and some logical connection exists between the medical complaint, the medical history, the physical examination, and the drug prescribed. The policy statement specifically explained that the completion of ''a questionnaire that is then review by a doctor hired by the Internet pharmacy could not be considered the basis for a doctor/patient relationship * * *'' Id., at 21,182–21,183.

Rogue Internet Pharmacies bypass a legitimate doctor-patient relationship, usually by use of a cursory and incomplete online questionnaire or perfunctory telephone ''consult'' with a doctor, who usually has a contractual arrangement with the online pharmacy and is often paid on the basis of prescriptions issued. The Food and Drug Administration (FDA) considers the questionnaire, in lieu of face-to-face interaction, to be a practice that undermines safeguards of direct medical supervision and amounts to substandard medical care. See U.S. Food and Drug Administration, Buying Medicines and Medical Products Online, General FAQs (*http://fda.gov/oc/buyonline/default.htm*).

The National Association of Boards of Pharmacy considers internet pharmacies to be suspect if:

> They dispense prescription medications without requiring the consumer to mail in a prescription, and if they dispense prescription medications and do not contact the patient's prescriber to obtain a valid verbal prescription. Further, online pharmacies are suspect if they dispense prescription medications solely based upon the consumer completing an online questionnaire without the consumer having a pre-existing relationship with a prescriber and the benefit of an in-person physical examination. State boards of pharmacy, boards of medicine, the FDA, as well as the AMA, condemn this practice and consider it to be unprofessional.

See, National Association of Boards of Pharmacy, VIIPS Program, Most Frequently Asked Questions (*http://www.nabp.net/vipps/consumer/faq.asp*).

Rogue Internet pharmacies often use persons with limited or no knowledge of medications and standard pharmacy practices to fill prescriptions, do not advertise the availability of pharmacists for medication consultation, and focus on select medications, usually lifestyle, obesity and pain medications. Rogue Internet pharmacies generally do not protect the integrity of original faxed prescriptions by requiring that they be received directly from the prescriber (not the patient) and do not verify the authenticity of suspect prescriptions.

When the established safeguards of an authentic doctor-patient relationship are lacking, controlled substance prescription drugs can not only be misused, but also present potentially serious health risks to patients. Rogue Internet pharmacies facilitate the easy circumvention of legitimate medical practice. The FDA has stated:

> We know that adverse events are under-reported and we know from history that tolerating the sale of unproven, fraudulent, or adulterated drugs results in harm to the public health. It is reasonable to expect that the illegal sales of drugs over the Internet and the number of resulting injuries will increase as sales on the Internet grow. Without clear and effective law enforcement, violators will have no reason to stop their illegal practices. Unless we begin to act now, unlawful conduct and the resulting harm to consumers most likely will increase.

See U.S. Food and Drug Administration, Buying Medicines and Medical Products Online, General FAQs (*http://fda.gov/oc/buyonline/default.htm*).

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

In this case, the Deputy Administrator finds factors two, four and five relevant to a determination of whether EZRX's continued registration remains consistent with the public interest.

With regard to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, there is no evidence in the investigative file that EZRX has been the subject of a state disciplinary proceeding, nor is there

evidence demonstrating that its state pharmacy license or state controlled substance authority are currently restricted in any form. Nevertheless, state licensure is a necessary, but not sufficient condition for registration, and therefore, this factor is not dispositive. See *e.g.*, Wesley G. Harline, M.D., 65 FR 5,665–01 (2000); James C. LaJevic, D.M.D., 64 FR 55,962 (1999).

With regard to factors two and four, the Deputy Administrator finds that the primary conduct at issue in this proceeding (*i.e.,* the unlawful dispensing of controlled substance prescriptions for use by Internet customers) relates to both EZRX's and its owners' experience in dispensing controlled substances, as well as its compliance with applicable state, federal, or local laws relating to controlled substances. DEA has consistently held that the registration of a pharmacy may be revoked as the result of the unlawful activity of the pharmacy's owners, majority shareholders, officers, managing pharmacist or other key employee. See Plaza Pharmacy, 53 FR 36,910 (1988)

A DEA registration authorizes a physician to prescribe or dispense controlled substances only within the usual course of his or her professional practice. For a prescription to have been issued within the course of a practitioner's professional practice, it must have been written for a legitimate medical purpose within the context of a valid physician-patient relationship. See Mark Wade, M.D., 69 FR 7,018 (2004). 51,600 (1998). Legally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription. See Floyd A Santner, M.D., 55 FR 37,581 (1990).

Factors two and four are relevant to EZRX's dispensing of Internet prescribed controlled substances. The Deputy Administrator concludes from a review of the record that the physicians issuing these prescriptions did not establish valid physician-patient relationships with Internet customers to whom they prescribed controlled substances. DEA has previously found that prescriptions issued through a pharmacy Internet Web site are not considered as having been issued in the usual course of medical practice, in violation of 21 CFR 1306.04 and has revoked the DEA registrations of several physicians for participating in Internet prescribing schemes similar to or identical to that of EZRX. See, Marvin L. Gibbs, Jr., M.D., 69 FR 11,658 (2004); Mark Wade, M.D., supra, 69 FR 7,018; Ernesto A. Cantu, M.D., 69 FR 7,104–02 (2004); Rick Joe Nelson, M.D., 66 FR 30,752 (2001).

Similarly, in the past few years, DEA has issued orders to show cause and subsequently revoked the DEA registrations of pharmacies which failed to fulfill their corresponding responsibility in Internet prescribing operations, similar to those of EZRX and its principals and their affiliated companies. See *Prescriptiononline.com,* 69 FR 5,583 (2004); Pill Box Pharmacy (surrendered DEA registration as part of owner's and pharmacy's guilty plea to 21 U.S.C. 841(a)(1) violation); Friendly Pharmacy (pharmacist pled guilty and owner convicted at trial, of violating 21 U.S.C. 841(a). Indeed, C&H and Lifeline, the predecessor Internet pharmacy entities owned by EZRX's principals, were both subjects of orders to show cause with immediate suspensions and both companies surrendered their DEA Certificates of Registration.

In the instant case, physicians associated with the Internet operation authorized prescriptions for controlled substances without the benefit of face-to-face physician-patient contact, physical exam or medical test. There is no information in the investigative file demonstrating that the issuing physicians even took the time corroborate responses to questionnaires that were submitted by EZRX's customers. Here, it is clear that the issuance of controlled substance prescriptions to persons whom the prescribing physician has not established a valid physician-patient relationship is a radical departure from the normal course of professional practice and that EZRX knowingly participating in this scheme.

With regard to factor three, applicant's conviction record under federal or state laws relating to the dispensing of controlled substances, the record does not reflect that EZRX or its principals have been convicted of a felony related to controlled substances.

Regarding factor five, such other conduct which may threaten the public health or safety, the Deputy Administrator finds this factor relevant to EZRX's continued dispensing to Internet customers after issuance of policy statements designed to assist licensed practitioners and pharmacists in the proper prescribing and dispensing of dangerous controlled drugs.

Factor five is also relevant to EZRX's continued Internet prescribing after C&H and Lifeline, both owned by the principals of EZRX, were served with Orders to Show Cause and for Immediate Suspensions in October 2003. These entities sought an order in United States District Court seeking to restrain DEA from imposing the immediate suspensions of their registrations. After the District Court held hearings to make a threshold determination that DEA had some basis to back up its allegations regarding the Internet prescribing activities of C&H and Lifeline, the Court upheld the immediate suspensions by DEA, finding ''there is not a substantial likelihood that C&H and Lifeline will prevail on the merits.'' It further stated, ''the danger of the public obtaining controlled substances outweighs the threatened injury to C&H and Lifeline. Granting the preliminary injunction would affect the public interest, again putting the public in danger of obtaining controlled substances.'' See C&H Wholesale, Inc. and Lifeline Pharmacy, Inc., CIV 03–61910 (S.D. Fla., October 23, 2003). Nevertheless after the District Court's Order, EZRX continued this practice and dispensed the controlled substance ordered over the Internet by undercover agents on November 6, 2003.

Similarly, factor five is relevant to Mr. Hernandez' timing in applying for EZRX's DEA registration on August 21, 2003. This is the date a federal search warrant was executed on Lifeline, his Florida pharmacy and further suggests the New Jersey operation was established by Mr. Hernandez to continue Internet dispensing as a back up to his Florida operations.

The Deputy Administrator has previously expressed her deep concern about the increased risk of diversion which accompanies Internet controlled substance transactions. Given the nascent practice of cyber-distribution of controlled drugs to faceless individuals, where interaction between individuals is limited to information on a computer screen or credit card, it is virtually impossible to insure that these highly addictive, and sometimes dangerous products will reach the intended recipient, and if so, whether the person purchasing these products has an actual need for them. The ramifications of obtaining dangerous and highly addictive drugs with the ease of logging on to a computer and the use of a credit card are disturbing and immense, particularly when one considers the growing problem of the abuse of prescription drugs in the United States. See, Mark Wade, M.D., supra, 69 FR 7,018.

The Deputy Administrator has also previously found that in a 2001 report, the National Clearinghouse for Alcohol and Drug Information estimated that 4 million Americans ages 12 and older had acknowledged misusing

prescription drugs. That accounts for 2% to 4% of the populations—a rate of abuse that has quadrupled since 1980. Prescription drug abuse—typically of painkillers, sedatives and mood-altering drugs—accounts for one-third of all illicit drug use in the United States. See Mark Wade, M.D., supra, 69 FR 7,018.

The Deputy Administrator finds that with respect to Internet transactions involving controlled substances, the horrific untold stories of drug abuse, addiction and treatment are the unintended, but foreseeable consequence of providing highly addictive drugs to the public without oversight. The closed system of distribution, brought about by the enactment of the Controlled Substances Act, is completely compromised when individuals can easily acquire controlled substances without regard to age or health status. Such lack of oversight describes EZRX, its principals, their associated companies and affiliated physician's practice of issuing prescriptions for and distributing controlled substances to indistinct Internet customers. Such conduct contributes to the abuse of controlled substances by EZRX's customers and is relevant under factor five and further supports revocation of its DEA Certificate of Registration.

It appears that EZRX and its principals, motivated purely by profit and in pursuit of financial gain, have demonstrated a cavalier disregard for controlled substance laws and regulations and a disturbing indifference to the health and safety of customers who purchased dangerous drugs through the Internet. Such demonstrated lack of character and adherence to the responsibilities inherent in a DEA registration show in no uncertain terms that EZRX's continued registration with DEA would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BE8488783, previously issued to EZRX, LLC, be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective November 29, 2004.

Dated: September 29, 2004.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 04–24235 Filed 10–28–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55, 382]

Eclipsys Corporation, Santa Rosa, California; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 27, 2004, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on August 31, 2004. The Notice was published in the **Federal Register** on September 23, 2004 (69 FR 57093).

The Department reviewed the request for reconsideration and has determined that the original investigation requires further investigation. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 20th day of October, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2908 Filed 10–29–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,596]

Interdynamics, Inc., Brooklyn, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 13, 2004 in response to petition filed by a company official on behalf of workers at Interdynamics, Inc., Brooklyn, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 13th day of October, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2910 Filed 10–28–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,622]

KAMCO Plastics, Inc., Galesburg, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 16, 2004 in response to a worker petition filed on behalf of workers at *Kamco* Plastics, Inc., Galesburg, Illinois.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet the threshold of employment. Consequently the investigation has been terminated.

Signed at Washington, DC, this 15th day of October 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2911 Filed 10–28–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,504]

PPC Insulators Knoxville, TN; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated September 30, 2004, the Tennessee AFL–CIO Technical Assistance Center requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The negative determination was signed on September 15, 2004 and published in the **Federal Register** on October 8, 2004 (69 FR 60427).

The workers of PPC Insulators, Knoxville, Tennessee were certified eligible to apply for Trade Adjustment

Assistance (TAA) on September 15, 2004.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

The AFL–CIO provided documentation with the request for reconsideration that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers of PPC Insulators, Knoxville, Tennessee, who became totally or partially separated from employment on or after August 20, 2003 through September 15, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 20th day of October 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2909 Filed 10–28–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,772]

Southern Mechanical Services, Inc. Albemarle, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 12, 2004, in response to a worker petition filed by a company official on behalf of workers at Southern Mechanical Services, Inc., Albemarle, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 15th day of October 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2912 Filed 10–28–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ030002 (JUN. 13, 2003)
New York
NJ030002 (JUN. 13, 2003)
NJ030006 (JUN. 13, 2003)
NJ030010 (JUN. 13, 2003)
NJ030011 (JUN. 13, 2003)
NJ030021 (JUN. 13, 2003)
NJ030026 (JUN. 13, 2003)
NJ030031 (JUN. 13, 2003)
NJ030032 (JUN. 13, 2003)
NJ030037 (JUN. 13, 2003)
NJ030044 (JUN. 13, 2003)

NJ030046 (JUN. 13, 2003)
NJ030047 (JUN. 13, 2003)
NJ030052 (JUN. 13, 2003)
NJ030054 (JUN. 13, 2003)
NJ030057 (JUN. 13, 2003)
NJ030060 (JUN. 13, 2003)
NJ030066 (JUN. 13, 2003)
NJ030071 (JUN. 13, 2003)
NJ030076 (JUN. 13, 2003)

Volume II

District of Columbia
DC030001 (JUN. 13, 2003)
DC030003 (JUN. 13, 2003)
Maryland
MD030002 (JUN. 13, 2003)
MD030009 (JUN. 13, 2003)
MD030021 (JUN. 13, 2003)
MD030029 (JUN. 13, 2003)
MD030034 (JUN. 13, 2003)
MD030036 (JUN. 13, 2003)
MD030037 (JUN. 13, 2003)
MD030042 (JUN. 13, 2003)
MD030048 (JUN. 13, 2003)
MD030056 (JUN. 13, 2003)
MD030057 (JUN. 13, 2003)
MD030058 (JUN. 13, 2003)
Virginia
VA030052 (JUN. 13, 2003)
VA030078 (JUN. 13, 2003)
VA030079 (JUN. 13, 2003)
VA030092 (JUN. 13, 2003)
VA030099 (JUN. 13, 2003)

Volume III

Alabama
AL030018 (JUN. 13, 2003)
North Carolina
NC030050 (JUN. 13, 2003)

Volume IV

Illinois
IL030011 (JUN. 13, 2003)
IL030012 (JUN. 13, 2003)
IL030013 (JUN. 13, 2003)
IL030014 (JUN. 13, 2003)
Indiana
IN030001 (JUN. 13, 2003)
IN030002 (JUN. 13, 2003)
IN030003 (JUN. 13, 2003)
IN030004 (JUN. 13, 2003)
IN030005 (JUN. 13, 2003)
IN030006 (JUN. 13, 2003)
IN030014 (JUN. 13, 2003)
IN030017 (JUN. 13, 2003)
IN030018 (JUN. 13, 2003)
Michigan
MI030060 (JUN. 13, 2003)
MI030062 (JUN. 13, 2003)
MI030063 (JUN. 13, 2003)
MI030064 (JUN. 13, 2003)
MI030065 (JUN. 13, 2003)
MI030066 (JUN. 13, 2003)
MI030067 (JUN. 13, 2003)
MI030068 (JUN. 13, 2003)
MI030069 (JUN. 13, 2003)
MI030070 (JUN. 13, 2003)
MI030071 (JUN. 13, 2003)
MI030072 (JUN. 13, 2003)
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MI030099 (JUN. 13, 2003)
MI030100 (JUN. 13, 2003)
MI030101 (JUN. 13, 2003)
MI030103 (JUN. 13, 2003)
MI030105 (JUN. 13, 2003)
MI030106 (JUN. 13, 2003)
Minnesota
MN030006 (JUN. 13, 2003)
MN030020 (JUN. 13, 2003)

Volume V

Missouri
MO030003 (JUN. 13, 2003)
MO030006 (JUN. 13, 2003)
MO030008 (JUN. 13, 2003)
MO030009 (JUN. 13, 2003)
MO030010 (JUN. 13, 2003)
MO030018 (JUN. 13, 2003)
MO030041 (JUN. 13, 2003)
MO030047 (JUN. 13, 2003)
MO030053 (JUN. 13, 2003)
MO030059 (JUN. 13, 2003)

Volume VI

None

Volume VII

California
CA030004 (JUN. 13, 2003)
CA030009 (JUN. 13, 2003)
CA030029 (JUN. 13, 2003)
CA030030 (JUN. 13, 2003)
Nevada
NV030002 (JUN. 13, 2003)
NV030005 (JUN. 13, 2003)
NV030009 (JUN. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and Related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 21st day of October 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–23969 Filed 10–28–04; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–116]

NASA Advisory Committee; Notice of Establishment Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. Section 1 et seq.

AGENCY: National Aeronautics and Space Administration (NASA). The Administrator of the National Aeronautics and Space Administration has determined that the establishment of a Financial Management Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Financial Audit Committee.

Purpose and Objective: The Committee will advise NASA Administrator on matters related to Agency financial management. The Committee will draw on the expertise of its members and other sources to

provide its advice and recommendations to the Agency. The Committee will hold meetings and make site visits as necessary to accomplish their responsibilities. The Committee will function solely as an advisory body and will comply fully with the provisions of the Federal Advisory Committee Act.

Balanced Membership Plans: The Committee will consist of non-NASA employees. In addition, there may be associate members selected for Committee Subcommittees or Panels. The Committee may also request appointment of consultants to support specific tasks. Members of the Committee, Subcommittees and Panels will be chosen from among industry, academia, and government with recognized knowledge and expertise in fields relevant to education. Total membership will reflect a balanced view.

Duration: Continuing.

Responsible NASA Official: Ms. Gwendolyn Sykes, Chief Financial Officer and Chief Acquisition Officer, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, telephone 202/358–0978.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–24222 Filed 10–28–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board

AGENCY: National Institute for Literacy.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: Closed session—November 18, 2004 from 2 p.m. to 3 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2072; email: *ehollis@nifl.gov*.

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, Public Law 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group. The Interagency Group is composed of the Secretaries of Education, Labor, and Health and Human Services, and the three Secretaries administer the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board meeting on November 18, 2004 from 2 p.m. to 3 p.m. will be closed to the public to discuss the search for a permanent Director of NIFL. This discussion relates to the internal personnel rules and practices of the Institute and is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion must therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: October 25, 2004.

Sandra L. Baxter,

Interim Director.

[FR Doc. 04–24193 Filed 10–28–04; 8:45 am]

BILLING CODE 6055–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Notice; Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 69 FR 31846, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–8060.

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

Under OMB regulations, the agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed

information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: EHR Generic Clearance.

OMB Approval Number: 3145–0136.

Abstract: The EHR Generic Clearance was established in 1995 to integrate management, monitoring and evaluation information pertaining to the NSF's Education and Training (E&T) portfolio. Under a generic survey clearance (OMB 3145–0136) data from the NSF administrative databases are incorporated and additional information is obtained through initiative-, divisional-, and program-specific data collections.

Use of the Information: This information is required for effective administration, program monitoring and evaluation, and for measuring attainment of NSF's program goals, as required by the Government Performance and Results Act (GPRA) of 1993 and the President's Management 2003 agenda as represented by the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART).

Burden on the Public: The total estimate for this collection is 39,188 annual burden hours. This figure is based on the previous 3 years of collecting information under this clearance and anticipated collections. The average annual reporting burden is between .5 and 50 hours per 'respondent' depending on whether a respondent is self-reporting or representing a project and reporting on behalf of groups of individuals.

Dated: October 25, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–24169 Filed 10–28–04; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Proposed Information Collection Activities: Request for Comments

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the extension without change of standard form, SF–424, Application for Federal Assistance. This form is currently required by OMB Circular A–102, ''Grants and Cooperative Agreements with State and Local Governments,'' and Title 2 Code of Federal Regulations part 215 (OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.'' The form will continue to be used while the E–GOV Grants.gov interagency team completes their analysis of public comments received in response to an April 8, 2003, **Federal Register** notice [68 FR 17090] and finalizes the government-wide data standard.

DATES: Comments must be submitted on or before December 28, 2004. Late comments will be considered to the extent practicable.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic mail comments may be submitted to: *ephillip@omb.eop.gov.* Please include ''SF–424'' in the subject line and the full body of your comments in the text of the electronic message (and as an attachment if you wish). Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The standard forms can be downloaded from the OMB Grants Management home page (*http://www.whitehouse.gov/omb/grants*).

OMB Control No.: 0348–0043.

Title: Application for Federal Assistance.

Form No.: SF–424.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Non-Profit Organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 20 minutes.

Needs and Uses: The SF–424 is used to provide general information about the entity and the proposed project when applying for Federal assistance under grant and cooperative agreement awards. The Federal awarding agencies use information reported on this form for the pre-award and award processes.

Office of Management and Budget.

David Zavada,

Chief, Financial Standards and Grants Branch.

[FR Doc. 04–24197 Filed 10–28–04; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Proposed Information Collection Activities: Request for Comments

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of eight (8) standard forms: the SF–269, Financial Status Report (long form); SF–269A, Financial Status Report (short form); SF–272, Federal Cash Transactions Report; SF–272A, Federal Cash Transactions Report (continuation); SF–424A, Budget Information—Non-construction Programs; SF–424B, Assurances—Non-construction Programs; SF–424C, Budget Information—Construction Programs; and SF–424D, Assurances—Construction Programs. These forms are currently required by OMB Circular A–102, ''Grants and Cooperative Agreements with State and Local Governments,'' and Title 2 Code of Federal Regulations Part 215 (OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of

Higher Education, Hospitals, and Other Non-Profit Organizations.'' These eight forms will continue to be used while interagency teams working under two streamlining initiatives (the Grants.gov E-Gov effort and the Pub. L. 106–107 implementation work groups) complete the final consolidated data standards.

DATES: Comments must be submitted on or before December 28, 2004. Late comments will be considered to the extent practicable.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic mail comments may be submitted to: *ephillip@omb.eop.gov.* Please include ''Grant Forms'' in the subject line and the full body of your comments in the text of the electronic message (and as an attachment if you wish). Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952. Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The standard forms can be downloaded from the OMB Grants Management home page *(http://www.whitehouse.gov/omb/grants).*

OMB Control No.: 0348–0039.
Title: Financial Status Report (Long Form).
Form No.: SF–269.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit Organizations.
Number of Responses: 100,000.
Estimated Time Per Response: 60 minutes.
Needs and Uses: The SF–269 is used to report on cash received. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance program awards.

OMB Control No.: 0348–0038.
Title: Financial Status Report (Short Form).
Form No.: SF–269A.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit Organizations.
Number of Responses: 50,000.
Estimated Time Per Response: 40 minutes.
Needs and Uses: The SF–269A is used to report on cash received. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance program awards.

OMB Control No.: 0348–0003.
Title: Federal Cash Transactions Report.
Form No.: SF–272.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit Organizations.
Number of Responses: 50,000.
Estimated Time Per Response: 40 minutes.
Needs and Uses: The SF–272 is used to report on cash received. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance program awards.

OMB Control No.: 0348–0003.
Title: Federal Cash Transactions Report (continuation).
Form No.: SF–272A.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit Organizations.
Number of Responses: 25,000.
Estimated Time Per Response: 40 minutes.
Needs and Uses: The SF–272A is used to report on cash received. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance program awards.

OMB Control No.: 0348–0044.
Title: Budget Information—Non-Construction.
Form No.: SF–424A.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit Organizations.
Number of Responses: 100,000.
Estimated Time Per Response: 60 minutes.
Needs and Uses: The SF–424A is used to provide budget information when applying for non-construction Federal grants. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0040.
Title: Assurances—Non-construction Programs.
Form No.: SF–424B.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit Organizations.
Number of Responses: 100,000.
Estimated Time Per Response: 10 minutes.
Needs and Uses: The SF–424B is used to provide information on required assurances when applying for non-construction Federal grants. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0041.
Title: Budget Information—Construction Programs.
Form No.: SF–424C.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit Organizations.
Number of Responses: 40,000.
Estimated Time Per Response: 60 minutes.
Needs and Uses: The SF–424C is used to provide budget information when applying for Federal construction grants. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0042.
Title: Assurances—Construction Programs.
Form No.: SF–424D.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit Organizations.
Number of Responses: 40,000.
Estimated Time Per Response: 10 minutes.
Needs and Uses: The SF–424D is used to provide information on required assurances when applying for Federal construction grants. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

Office of Management and Budget.

David Zavada,

Chief, Financial Standards and Grants Branch.

[FR Doc. 04–24198 Filed 10–28–04; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: Wednesday, November 10, 2004, 10 a.m. (Open Portion), 10:15 a.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting Open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of September 9, 2004 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 10:15 a.m.).

1. Finance Project—Global.
2. Insurance Project—Israel.
3. Finance Project—Southeast Europe.
4. Approval of September 9, 2004 Minutes (Closed Portion).
5. Pending Major Projects.
6. Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: October 27, 2004.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 04–24357 Filed 10–27–04; 2:20 pm]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 1, 2004:

A closed meeting will be held on Wednesday, November 3, 2004, 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 may also 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), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, November 3, 2004, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Regulatory matter regarding financial institution; and

Adjudicatory matters.

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) 942–7070.

Dated: October 26, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–24313 Filed 10–27–04; 10:56 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50585; File No. SR–OCC–2004–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to OCC's Adjustment Policies for Options and Stock Futures on Fund Shares

October 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 27, 2004, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change codifies exceptions for options and stock futures on ''fund shares'' to OCC's adjustment policies recently made by panels of OCC's Securities Committee.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Background

Article VI, Clearance of Exchange Transactions, Section 11, Adjustments, Paragraph (c) of OCC's By-Laws states:

It shall be the general rule that there will be no adjustments to reflect ordinary cash dividends or distributions * * * by the issuer of the underlying security.

Interpretation .01 of Article VI, Section 11 (sometimes referred to as the ''10% rule'') provides:

Dividends or distributions by the issuer of the underlying security in an aggregate amount per dividend or distribution which does not exceed 10% of the market value (as of the close of trading on the declaration date) of the underlying security outstanding will, as a general rule, be deemed to be 'ordinary dividends or distributions' within the meaning of paragraph (c) of Section 11.

However, Article VI, Section 11(j) provides:

Notwithstanding the general rules set forth in paragraphs (c) through (j) of this Section 11 or which may be set forth as interpretations and policies under this Section 11, the Securities Committee shall have the power to make exceptions in those cases or groups of cases * * * in which, applying the standards set forth in paragraph (b) hereof, the Securities Committee shall determine such exceptions to be appropriate. * * *

Panels of OCC's Security Committee recently determined to exercise their authority under Article VI, Section 11(j) to make exceptions to the 10% rule and adjust options on exchange traded funds (''ETFs'') and Holding Company Depository Receipts (''HOLDRs'') (collectively referred to in OCC's Rules

[2] The Commission has modified parts of these statements.

as ''fund shares'') for dividends reflecting special one-time distributions on portfolio securities notwithstanding that the amounts of the dividends were not expected to exceed 10% of the market value of the fund shares themselves.[3] The proposed rule change amends Interpretation .08 under Article VI, Section 11 of OCC's By-Laws to call for such adjustments as a matter of course.

(a) The TRLY Decision. On July 20, 2004, Terra Networks S.A. (''TRLY'') announced a cash return of capital distribution of $2.48 per share, which represented approximately 42% of the stock price, payable to holders of record on July 27, 2004. Because the amount of the distribution exceeded 10% of the stock price, the 10% rule did not apply. On July 23, 2004, a panel of OCC's Securities Committee determined to adjust options on TRLY stock effective on the ex-date for the distribution by adjusting the underlying to include the amount of the distribution.[4]

The American Stock Exchange (''Amex'') trades options on HOLDRs issued by the Europe 2001+ HOLDRS Trust (''Trust''). The Trust's portfolio includes TRLY American Depository Shares. In order to pass through the TRLY distribution, as it was obligated to do, the Trust declared its own distribution of approximately $0.37 per HOLDR. This was less than 10% of the market price of the HOLDRs. Nevertheless, on July 26, 2004, a panel of the Securities Committee consisting of two representatives of the Amex and one non-voting representative of OCC determined to make an exception to the 10% rule and adjust for the Trust's distribution.[5]

The panel's decision was based on the special characteristics of HOLDRs. A HOLDR is a trust-issued receipt representing beneficial ownership of a basket of stocks. The owner of a HOLDR has the right to vote the shares in the basket, to receive dividends and other distributions on those shares, and to exchange the HOLDR at any time for the underlying basket of stocks. Given the purely derivative nature of HOLDRs, which are intended to function as exact surrogates for the underlying basket of stocks, the Securities Committee was of the view that it would be inappropriate to apply the 10% rule to a distribution on a HOLDR caused by a one-time distribution on a portfolio security of sufficient size to cause options on the latter to be adjusted.[6]

Existing Interpretation .08 of Article VI, Section 11 recognizes the special characteristics of HOLDRs and other fund shares by excluding capital gain distributions on fund shares from the 10% rule. Had the draftsmen of that Interpretation anticipated the possibility of distributions on fund shares reflecting on-time return of capital distributions on portfolio securities, they would have excluded those distributions as well. The Securities Committee concluded that adjusting for the Trust's distribution was consistent with the spirit of Interpretation .08.

(b) The MSFT Decision. On July 20, 2004, Microsoft Corporation (''MSFT'') declared a special one-time cash dividend of $3.00 per share, payable December 2, 2004, to holders of record on November 17, 2004, subject to approval of related amendments to MSFT's employee stock plans at its annual meeting in November. Because the amount of the dividend exceeded 10% of the market value of MSFT, the 10% rule did not apply and on July 20, 2004 a panel of OCC's Securities Committee determined to adjust options on MSFT stock effective on the ex-date by reducing stock prices by $3.00 per share.[7]

Options are traded on a total of 19 ETFs and HOLDRs whose portfolios include MSFT stock. When the MSFT special dividend is paid, it is anticipated that it will be passed through to holders of those fund shares in the form of dividends. The amounts of any such dividends are expected to be less than 10% of the funds' respective stock prices. Panels of OCC's Securities Committee nevertheless determined on July 27, 2004, to make an exception to the 10% rule and to adjust for fund share dividends reflecting the MSFT special dividend in those cases where the impact on the ETF or HOLDR equals or exceeds the de minimus amount of an eighth, or $0.125 per share.[8]

There were a number of reasons for the decision to adjust. First, Nasdaq, Standard & Poor's, and Dow Jones had all announced that they intended to adjust the divisors of their respective indexes to compensate for the MSFT special dividend. As Dow Jones explained in its press release, ''Divisor adjustments nullify the effect on the index values of the stock price being lowered by the value of the dividend.''[9] A number of underlying ETFs, including the widely traded QQQ which tracks the Nasdaq-100 index, were designed to track indexes that will be adjusted for the MSFT special dividend. The effect of adjusting those indexes would be to nullify the effect of the special dividend not only on the indexes themselves but also on options overlying those indexes. Failing to adjust options on ETFs that track those indexes would have created an unfair and inequitable disconnect between the values of ETF options and the values of index options based on the same index.

Although this rationale applied only to some ETFs (*i.e.*, those that tracked indexes that were being adjusted), it would have been inconsistent and potentially confusing not to adjust options on other ETFs that also hold MSFT stock in their portfolios. Moreover, a precedent for adjusting options on fund shares for distributions reflecting special one-time distributions on portfolio securities notwithstanding the 10% rule had been set just the day before by the TRLY decision.

(2) The Proposed Rule Change

The proposed rule change codifies the TRLY and MSFT decisions by revising Interpretation .08 under Article VI, Section 11 to exclude from the 10% rule distributions on fund shares other than capital gains distributions, which are currently excluded, if:

(i) The fund tracks the performance of an index that underlies a class of index options or index futures, and the distribution on the fund shares includes or reflects a dividend or other distribution on a portfolio security that resulted in an adjustment of the index divisor; or

(ii) The distribution in the fund shares includes or reflects a dividend or other distribution on a portfolio security:

(x) That results in an adjustment of options on other fund shares;[10] or

(y) In an aggregate amount exceeding 10% of the market value of the portfolio security.

[3] In accordance with a preexisting commitment to report exercises of the Securities Committee's exception-making authority, these actions were reported to the Division of Market Regulation by letter dated August 9, 2004.

[4] OCC Information Memo #19875 (July 20, 2004).

[5] OCC Information Memo #19877 (July 26, 2004).

[6] The 10% rule does not apply to regular quarterly dividends on HOLDRs because adjusting for recurring dividends would require repeated readjustments of previously adjusted series, which would cause a proliferation of outstanding options series that would not be in the best interest of investors. Making a one-time adjustment for a one-time distribution does not have that effect.

[7] OCC Information Memo #19872 (July 20, 2004).

[8] OCC Information Memos #19883 (July 27, 2004) and #19892 (July 29, 2004).

[9] Dow Jones Indexes press release dated July 22, 2004.

[10] This would cover the situation, perhaps unlikely, where two ETFs, one of which tracks an index, hold the same portfolio security and a distribution of less than 10% of the value of the portfolio security nevertheless causes an adjustment of the index divisor. If options on the ETF that tracks the index are adjusted, this provision would allow options on the other to be adjusted as well.

No adjustment would be made, however, if the adjustment would amount to less than $0.125 per share.

Conforming changes have been made to Interpretation and Policy .08 of Article XII, Futures and Futures Options, Section 3, which covers adjustments to stock futures on fund shares and parallels the provisions of Interpretation and Policy .08 of Article VI, Section 11. In addition, technical changes have been made to Interpretation .08 of Article VI, Section 3 to (i) fix garbled text as originally filed in SR–OCC–2001–07 and approved by the Commission [11] and (ii) delete the term ''stock'' as a modifier for ''fund shares'' in order to further conform the Interpretation to the changes proposed in SR–OCC–2002–22 and approved by the Commission.[12]

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended, because it codifies exceptions to OCC's adjustment policies made by adjustment panels of the Securities Committee that were intended to promote fairness to buyers and sellers of options contracts, the maintenance of fair and orderly markets, and consistency of interpretation and practice.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC 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 were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(4) [14] promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2004–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2004–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2004–18 and should be submitted on or before November 19, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–2907 Filed 10–28–04; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 (August 28, 2001).

[12] See Securities Exchange Act Release No. 46914 (November 26, 2002), 67 FR 72261 (December 4, 2002).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(4).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice to establish a system of records.

SUMMARY: DOT proposes to establish a new system of records under the Privacy Act of 1974.

EFFECTIVE DATE: December 8, 2004. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

ADDRESSES: Address all comments concerning this notice to Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax) *Yvonne.Coates@ost.dot.gov* (Internet address).

FOR FURTHER INFORMATION CONTACT: Theresa Rowlett, (202) 385–2323, Chief, Business Information and Operations Division, Federal Motor Carrier Safety Administration.

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

SYSTEM NUMBER:

DOT/FMCSA 04.

SYSTEM NAME:

Safety Violation and Consumer Complaint Safety Hotline Database.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

The system is located at the Computing Technology, Inc. (CoTs), 3028 Javier Road, Suite 400, Fairfax, Virginia. The office is under the direction and supervision of the Office of Communications (MC–CM), Federal Motor Carrier Safety Administration (FMCSA).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

Individuals who have filed Safety and/or Commercial complaints. Complaints filed are the results of alleged violations of safety and/or commercial regulations. The majority of commercial complaints filed are against household goods (HHG) movers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and reports in this system may include:

1. HHG commercial complaints
2. Acknowledgement letter to complainant
3. Notification letter to carrier
4. Commercial HHG press release setup
5. HHG carrier complaint history
6. HHG complaints searches (DOT#, MC#, State, Tracking#, Complainant, Respondent, Date)
7. Safety violations reports
8. Safety violations and commercial report generator

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 314104, 49 U.S.C. 14702.

PURPOSES:

The system has multiple purposes. First, the data collected will provide FMCSA with statistical information regarding commercial motor carriers, in particular the household goods moving industry. Using this information, FMCSA will target motor carriers with high levels of complaints for enforcement actions. The information will be used to promote compliance with Federal Motor Carrier Safety and Commercial Regulations. In addition, this statistical information will be used to develop guidance and direction for the general public—identifying the most common problems and the means to avoid them. This information will also be used to develop and maintain a list of problem movers. This information will be made public so that consumers can avoid using these problem companies.

Lastly, this information will be used, at the complainant's discretion, to assist in reconciling complaints. The mover will be informed of the complaint and will be encouraged to resolve the issue with the complainant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Notice of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The data within the Safety Violation and Consumer Household Goods Complaint Hotline database is stored within a Microsoft Access 2000 database. Direct access to the database from the Internet is protected and blocked via our multi-layering architecture. Access to the data is protected by using username and password authentication of only FMCSA approved users. Usernames and passwords follow the DOT standards for creation and refreshing periods of 90 days. The communication during user authentication and throughout the authorized user's access to the website and database is encrypted using 128–Bit Secure Socket Layer (SSL).

Files are stored at Computing Technology, Inc. (CoTs), 3028 Javier Road, Suite 400, Fairfax, Virginia. Back up copies of this information are stored at FMCSA's offices at 400 Virginia Avenue, SW., Suite 340, Washington, DC.

RETRIEVABILITY:

Records are maintained and retrieved by the following: complainant name, respondent name, secondary respondent name, motor carrier number, DOT number, tracking number, date, and state.

SAFEGUARDS:

To safeguard against the risk of unauthorized disclosure, CoTs maintains the information at secured facilities in limited access areas. The data on the systems are software-protected by passwords. There are also nightly backups to protect the database. CoTs limits access to the system to designated authorized personnel.

RETENTION AND DISPOSAL:

The complaint files are retained at CoTs by the system administrator. All files received by the Safety Violations and Commercial Consumer Hotline are retained in compliance with agency records control schedules. Complaints received by mail from FMCSA are recorded to the online database and returned to FMCSA. CoTs complies with all requirements of the National Archives and Records Administration (NARA) relative to records retention and control. NARA regulations indicate that electronic files created to monitor system usage are authorized for erasure or deletion when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

MANAGER(S) AND ADDRESS:

Federal Motor Carrier Safety Administration, Office of Communications, 400 7th Street, SW., (MC–CM), Washington, DC 20590

NOTIFICATION PROCEDURE:

Federal Motor Carrier Safety Administration, Business Information and Operations Division, 400 7th Street, SW., MC–MBI, Washington, DC 20590

RECORD ACCESS PROCEDURES:

Federal Motor Carrier Safety Administration, Office of Communications, 400 7th Street, SW., (MC–CM), Washington, DC 20590.

CONTESTING RECORD PROCEDURES:

Federal Motor Carrier Safety Administration, Business Information and Operations Division, 400 7th Street, SW., MC–MBI, Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Consumers, motor carriers and brokers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 25, 2004.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 04–24253 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Deer Park Municipal Airport, Deer Park, WA

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at Deer Park Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 USC § 47107(h).

DATES: Comments must be received on or before November 29, 2004.

ADDRESSES: Comments on this application may be mailed or delivered

to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Penni Loomis, Airport Manager, City of Deer Park, P.O. Box F, Deer Park, Washington 99006.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Miles, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Deer Park Municipal Airport under the provisions of 49 USC 47107(h).

On October 21, 2004, the FAA determined that the request to release property at Deer Park Municipal Airport submitted by the City of Deer Park met the procedural requirements of the Federal Aviation Airport Compliance Requirements Order 5190.6A. The FAA may approve the request, in whole or in part, no later than November 29, 2004.

The following is a brief overview of the request:

The Deer Park Municipal Airport requests the release of non-aeronautical airport property consisting of approximately 5 acres on the east side of the airport to a private developer. The purpose of this release is to trade unimproved airport land to a private developer for use as a residential emergency egress, for 8.88 acres of improved light industrial property adjacent to the west side of the airport. The airport property proposed for release has not been used for aviation purposes and no aeronautical use of the property is planned or anticipated. The City of Deer Park has determined that the property requested is not within critical areas affecting safety of flight and that the proposed use of the property as a residential emergency egress would not interfere with airport operations. The property to be acquired by the Airport in trade would benefit the airport for future revenue producing development. The airport would realize a net gain of property.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Deer Park Municipal Airport, 712 North Cedar Road, Deer Park, Washington, 99006.

Issued in Renton, Washington on October 21, 2004.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 04–24268 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property At Dillant-Hopkins Airport, Keene, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the City of Keene, New Hampshire's request to change a portion (approx. 3.4 acres) of Airport property from aeronautical use to non-aeronautical use. The property is located on Route 32 (Map 34, Lot 32) and is currently used for approach protection and land use compatibility. Upon disposition the property will be used as property for a restaurant, miniature golf course and go-cart track. The property was acquired under AIP Project No. 3–33–0008–13.

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments must be received on or before November 29, 2004.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Edward Mattern, Airport Manager at Dillant-Hopkins Airport, 80 Airport Road, Keene, New Hampshire 03431–4455, Telephone (603) 357–9853 and by contacting Donna R. Witte.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (781) 238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts on October 20, 2004.

Bradley A. Davis,

Manager, Engineering and Safety Branch, New England Region.

[FR Doc. 04–24267 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee (ARAC).

DATES: The meeting is scheduled for November 17, 2004, 10 a.m.–noon.

ADDRESSES: The meeting will be held at the FAA, Orville Wright Building, 800 Independence Avenue, SW., Washington, DC 20591, 10th floor, MacCracken Room.

FOR FURTHER INFORMATION CONTACT: Ms. Gerri Robinson, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9678; fax (202) 267–5075; e-mail: *Gerri.Robinson@faa.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Executive Committee of the ARAC to be held on November 17, 2004, at the FAA, Orville Wright Building, 800 Independence Avenue, SW., Washington, DC 20591. The agenda includes:

FAA Rulemakings on the Unified Regulatory Agenda
Tracking the status of rulemaking documents at OST and OMB
Discussion on future of ARAC and ARCs
Discussion of how EASA and FAA should coordinate regulatory initiatives
ARAC Accomplishments

Participation at the Public Meeting

Attendance is open to the public, but will be limited to the space available. The public must make arrangements for teleconferencing by November 5th to participate in the meeting using the teleconference service. The public must

also make arrangements by November 5th to present oral statements at the meeting. Written statements may be presented to the Committee at any time either by sending 25 copies to the Executive Director or by providing the copies at the meeting. To make arrangements for teleconferencing, making an oral presentation, or other reasonable accommodations for this meeting, please contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section above.

Issued in Washington, DC on October 25, 2004.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 04–24257 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200: Integrated Modular Avionics (IMA)/ EUROCAE WG–60

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200: Integrated Modular Avionics.

DATES: The meeting will be held on November 16–19, 2004, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at National Aerospace Laboratory NLR, Anthony Fokkerweg 2, 1059 BM, Amsterdam, The Netherlands.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*. (2) *http://www.nlr.nl*; René Eveleens; telephone +31 20 511 3600; *eveleens@nlr.nl*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 200 meeting. The agenda will include:

- November 16:
  - Editorial Committee Meeting.
  - Subgroup Meetings: Edit document.
- November 17:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Review Summary of Previous Meeting).
  - Review Action Items.
  - Reports on Related Committees Activities.
  - Subgroup Reports.
  - Review Status of Document.
  - Assignment of Action Items.
  - Subgroup Meetings: Edit Document.
- November 18:
  - Subgroups Meet in Working Sessions.
  - Inter-Subgroup Meetings: Work Mutual Action Items.
- November 19:
  - Subgroup Reports.
  - Review Status of Document.
  - Closing Session (Make Assignments, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, October 14, 2004.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 04–24266 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19428]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel METALFISH.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19428 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 29, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19428. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel METALFISH is:

Intended Use: ''Salmon charter fishing and possible day cruises''.

Geographic Region: ''Great Lakes''.

Dated: October 25, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–24203 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19424]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MYSTIC WIND.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19424 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 29, 2004.

ADDRESSES: Comments should refer to docket number MARAD–19424. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MYSTIC WIND is:

Intended Use: ''Overnight dinner sails, crewed charter, multi-day corporate team building.''

Geographic Region: ''Washington State.''

Dated: October 20, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–24201 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19429]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PHOENIX.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19429 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments.

Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 29, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–19429. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PHOENIX is:

Intended Use: ''Research Vessel, Expedition Vessel.''

Geographic Region: ''United States East Coast.''

Dated: October 20, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–24202 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19427]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SAILS CALL.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief

description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19427 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 29, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19427. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SAILS CALL.

Intended Use: ''Sailboat Charter.''

Geographic Region: ''East Coast of the U.S.''

Dated: October 20, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–24200 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19425]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SERENITY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19425 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 29, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19425. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SERENITY is:

Intended Use: ''Charters.''

Geographic Region: ''U.S. East Coast, Puerto Rico, U.S. Virgin Islands.''

Dated: October 20, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–24199 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19430]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel YACHT LADY.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19430 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 29, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19430. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel YACHT LADY is:

Intended Use: ''Luxury private and short term charters''.

Geographic Region: ''California''.

Dated: October 20, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–24204 Filed 10–28–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34597]

Progressive Rail, Incorporated—Lease and Operation Exemption—Rail Line of Union Pacific Railroad Company

Progressive Rail, Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company and operate 38.3 miles of rail line consisting of the Cameron Line that extends between milepost 50.00 at or near Cameron and milepost 11.70 at or near Norma, in Barron and Chippewa Counties, WI.[1]

PGR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. The transaction was scheduled to be consummated no sooner than October 12, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34597, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Thomas F. McFarland, P.C., 208 South LaSalle St., Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 22, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–24116 Filed 10–28–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The rail line in the instant transaction connects in Barron County, WI, to a rail line that is the subject of a concurrently filed notice of exemption in STB Finance Docket No. 34596, *Wisconsin Northern Railroad Company, LLC-Lease and Operation Exemption-Rail Lines of Wisconsin Central, Ltd.,* wherein Wisconsin Northern Railroad Company (WNRC) has sought to lease and operate approximately 23.97 miles of rail line in Barron County, WI. PGR is the parent company of WNRC. However, by letter filed on October 15, 2004, WNRC has requested withdrawal of its notice, indicating that PGR proposes to file a new notice in its own behalf to lease and operate the 23.97 miles of rail line in Barron County to avoid the common control situation that otherwise would occur and require Board approval. The withdrawal request was granted by decision served October 22, 2004, in that proceeding.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Capital Distribution

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

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before December 28, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Capital Distribution.

OMB Number: 1550–0059.

Form Number: OTS Forms 1583.

Description: Provides uniform treatment for capital distributions made by savings associations held by holding companies. Ensures adequate supervision of distribution of capital by those savings associations, thereby fostering safety and soundness of the thrift industry.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 523.

Estimated Burden Hours per Response: 4 hours.

Estimated Frequency of Response: Event-generated.

Estimated Total Burden: 2,092 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: October 25, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–24269 Filed 10–28–04; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Friday,
October 29, 2004

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 040831251-4251-01; I.D. 100804A]

RIN 0648–AS47

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations implementing Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP). Amendments 18 and 19 amend the FMP to include the Voluntary Three-Pie Cooperative Program (hereinafter referred to as the Crab Rationalization Program (Program)). Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce to approve the Program. The proposed action is necessary to increase resource conservation, improve economic efficiency, and improve safety. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable law.

DATES: Comments must be received no later than December 13, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Facsimile: 907-586-7557.
- E-mail: *KTC18–PR–0648–AS47@noaa.gov*. Include in the subject line of the e-mail the following document identifier: Crab Rationalization RIN 0648–AS47. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Send comments on collection-of-information requirements to the same NMFS address and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). Also, send comments to David Rostker, OMB, by e-mail at *DRostker@omb.eop.gov* or by facsimile to 202-395-7285.

Copies of Amendments 18 and 19 and the Environmental Impact Statement (EIS) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm*. The EIS contains as appendices the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and Social Impact Assessment (SIA) prepared for this action.

FOR FURTHER INFORMATION CONTACT: Susan Salveson, 907-586-7228 or *sue.salveson@noaa.gov*.

SUPPLEMENTARY INFORMATION: In January 2004, Congress amended section 313 of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108-199, section 801), by adding paragraph (j). As amended, section 313(j)(1) requires the Secretary to approve by January 1, 2005, and implement thereafter, the Program as it was adopted by the North Pacific Fishery Management Council (Council). Amendments 18 and 19 amend the FMP to include the Program.

This proposed rule implements Amendments 18 and 19 to the FMP. The Notice of Availability for these amendments was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS solicited public comments on the proposed amendments through November 1, 2004. NMFS published the amendments in September so that the decision date for approval of the amendments will be before the statutory deadline of January 1, 2005.

The Program would allocate BSAI crab resources among harvesters, processors, and coastal communities. The Council developed the Program over a 6-year period to accommodate the specific dynamics and needs of the BSAI crab fisheries. The Program builds on the Council's experiences with the halibut and sablefish Individual Fishing Quota (IFQ) program and the American Fisheries Act (AFA) cooperative program for Bering Sea pollock. The Program is a limited access system that balances the interests of several groups who depend on these fisheries. The Program would address conservation and management issues associated with the current derby fishery and would reduce bycatch and associated discard mortality. The Program also would increase the safety of crab fishermen by ending the race for fish. Share allocations to harvesters and processors, together with incentives to participate in fishery cooperatives, would increase efficiencies, provide economic stability, and facilitate compensated reduction of excess capacities in the harvesting and processing sectors. Community interests would be protected by Community Development Quota (CDQ) allocations and regional landing and processing requirements, as well as by several community protection measures.

This preamble first provides a Crab Rationalization Program overview that presents a general description of all of the Program components. Subsequent sections focus on the specifics of the following Program components: quota share allocation, processor quota share allocation, IFQ and individual processing quota (IPQ) issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, binding arbitration, monitoring, economic data collection, and cost recovery fee collection.

Crab Rationalization Program Overview

The Program would apply to the following BSAI crab fisheries: Bristol Bay red king crab (*Paralithodes camtschaticus*), Western Aleutian Islands (Adak) golden king crab (*Lithodes aequispinus*) - West of 174° W., Eastern Aleutian Islands (Dutch Harbor) golden king crab - East of 174° W., Western Aleutian Islands (Adak) red king crab - West of 179° W., Pribilof Islands blue king crab (*P. platypus*) and red king crab, St. Matthew Island blue king crab, Bering Sea snow crab (*Chionoecetes opilio*), and Bering Sea Tanner crab (*C. bairdi*). Golden king crab is also known as brown king crab. In this document, the phrases ''crab fishery'' and ''crab fisheries'' refer to these fisheries, unless otherwise specified.

Several crab fisheries under the FMP would be excluded from the Program, including the Norton Sound red king crab fishery, which is operated under a ''superexclusive'' permit program intended to protect the interests of local, small-vessel participants. Also excluded from this Program are the Aleutian Islands Tanner crab fishery, Aleutian Islands red king crab fishery east of 179° W. long., and the Bering Sea golden king crab, scarlet king crab (*L. couesi*), triangle Tanner crab (*C. angulatus*), and

grooved Tanner crab (*C. tanneri*) fisheries.

Harvest Sector

Qualified harvesters would be allocated quota share (QS) in each crab fishery. To receive a QS allocation, a harvester must hold a permanent, fully transferable license limitation program (LLP) license endorsed for that crab fishery. Quota share represents an exclusive but revokable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the total allowable catch (TAC) from a fishery. IFQs are the annual allocations of pounds of crab for harvest that represent a QS holder's percentage of the TAC. Using LLP licenses for defining eligibility in the Program would maintain current fishery participation. A harvester's allocation of QS for a fishery would be based on the landings made by his or her vessel in that fishery. Specifically, each allocation would be the harvester's average annual portion of the total qualified catch during a specific qualifying period. Qualifying periods were selected to balance historical and recent participation. Different periods were selected for different fisheries to accommodate closures and other circumstances in the fisheries in recent years.

Quota share would be designated as either catcher vessel (CV) shares or catcher/processor (CP) shares, depending on the nature of the LLP license and whether the vessel processed the qualifying harvests on board. Catcher vessel IFQ would be issued in two classes, Class A IFQ and Class B IFQ. Crabs harvested with Class A IFQ would require delivery to a processor holding unused processing quota. Class A IFQ landings also would be subject to a regional delivery requirement. Under this regional requirement, landings would be delivered either in a North or in a South region (in most fisheries). Crabs harvested with Class B IFQ could be delivered to any processor and would not be regionally designated. Landings in excess of IFQ would be forfeited in all cases. Class B IFQs are intended to provide ex-vessel price negotiating leverage to harvesters. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ to the CV sector.

Transfer of QS and IFQ, either by sale or lease, would be allowed, subject to limits including caps on the amount of shares a person may hold or use. To be eligible to receive transferred QS or IFQ, a person would have to meet specific eligibility criteria. Initial recipients of QS, CDQ groups, and eligible crab community entities would be exempt from the transfer eligibility criteria.

Separate caps would be imposed to limit the amount of QS and IFQ a person could hold and to limit the use of IFQ on board a vessel. These caps are intended to prevent negative impacts from what can be described as excessive consolidation of shares. Excessive share holdings are prohibited by the Magnuson-Stevens Act. Different caps were chosen for the different fisheries because fleet characteristics and dependence differ across fisheries. Separate caps on QS holdings would be established for CDQ groups, which represent rural western Alaska communities. Processor holdings of QS would also be limited by caps on vertical integration. Quota share holders could retain and use initial allocations of QS above the caps.

Crew Sector

To protect their interests in the fisheries, qualifying crew would be allocated 3 percent of the initial QS pool. These shares are intended to provide long term benefits to captains and crew. The Council originally intended this provision to apply only to vessel captains. However, NMFS has determined that documentation necessary to allocate Crew QS, called C shares by the Council, would require that these shares be initially issued to individuals who hold a State of Alaska Interim Use Permit. Most likely, this individual would be the captain; however, the State does not require that the holder of the Interim Use Permit be the vessel captain. The allocation to crew would be based on the same qualifying years and computational method used for QS allocations to LLP license holders. Crew (C) QS would be issued as CVC QS and CPC QS, depending on the activity in the qualifying years. To ensure that Crew QS and IFQ benefit at-sea participants in the fisheries, Crew IFQ could be used only when the IFQ holder is on board the vessel, except when a Crew QS holder joins a cooperative.

To be eligible to receive an allocation, an individual would be required to have historic and recent participation. Historic participation would be demonstrated by at least one landing in each of three of the qualifying years. Recent participation would be demonstrated by at least one landing in two of the three most recent seasons, with some specific exceptions.

CV Crew IFQ would be required to be delivered to shore-based or floating processors for processing. CV Crew IFQ would not be subject to specific delivery requirements until July 1, 2008. After July 1, 2008, CV Crew IFQ would be subject to the Class A IFQ/Class B IFQ distinction with commensurate regional delivery requirements unless the Council determines, after review, not to apply those designations. Before July 1, 2007, the Council would review CV Crew IFQ landing patterns to determine whether the distribution of landings among processors and communities of CV Crew IFQ differs from the distribution of IFQ landings.

CP crew would be allocated CPC QS and IFQ that include a harvesting and on-board processing privilege. Harvests with CPC IFQ also could be delivered to shore-based or floating processors.

Crew QS and IFQ could be transferred to eligible individuals. Leasing of Crew IFQ would be permitted before July 1, 2008. After July 1, 2008, leasing would be permitted only in the case of a documented hardship (such as a medical hardship or loss of vessel) for the term of the hardship, subject to a maximum of 2 years over a 10-year period. Individual Crew QS holdings would be capped.

Processing Sector

A processing privilege, analogous to the harvesting privilege allocated to harvesters, would be allocated to processors. Qualified processors would be allocated processor quota share (PQS) in each crab fishery. PQS represents an exclusive but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery. An annual allocation of pounds of crab based on the PQS is IPQ. IPQs would be issued for 90 percent of the IFQ allocated harvesters, equaling the amount of IFQ allocated as Class A IFQ. Processor privileges would not apply to the remaining TAC allocated as Class B IFQ, or for Crew IFQ until July 1, 2008. IPQs would be regionally designated for processing (corresponding to the regional designation of the Class A IFQ).

PQS allocations would be based on processing history during a specified qualifying period for each fishery. A processor's initial allocation of PQS in a fishery would equal its share of all qualified pounds of crab processed in the qualifying period. Processor shares would be transferable, including the leasing of IPQs and the sale of PQS, subject to caps and to community protection measures. IPQs could be used without transfer at any facility or plant operated by a processor. New processors could enter the fishery by purchasing PQS or IPQ or by purchasing crab harvested with Class B IFQ or crab harvested by CDQ groups or the Adak community entity.

A PQS holder would be limited to holding 30 percent of the PQS issued for a fishery, except that initial allocations of shares above this limit could be retained and used. In addition, in the snow crab fishery, no processor would be permitted to use or hold in excess of 60 percent of the IPQs issued for the Northern region.

Catcher/Processor Sector

CPs have a unique position in the Program because they participate in both the harvesting and processing sectors. To be eligible for CP QS, a person would be required to hold a permanent, fully transferable LLP license designated for CP use. In addition, a person must have processed crab on board the CP, whose history gave rise to the LLP license, in either 1998 or 1999. Persons meeting these qualification requirements would be allocated CP QS in accordance with the allocation rules for QS for all qualified catch that was processed on board. These shares would represent a harvest privilege and an on-board processing privilege. Catcher/Processor QS would not have regional designations.

Regionalization

The regional delivery requirements for QS are intended to preserve the historic geographic distribution of landings in the fisheries. Communities in the Pribilof Islands are the prime beneficiaries of this regionalization provision. Two regional designations would be created in most fisheries. The North region would be all areas in the Bering Sea north of 56°20′ N. latitude. The South region would be all other areas. Catcher vessel QS, Class A IFQ, PQS, and IPQ would be regionally designated. Crab harvested with regionally designated IFQ would be required to be delivered to a processor in the designated region. Likewise, a processor with regionally designated IPQ would be required to accept delivery of and process crab in the designated region. Legal landings in a region in the qualifying years would result in QS and PQS designated for that region.

The Program has two exceptions to the North/South regional designations. In the Western Aleutian Islands golden king crab fishery, 50 percent of the Class A IFQ and IPQ would be designated as west shares to be delivered west of 174° W. longitude. The remaining 50 percent of the Class A IFQ and IPQ would have no regional designation and would not be subject to a regional delivery requirement. The west designation would be applied to all Class A IFQ and IPQ regardless of the historic location of landings in the fishery. A second exception is the Bering Sea Tanner crab fishery, which would have no regional designation. This fishery is anticipated to be conducted primarily as a concurrent fishery with the regionalized Bristol Bay red king crab and Bering Sea snow crab fisheries, making the regional designation of Tanner crab landings unnecessary.

Cooperatives

Harvesters may form voluntary cooperatives in order to collectively manage their IFQ holdings. A minimum membership of four unique QS holders would be required for cooperative formation. Quota share holders who also (1) hold PQS or IPQ, (2) are affiliated with a person who holds PQS or IPQ, (3) process Class B IFQ, or (4) are affiliated with a person that processes Class B IFQ, would be prohibited from joining a crab harvesting cooperative. A cooperative would be required to apply for a cooperative IFQ permit. The cooperative IFQ permit would display the aggregate amount of IFQ in each crab fishery that would be yielded by the collective QS holdings of the members. IFQ could be transferred between cooperatives, subject to NMFS' approval. Cooperative members would be allowed to leave a cooperative or change cooperatives on an annual basis prior to the July 1 deadline for the annual cooperative IFQ permit application. Vessels that are used exclusively to harvest cooperative IFQ would not be subject to use caps. Cooperatives are free to associate with one or more processors to the extent allowed by antitrust law.

Community Protection Measures

The Program includes several provisions intended to protect communities from adverse impacts that could result from the Program. Communities eligible for the community protection measures would be those with 3 percent or more of the qualified landings in any crab fishery included in the Program. Based on these criteria, NMFS has preliminarily determined that the following crab communities meet this criteria: Adak, Akutan, Dutch Harbor, Kodiak, King Cove, False Pass, St. George, St. Paul, and Port Moller. All of these communities are identified as eligible crab communities (ECCs) for purposes of community protection measures.

''Cooling off'' provision. Until July 1, 2007, PQS and IPQ based on processing history from the ECCs could not be transferred from those communities. The use of IPQ outside the community during this period would be limited to 20 percent of the IPQ and for specific hardships. PQS and IPQ from three crab fisheries would be exempt from the cooling off provision: Tanner crab, Western Aleutian Islands red king crab, and Western Aleutian Islands golden king crab.

Individual processing quota caps. IPQ caps would be established to limit the annual issuance of IPQs in seasons when the Bristol Bay red king crab or snow crab TAC exceeds a threshold amount. Under these circumstances, Class A IFQ issued in excess of these thresholds would not be subject to the IPQ landing requirements but would be subject to the regional delivery requirements.

Sea time waiver. Sea time eligibility requirements for the purchase of QS would be waived for CDQ groups and community entities in ECCs, allowing those communities to build and maintain local interests in harvesting. CDQ groups and ECCs would be eligible to purchase PQS but would not be permitted to purchase Crew QS.

Right of first refusal (ROFR). ECCs, except for Adak, would have a ROFR on the transfer of PQS and IPQ originating from processing history in the community if the transfer would result in relocation of the shares outside the community. Adak would not be eligible for the ROFR provision because Adak would receive a direct allocation of Western Aleutian Islands golden king crab. In addition, the City of Kodiak and the Kodiak Island Borough in the Gulf of Alaska (GOA) would have a ROFR on the transfer of PQS and IPQ from communities in the GOA north of 56°20′ N. latitude.

Community Development Quota Program and Community Allocations

Community Development Quota Program. The CDQ Program would be expanded to include the Eastern Aleutian Islands golden king crab fishery and the Western Aleutian Islands red king crab fishery. In addition, the CDQ allocations in all crab fisheries covered by the Program would be increased from 7.5 to 10 percent of the TAC. The increase would not apply to the CDQ allocation of Norton Sound red king crab because this fishery is excluded from the Program. The crab CDQ fisheries would be managed as separate commercial fisheries by the State under authority deferred to it under the FMP. The State would establish observer coverage requirements, State permitting requirements, and transfer provisions among the CDQ groups. It also would monitor catch to determine when quotas had been reached, enforce any penalties

associated with quota overages, and monitor compliance with the requirement that CDQ groups must deliver at least 25 percent of their allocation to shore-based processors.

Crab harvested under the CDQ allocations (except Norton Sound red king crab) would be subject to some of the Federal requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees. The specifics of these requirements are discussed in more detail in later sections.

The CDQ groups could participate in the crab fisheries as holders of both QS and PQS. Some CDQ groups would be initial recipients of QS because they hold LLP licenses and the appropriate catch history. In addition, the CDQ groups would be exempt from the transfer eligibility requirement related to sea time so they would be eligible to obtain QS by transfer, subject to QS use caps for CDQ groups. The CDQ groups also would be able to obtain PQS by transfer because there are no transfer restrictions on PQS. While harvesting crab with IFQ, the CDQ groups would be subject to the same regulations as apply to other IFQ holders. The purchase and holding of QS and PQS by the CDQ groups would be subject to the administrative regulations for the CDQ Program at 50 CFR part 679. These regulations include information, reporting, prior approval, and use requirements for all CDQ investments, which include QS and PQS.

Adak allocation. An allocation of 10 percent of the TAC of Western Aleutian Islands golden king crab would be made to the community of Adak. The allocation to Adak would be made to a nonprofit entity representing the community, with a board of directors elected by the community. As an alternative and in the interim, the allocation and funds derived from it could be held in trust by the Aleut Enterprise Corporation for a period not to exceed 2 years, if the Adak community non-profit entity is not formed prior to implementation of the Program. Oversight of the use of the allocation for ''fisheries related purposes'' would be deferred to the State under the FMP. NMFS would have no direct role in oversight of the use of this allocation. The State would provide an implementation review to the Council to ensure that the benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan. The Adak allocation would be managed as a separate commercial fishery by the State in a manner similar to management of the crab CDQ fisheries. As with the CDQ allocations, crab harvested under the Adak allocation would be subject to several requirements that apply to all crab fisheries under the Program including permitting, recordkeeping and reporting, a vessel monitoring system, and the cost recovery fees.

Community purchase. Any non-CDQ community in which 3 percent or more of any crab fishery was processed could form a non-profit entity to receive QS, IFQ, PQ and IPQ transfers on behalf of the community. The non-profit entity would be called an eligible crab community organization (ECCO).

Protections for Participants in Other Fisheries

The Program would greatly increase the flexibility for crab fishermen to chose when and where to fish for their IFQ, and this increased flexibility would provide crab fishermen with increased opportunity to participate in other fisheries. Restrictions on the participants in other fisheries, also called sideboards, would restrict a vessel's harvests to its historical landings in all GOA groundfish fisheries (except the sablefish fishery). Vessels with less than 100,000 pounds (45,359 kg) of total snow crab landings and more than 500 metric tons (mt) (1,102,311 lb) of total Pacific cod landings in the GOA during the qualifying years would be exempt from the restrictions. In addition, vessels with less than 50 mt (110,231 lb) of total groundfish landings in the GOA during the qualifying period would be prohibited from harvesting Pacific cod from the GOA. Restrictions would be applied to vessels but would also restrict landings made using a groundfish LLP license derived from the history of a vessel so restricted, even if that LLP license is used on another vessel. Groundfish sideboards in the GOA would be managed by NMFS through fleet-wide sideboard directed fishing closures in Federal waters and for the parallel fishery in state waters.

Arbitration System

BSAI crab fisheries have a history of contentious price negotiations. Harvesters have often acted collectively to negotiate an ex-vessel price with processors, which at times delayed fishing. The Arbitration System was developed to compensate for complications arising from the creation of QS/IFQ and PQS/IPQ. The complications include price negotiations that could continue indefinitely and result in costly delays and the ''last person standing'' problem where the last Class A IFQ holder to contract deliveries would have a single IPQ holder to contract with, effectively limiting any ability to use other processor markets for negotiating leverage. To ensure fair price negotiations, the Arbitration System includes a provision for open negotiations among IPQ and IFQ holders as well as various negotiation approaches, including: (a) a share matching approach where IPQ holders make known to unaffiliated IFQ holders that have uncommitted IFQ available the amount of uncommitted IPQ they have available so the IFQ holder can match up its uncommitted IFQ by indicating an intent to deliver its catch to that IPQ holder; (b) a lengthy season approach that allows parties to postpone binding arbitration until sometime during the season; and (c) a binding arbitration procedure to resolve price disputes between an IPQ holder and eligible IFQ holders.

The arbitration process would begin preseason with a market report for each fishery prepared by an independent market analyst selected by the PQS and QS holders and the establishment of a non-binding fleet wide benchmark price by an arbitrator who has consulted with fleet representatives and processors. Information provided by the sectors would be historical in nature and at least 3 months old. This non-binding price would guide the above described negotiations. Information sharing among IPQ and IFQ holders, collective negotiations, and release of arbitration results would be limited to minimize the antitrust risks of participants in the Program.

The binding arbitration procedure in a last best (or final) offer format. The IPQ holder, each IFQ holder, and each crab harvesting cooperative could submit an offer. For each IFQ holder or cooperative, the arbitrator would select between the IFQ holder's (or cooperative's) offer and the IPQ holder's offer. After an arbitration decision is rendered, an eligible IFQ holder with uncommited IFQ could opt-in to the completed contract by accepting all terms of the arbitration decision as long as the IPQ holder held sufficient uncommitted IPQ.

Monitoring and Enforcement

NMFS and the State of Alaska would coordinate monitoring and enforcement of the crab fisheries. Harvesting and processing activity would need to be monitored for compliance with the implementing regulations. Methods for catch accounting and catch monitoring plans would generate data to provide accurate and reliable round weight accounting of the total catch and landings to manage quota share

accounts, prevent overages of IFQ and IPQ, and determine regionalization requirements and fee liability. Monitoring measures would include landed catch weight and species composition, bycatch, and deadloss to estimate total fishery removals.

Economic Data Collection

The Program includes a comprehensive economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. An Economic Data Report (EDR), containing cost, revenue, ownership, and employment data, would be collected on a periodic basis from the harvesting and processing sectors. The data would be used to study the economic impacts of the Program on harvesters, processors, and communities. Participation in the data collection program would be mandatory for all participants in the crab fisheries.

Cost Recovery and Fee Collection

NMFS would establish a cost recovery fee system, required by section 304(d)(2) of the Magnuson-Stevens Act, to recover actual costs directly related to the management and enforcement of the Program. The crab cost recovery fee would be paid in equal shares by the harvesting and processing sectors and would be based on the ex-vessel value of all crab harvested under the Program, including CDQ crab and Adak crab. NMFS also would enter into a cooperative agreement with the State of Alaska to use IFQ cost recovery funds in State management and observer programs for BSAI crab fisheries. The crab cost recovery fee is prohibited from exceeding 3 percent of the annual ex-vessel value. Within this limit, the collection of up to 133 percent of the actual costs of management and enforcement under the Program would be authorized, which would provide for fuller reimbursement of management costs after allocation of 25 percent of the cost recovery fees to the crew loan program.

Crew Loan Program

To aid captains and crew in purchasing QS, a low interest loan program (similar to the loan program under the halibut and sablefish IFQ program) would be created. This program would be funded by 25 percent of the cost recovery fees as required by the Magnuson-Stevens Act. Loan money would be accessible only to active participants and could be used to purchase either QS or Crew QS. Quota share purchased with loan money would be subject to all use and leasing restrictions applicable to Crew QS for the term of the loan. This proposed rule does not contain proposed regulations to implement the crew loan program. Those proposed regulations will be developed by NMFS Financial Services.

Annual Reports and Program Review

NMFS, in conjunction with the State of Alaska, would produce annual reports on the Program. Before July 1, 2007, the Council would review the PQS, binding arbitration, and C share components of the Program. After July 1, 2008, the Council would conduct a preliminary review of the Program. A full review of the entire Program would be undertaken in 2010. Additional reviews would be conducted every 5 years. These reviews are intended to objectively measure the success of the Program in achieving the goals and objectives specified in the Council's problem statement and the Magnuson-Stevens Act. These reviews would examine the impacts of the Program on vessel owners, captains, crew, processors, and communities, and include an assessment of options to mitigate negative impacts.

The following sections provide more detail on the key components of the Program.

Quota Share Allocation

This section identifies those who would be eligible to receive QS in the initial allocation and describes the four QS sectors. The following sections discuss the application process and the proposed mechanism for deriving QS and IFQ in each sector. Qualified harvesters would be allocated QS in each crab fishery. To receive an initial QS allocation, a person must either: (1) hold a permanent, fully transferable LLP license endorsed for that crab fishery; or (2) have made a landing under the authority of a State of Alaska Interim Use Permit issued to crew members by the State of Alaska. Quota share would represent an exclusive but revokable privilege that provides the QS holder with an annual allocation to harvest a specific percentage of the TAC from a fishery. The annual allocations to QS holders of TAC, in pounds, are referred to as IFQ.

QS Sectors

The sector of QS issued would be based on eligibility and fishing activity during the qualified period. These distinctions yield four sectors of QS, as follows:

(1) Catcher Vessel Owner (CVO) QS would be issued to an LLP license holder who harvested and delivered unprocessed crab to a processor.

(2) Catcher/Processor Owner (CPO) QS would be issued to a CP LLP license holder for crab harvested and processed crab on board the same vessel or under that LLP license.

(3) Catcher Vessel Crew (CVC) QS would be issued to a crew member who held a State of Alaska Interim Use Permit and signed a fish ticket for the delivery of crab during the qualifying period.

(4) Catcher/Processor Crew (CPC) QS would be issued to a crew member who held a State of Alaska Interim Use Permit and signed a fish ticket for crab processed at-sea on the vessel that harvested that crab.

Official Crab Rationalization Record

Prior to issuing any QS, NMFS would compile an official record that contains the best available information on the harvesting and processing activities in the crab fisheries. This record would be the basis for determining QS allocations. In order to facilitate the timely issuance of QS, NMFS would require any claims that are contrary to the official record to be substantiated before changing the official record.

NMFS would establish certain operational standards about the use of landings in the official record to facilitate timely issuance of QS. First, NMFS would not issue CPO or CVO QS to any person other than to the applicant who holds the LLP license at the time of application. The Council clearly established that the basis for recognizing and allocating QS is the possession of an LLP license endorsed for the crab fishery, the associated legal landings that were made on the vessel that resulted in the issuance of the LLP license and endorsement, and any landings that were made under the authority of that LLP license.

Second, NMFS would assume any of the legal landings recorded on State of Alaska fish tickets to be correct. An applicant who has information to suggest the fish ticket records are inaccurate would have the burden of proving that to be the case.

Third, NMFS would assume the LLP license issued based on the landings made on a vessel continued to be used on that same vessel, unless the applicant shows, with written documentation, that the LLP license was transferred and used on another vessel. NMFS would make this assumption because, during the years 2000 and 2001, NMFS did not track the vessel on which the LLP license was used. Thus, NMFS would require an applicant to inform NMFS if the LLP license was

used on a vessel other than the vessel for which the LLP license was originally issued. Written documentation establishes a clear record of any transfer of LLP license use prior to tracking by NMFS.

Fourth, if more than one person is claiming legal landings or legal processing activities during the same time at the same processing facility or on board the same vessel, then each person eligible to receive QS or PQS based on those legal landings or legal processing activities would receive any QS or PQS issued divided in equal proportion among all eligible recipients for that time period. This pro rata division of QS would occur unless the applicants can provide written documentation establishing an alternative means for distributing the QS or PQS resulting from the activities during that time period.

Catcher Vessel Owner - CVO QS Sector

Eligibility to receive QS at initial allocation would be limited to U.S. citizens who hold a permanent, fully transferable LLP license at the time of application. This means any corporation applying to receive CVO QS must also be incorporated as a U.S. corporation.

The landings that would be considered as the basis for a QS allocation for a crab fishery would be those made on the vessel used to qualify for the LLP license and species endorsement for that fishery or were made by the vessel on which that LLP license was used. NMFS would initially allocate QS only to the person holding that LLP license at the time of application. Any subsequent transfer of QS after initial issuance by the qualified LLP license holder would be subject to the QS transfer provisions described later in this preamble. NMFS would establish that the landings made under the authority of an LLP license are non-severable from that license. In other words, ''catch history'' that has been separated from an LLP license would not be considered for initial allocation of QS.

The proposed definition of persons eligible to receive an initial allocation of CVO QS and the qualifying periods used to determine the allocation of QS are described in the following table:

TABLE 1—ELIGIBILITY TO RECEIVE CATCHER VESSEL OWNER (CVO) AND CATCHER PROCESSOR OWNER (CPO) QUOTA SHARE (QS) AND ASSOCIATED QUALIFYING YEAR PERIODS

Eligible Person to Receive QS	Crab Fisheries	Qualifying Year Periods for Determining QS Allocation
General: A citizen of the United States at the time of application for QS, and is... *CVO QS:* The holder of a permanent, fully transferable LLP license endorsed for that crab fishery at the time of application to receive QS and who is a citizen of the United States at the time of application for QS; or *CPO QS:* (1) The holder of a permanent, fully transferable LLP license endorsed for that crab fishery and endorsed for CP activities at the time of application to receive QS; and (2) Harvested and processed at-sea any crab species in any BSAI crab fishery during the years 1998 or 1999.	Eastern Aleutian Island golden king crab (EAG)	5 years of the 5-year base period beginning on September 1, 1996, and ending on September 24, 2000.
	Western Aleutian Island golden king crab (WAG)	5 years of the 5-year base period beginning on September 1, 1996, and ending on March 30, 2001.
	Bering Sea Tanner crab (BST)	4 years of the 6-year period beginning on November 15, 1992, through November 27, 1996.
	Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on January 15, 1996, and ending on April 8, 2000.
	Bristol Bay red king crab (BBR)	4 years of the 5-year base period beginning on November 1, 1996, and ending on October 20, 2000.
	Pribilof Islands red and blue king crab (PIK)	4 years of the 5-year period beginning on September 15, 1994, and ending on September 28, 1998.
	St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on September 15, 1994, and ending on September 26, 1998.
	Western Aleutian Islands red king crab (WAI)	3 years of the 4-year period beginning on November 1, 1992, and ending on February 13, 1996.

Catcher Processor Owner - CPO QS Sector

The eligibility to receive a CPO QS is essentially the same as for CVO QS. In order to receive CPO QS, a person would have to be a U.S. citizen who holds a permanent, fully transferable LLP license at the time of application. The LLP license would have to be endorsed for the fisheries for which the QS would be issued and would have to be endorsed to allow the person to harvest and process crab as a CP. Only landings harvested and processed on board the vessel during the qualifying years would be used toward CPO QS. The qualifying periods and number of qualifying years used in CPO QS initial issuance calculations would be the same as those in Table 1. In addition, any person who applies to receive CPO QS would have to have made crab landings that were processed at-sea in either 1998 or 1999. These provisions are intended to ensure that LLP licenses with a history of harvesting and processing at-sea have continued to do so recently, in order to reduce the amount of QS that would be issued for use on vessels that are no longer active in the fishery.

Catcher Vessel Crew - CVC QS Sector

CVC QS would be issued based on different eligibility criteria. Table 2 summarizes the persons who would be eligible to receive an initial allocation of CVC QS, the qualifying years used, and the number of years that could be selected for initial allocation of QS. Individuals would be qualified to receive QS if they are designated on a State of Alaska Interim Use Permit and had historic and recent participation. NMFS would determine participation based on signed State of Alaska fish tickets because the State of Alaska requires individuals who sign a fish ticket to hold a State of Alaska Interim Use Permit.

Historic participation would be demonstrated by at least one landing in each of three of the qualifying years. Recent participation would be demonstrated by at least one landing in two of the three most recent seasons before June 10, 2002, except for the fisheries that were closed in this period. For these fisheries, Western Aleutian Islands red king crab, the Pribilof Islands red and blue king crab, the St. Matthew Island blue king crab, and Tanner crab, recent participation would be demonstrated by at least one landing in two of the three most recent seasons preceding June 10, 2002, in the snow crab, Bristol Bay red king crab, or one of the Aleutian Islands golden king crab fisheries. The recent participation requirement would be waived for captains who died in fishing-related incidents if the captain's estate applies for QS. See the following table for details:

TABLE 2—ELIGIBILITY TO RECEIVE CATCHER VESSEL CREW (CVC) QUOTA SHARE (QS) AND QUALIFYING YEAR PERIODS

Eligible Person to Receive QS	Crab Fisheries	Number of Qualifying Year Periods for Determining QS Initial Allocation	Qualifying Seasons for Determining Recent Participation
An individual who: (1) is a citizen of the United States, or his or her successor-in-interest if that individual is deceased; (2) has historical participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit who made at least one legal landing per year for any 3 qualifying years under that permit based on data from fish tickets maintained by the State of Alaska; and (3) has recent participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit who made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska.	Eastern Aleutian golden king crab (EAG)	3 years of the 5-year base period beginning on September 1, 1996, and ending on September 24, 2000.	(1) September 1, 1999, through October 25, 1999. (2) August 15, 2000, through September 24, 2000. (3) August 15, 2001, through September 10, 2001.
	Western Aleutian golden king crab (WAG)	3 years of the 5-year base period beginning on September 1, 1996, and ending on March 30, 2001.	(1) September 1, 1999, through August 14, 2000. (2) August 15, 2000, through March 28, 2001. (3) August 15, 2001, through March 30, 2002.
	Bering Sea Tanner crab (BST)	3 years of the 6-year period beginning on November 15, 1992, through November 27, 1996.	any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden king crab, Western Aleutian Island golden king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.

TABLE 2—ELIGIBILITY TO RECEIVE CATCHER VESSEL CREW (CVC) QUOTA SHARE (QS) AND QUALIFYING YEAR PERIODS—Continued

Eligible Person to Receive QS	Crab Fisheries	Number of Qualifying Year Periods for Determining QS Initial Allocation	Qualifying Seasons for Determining Recent Participation
	Bering Sea snow crab (BSS)	3 years of the 5-year period beginning on January 15, 1996, and ending on April 8, 2000.	(1) April 1, 2000, through April 8, 2000. (2) January 15, 2001, through February 14, 2001. (3) January 15, 2002, through February 8, 2002.
	Bristol Bay red king crab (BBR)	3 years of the 5-year base period beginning on November 1, 1996, and ending on October 20, 2000.	(1) October 16, 2000, through October 20, 2000. (2) October 15, 2001, through October 18, 2001. (3) October 15, 2002, through October 18, 2002.
	Pribilof Islands red and blue king crab (PIK)	3 years of the 5-year period beginning on September 15, 1994, and ending on September 28, 1998.	any 2 of the last 3 seasons prior to June 10, 2002, in the Eastern Aleutian Island golden king crab, Western Aleutian Island golden king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60′ LOA at the time of harvest are exempt from this requirement.
	St. Matthew blue king crab (SMB)	3 years of the 5-year period beginning on September 15, 1994, and ending on September 26, 1998.	any 2 of the last 3 seasons prior to June 10, 2002, in the Eastern Aleutian Island golden king crab, Western Aleutian Island golden king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.
	Western Aleutian Islands red king crab (WAI)	3 years of the 4-year period beginning on November 1, 1992, and ending on February 13, 1996.	any 2 of the last 3 seasons prior to June 10, 2002, in the Eastern Aleutian Island golden king crab, Western Aleutian Island golden king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.

In addition, the Program exempts crew members who participated in small vessels (under 60 feet in length) from seasonal requirements in the Pribilof Islands red and blue king crab fisheries. Such small vessels have traditionally participated in the fishery, but have been limited in recent years due to hazardous weather conditions.

This exemption for small vessels would allow crew serving in the fishery to be considered for initial allocation.

Catcher Processor Crew - CPC QS Sector

Catcher/Processor crew would be allocated CPC QS that include a harvesting and on-board processing privilege. Harvests with CPC QS also may be delivered to shore-based or floating processors. The definition of an eligible person, the qualifying years, and the seasonal recent participation requirements for the CPC QS sector would be the same as those for the CVC QS sector described in Table 2 above. The allocation to the CPC QS sector would be based on an individual landing under the authority of a State of Alaska Interim Use Permit and processing the catch on board the vessel that made the landing.

Regional Designations of QS

In addition to the four QS sectors issued in each of the eight crab fisheries, QS would have regional delivery requirements. Regional delivery requirements are based on the specific geographic location in which the crab were landed during the qualifying years. Any QS that is subject to regional landing requirements must be delivered to a Registered Crab Receiver (RCR) operating in that region. Regional designations would apply to: (1) QS initially issued to the CVO QS sector, (2) CPO QS subsequently transferred for use as CVO QS under the transfer provisions, or (3) after July 1, 2008, QS initially issued for the CVC QS sector. Regional designations would not apply to CPO QS or to CPC QS. Any QS not subject to regional designation would be issued as an ''Undesignated'' region. The regional designations for each of the fisheries are summarized in the following table:

TABLE 3—REGIONAL DESIGNATIONS OF QUOTA SHARE (QS) AND PROCESSOR QUOTA SHARE (PQS)

Crab Fishery	North Region, North of 56°20′ N. lat.	South Region, South of 56°20′ N. lat.	West Region, West of 174° W. long.	Undesignated
EAG - Eastern Aleutian golden king crab	X	X		
WAG - Western Aleutian golden king crab			X	X
BST - Bering Sea Tanner crab				X
BSS - Bering Sea snow crab	X	X		
BBR - Bristol Bay red king crab	X	X		
PIK - Pribilof Islands red and blue king crab	X	X		
SMB - St. Matthew blue king crab	X	X		
WAI - Western Aleutian Islands red king crab		X		

The North Region would include all landings made in that crab fishery North of a line at 56°20′ N. latitude in the Bering Sea subarea of the EEZ. The South Region would include all landings made in the EEZ south of that line. The West Region would apply only to the Western Aleutian Islands golden king crab fishery. Under this regional designation, 50 percent of the CVO QS issued in the fishery would be designated as West Region and would be limited for delivery West of a line at 174° W. longitude. Undesignated QS may be delivered in any region.

Calculation of QS Issuance

The amount of QS that would initially be issued to any one person would be based on the amount of legal landings made by that person as a percentage of the total legal landings made by all persons eligible to receive QS. NMFS would build the official crab rationalization record, which would contain the total legal landings for each fishery based on the best available information using the State of Alaska fish ticket database. The official record would be established for the CVO and CPO QS sectors based on the total legal landings during the qualifying years that resulted in the issuance of LLP licenses or that were made under the authority of an LLP license. The official record for the CVC and CPC QS sectors would be based on the total legal landings made under the authority of State of Alaska Interim Use Permits during the qualifying years. The official record is presumed to be correct unless an applicant provides information indicating a correction is necessary.

The computation process for CVO and CPO QS and the computation process for CVC and CPC are the same. The process for determining initial allocation of CVO and CPO QS is detailed first. The following steps would be used to calculate QS for an applicant.

Establish harvest denominator. The official crab rationalization record would result in a harvest denominator for all LLP licenses that would be used in calculating QS. The harvest denominator represents the total legal landings made in each year for each crab fishery.

The use of a harvest denominator allows NMFS to calculate the relative percentage of the legal landings made by a person applying to receive QS without having to adjust the relative percentage of all other applicants if additional applications are approved after appeal. The harvest denominator would remain fixed for all applicants. One harvest denominator would be established for the CVO and CPO QS sectors, and one for the CVC and CPC QS sectors because the number of qualifying years used differ.

Computation of initial issuance of CVO and CPO QS. In order to facilitate understanding of the computation, a hypothetical example is used to illustrate the process. This example does not use data or persons from existing crab fisheries and is intended for illustrative purposes only. In our example, there are only two participants in the fishery, LLP A and LLP B, each with different landing patterns. The total legal landings, the region in which those landings were made, the amount of the landings harvested on board the vessel and processed at-sea, and the computation process using two LLPs (A and B) are described in the following table:

TABLE 4—HYPOTHETICAL CRAB FISHERY – BEST 3 OF 4 YEARS USED – CALCULATION OF CATCHER VESSEL OWNER (CVO) AND CATCHER PROCESSOR CREW (CPO) QUOTA SHARE (QS) INITIAL ISSUANCE FOR LLPS

	Year 1	Year 2	Year 3	Year 4	Total of Years Used
1. Harvest Denominator in Fishery (Legal Landings)	1,000 lb	500 lb	3,000 lb	1,333 lb	5,833 lb
2. Total Legal Landings of LLP A	500 lb	200 lb	1,000 lb	1,000 lb	2,700 lb
3. Percentage of Harvest Denominator for LLP A (year used)	50 % (Used)	40 % (Used)	33.3 %	75 % (Used)	55.0 %
(3A) Total Landings Landed Onshore for LLP A	*500*	*100*	500	*200*	800 lb
(3B) Total Landings Processed At-sea for LLP A	*0*	*100*	500	*800*	900 lb
(3C) Percentage of Landings Landed on Shore for LLP A = (800 / (800 + 900)) = 47.06 %					
(3D) Percentage of Landings Processed At-sea for LLP A = (900 / (800 + 900)) = 52.94 %					
(3E) Total Onshore Landings in the North Region for LLP A	*500*	*100*	0	*200*	*800* lb
(3F) Total Onshore Landings in the South Region for LLP A	*0*	*0*	500	*0*	*0* lb
(3G) Percentage of Landings in the North Region for LLP A = (800 / (800 + 0)) = 100 %					
(3H) Percentage of Landings in the South Region for LLP A = (0/ (800 + 0)) = 0 %					
4. Total Legal Landings of LLP B	500 lb	300 lb	2,000 lb	333 lb	3,800 lb
5. Percentage of Harvest Denominator for LLP B	50 % (Used)	60 % (Used)	66.6 % (Used)	25 %	58.9 %
(5A) Total Landings Landed Onshore for LLP B	*500*	*300*	*1,500*	200	*2,300* lb
(5B) Total Landings Processed At-sea for LLP B	*0*	*0*	*500*	800	*500* lb
(5C) Percentage of Landings Landed on Shore for LLP B = (2,300 / (2,300 + 500)) = 82.14 %					
(5D) Percentage of Landings Processed At-sea for LLP B = (500 / (2,300 + 500)) = 17.86 %					
(5E) Total Onshore Landings in the North Region for LLP B	*500*	*300*	*500*	0	*1,300* lb
(5F) Total Onshore Landings in the South Region for LLP B	*0*	*0*	*1,000*	200	*1,000* lb
(5G) Percentage of Landings in the North Region for LLP B = (1,300 / (1,300 + 1,000)) = 56.52 %					
(5H) Percentage of Landings in the South Region for LLP B = (1,000 / (1,300 + 1,000)) = 43.48 %					
6. Sum of Total Percentages of Harvest Denominators for All LLPs = LLP A 55 (Line 3) + LLP B 58.9 (Line 5) = 113.9 %					
7. Percentage of the Sum of the Percentage of the Harvest Denominator for LLP A = (0.550/1.139) = 0.4829 or 48.29 %					
8. Percentage of the Sum of the Percentage of the Harvest Denominator for LLP B = (0.589/1.139) = 0.5171 or 51.71 %					
9. Initial QS Pool = 9,000 Units					
10. Unadjusted Initial QS Allocation for LLP A = 48.29 % × 9,000 = 4,346 QS Units					
11. Unadjusted Initial QS Allocation for LLP B = 51.71 % × 9,000 = 4,654 Units					
12. Initial QS Allocation for LLP A = 4,346 QS Units × (0.97) = 4,216 QS Units					
13. Initial QS Allocation for LLP B = 4,654 QS Units × (0.97) = 4,514 QS Units					
14. Percentage of LLP A QS Allocation as CVO QS = 4,216 × 0.4706 (Line 3C) = 1,984 CVO QS Units					
15. Percentage of LLP A QS Allocation as CPO QS = 4,216 × 0.5294 (Line 3D) = 2,232 CPO QS Units					
16. Percentage of LLP B QS Allocation as CVO QS = 4,514 × 0.8214(Line 5C) = 3,708 CVO QS Units					
17. Percentage of LLP B QS Allocation as CPO QS = 4,514 × 0.1786 (Line 5D) = 806 CPO QS Units					

Determine the total legal landings for each applicant. First, NMFS would sum the total legal landings for each LLP license, in each of the crab fisheries for which the LLP is endorsed, for each of the qualifying years. If there were no legal landings in a qualifying year, then the amount would be zero for that year. If a person is applying to receive QS using multiple licenses, the total legal landings would be summed for each license separately. In our hypothetical example this corresponds to Line 2 in Table 4 for LLP A and Line 4 for LLP B.

Determine the percentage of the harvest denominator in each year. NMFS would divide the total legal landings for that person by the harvest denominator for each year. This yields the percentage of the harvest denominator. For LLP A, this corresponds to Line 3 in Table 4. For LLP B, this corresponds to Line 5.

Determine the qualifying years to be used. Most of the crab fisheries have a ''best of'' provision in which only a select number of the qualifying years are actually used in the QS computation. NMFS would determine which years are used for each initial QS allocation by determining the years that represent the highest percentage of the harvest denominator. In our hypothetical example, 3 of the 4 years representing the greatest percentage of the harvest denominator in each year would be used. This method ensures that a person applying to receive QS would receive a QS allocation based on the highest percentage of the total landings in each year. For LLP A, this corresponds to the italicized years noted as ''(Used)'' in Line 3 of Table 4. For LLP B, this corresponds to Line 5. If a person has insufficient years of landings, one or more ''0 lb'' years would be ''(Used).''

Sum the percentages of the harvest denominator for each LLP license. The next step is to sum the percentages for the years used for each LLP license held by the applicant. Then, that amount is divided by the total number of years used for that crab fishery. In our hypothetical example, for LLP A, this would be the sum of the italicized percentages in Line 3 of Table 4 divided by three, or (50 percent + 40 percent + 75 percent)/3 = 55.0 percent. The same computation is provided for LLP B in Line 5 of Table 4, and is equal to 58.9 percent.

Sum the average percent of the harvest denominator. In our example, the percentage of the harvest denominator is 55.0 percent (for LLP A) and 58.9 percent (for LLP B). The sum of the percentages of all LLP licenses is 113.9 percent. This computation is shown in Line 6 of Table 4. The reason that the amount is greater than 100 percent is that NMFS uses the best years of each LLP license to determine the percentage of the harvest denominator that the landings represent.

Divide each LLP license's percentage by the sum of the percentages of the harvest denominator. In order to properly scale the landings so each LLP license is receiving a percentage of the harvest denominator, each LLP license's percentage of the harvest denominator must be divided by the sum of all percentages for all LLP licenses. This total is the percentage of the sum of the harvest denominators for each LLP license. This computation is shown in Line 7 for LLP A and in Line 8 for LLP B in Table 4.

Multiply the percentage of the sum of the percentages of the harvest denominator by the initial QS pool. The amounts calculated in Lines 7 and 8 are multiplied by the Initial QS Pool; in our example 9,000 QS Units. In the crab fisheries, NMFS would establish an initial QS pool as a fixed amount. This fixed initial QS pool would be used to initially distribute QS to recipients. If appeals are adjudicated, then additional QS may be added to the QS pool, but the process for determining how much QS a person would receive would be established using the same procedure detailed in our example.

Establish the initial QS and PQS pools. The initial QS pool that would be established in each of the eight crab fisheries is an amount large enough so that, on initial issuance, a single unit of QS would yield an annual amount of IFQ less than the average weight of one crab. To achieve this, the initial QS pool for the eight crab QS fisheries would be set at an amount of units equal to three times the highest historical fishery harvest rounded to the nearest 10,000,000 units. The Initial PQS pools are set at the same level as the initial QS pools for ease of computation and to ensure that a single unit of PQS would yield an annual amount of IPQ less than the average weight of one crab. The Initial QS pools for all the crab fisheries using this method are shown in the following table:

TABLE 5—INITIAL QS AND PQS POOL FOR EACH CRAB FISHERY

	Initial QS Pool	Initial PQS Pool
EAG - Eastern Aleutian Islands golden king crab	10,000,000	10,000,000
WAG - Western Aleutian Islands golden king crab	40,000,000	40,000,000
BST - Bering Sea Tanner crab	200,000,000	200,000,000
BSS - Bering Sea Snow Crab	1,000,000,000	1,000,000,000
BBR - Bristol Bay red king crab	400,000,000	400,000,000
PIK - Pribilof Islands red and blue king crab	30,000,000	30,000,000
SMB - St. Matthew blue king crab	30,000,000	30,000,000
WAI - Western Aleutian Islands red king crab	60,000,000	60,000,000

The initial QS pools would be used for all four QS sectors. The amount of QS initially issued as CVO and CPO QS sectors would be 97 percent of the total amount of QS, and the amount of QS initially issued to the CVC and CPC QS sectors in any one fishery would be 3 percent of the initial QS pools. NMFS would implement this provision by multiplying the amount of QS initially issued by either 97 percent for the CVO and CPO QS sectors, or 3 percent for the CVC and CPC QS sectors. The calculation showing the unadjusted allocation for LLP A is shown in Line 10 of Table 4, and the adjusted amount for the CVO and CPO QS sectors is shown in Line 12. The same

calculations for LLP B are shown in Lines 11 and 13.

Determine the amount of QS issued as CVO or CPO QS. The amount of QS issued as CVO QS to each LLP license holder would be equal to the percentage of landings delivered unprocessed, to a shorebased or stationary floating processor. In our hypothetical example, the onshore landings made by LLP A in each year are shown in Line 3A of Table 4. The landings processed at-sea in each year are shown in Line 3B. The italicized numbers are the years used in the initial QS calculations because they represent the years with the highest percentage of the total harvest denominator the best years for that LLP license. The total shown in the last column of Line 3A and Line 3B is the total of onshore landings for the best years only. In this case, Year 3 is not used for LLP A. In order to calculate the percentage of QS that would be issued as CVO QS for LLP A, NMFS would determine the percentage of the landings that were landed on shore for each LLP license applying to receive QS. In our example, for LLP A, the percentage of landings delivered onshore is calculated in Line 3C. The percentage calculated in Line 3C is then multiplied by the amount of QS initially issued to LLP A, which is shown in Line 12. This calculation is provided in Line 14 for LLP A. The amount of QS issued as CVO QS for LLP B is determined by using the same methodology. Lines 5A, 5B, 5C, and Line 16 show the same calculation for LLP B. Only landings that were processed at-sea and that gave rise to an LLP license endorsed for CP activity would be allocated CPO QS.

Determination of Regional Designation

Regional designation applies to most of the crab fisheries (see Table 3 for regional designations). Regional designation does not apply to QS initially issued to the CPO QS sector, but can apply to the CVO QS sector. In our example, we assume there are two regions in the hypothetical fishery: a North region and a South region. The percentage of landings made in each region in each year under LLP A is shown in Lines 3E and 3F. The percentages for LLP B are shown in Lines 5E and 5F. In order to calculate the amount of the CVO QS allocated to each region, several additional steps must be taken depending on specific conditions applicable to each LLP license holder.

LLP license holders with landings in only one region. If an LLP license holder made landings in only one region, then all of the QS issued would be for that region. That is the case for LLP A in our hypothetical fishery example. As shown in Lines 3E and 3F, the amount of landings that occurred in each region are shown in italics. Note the landings processed at-sea are not assigned to a region. As shown in the calculations Line 3G and 3H, 100 percent of the onshore landings subject to regional designation for the years used were in the North region.

LLP license holders with landings in more than one region. If an LLP license holder received QS based on landings made in more than one region, then a one-time additional adjustment in the designation of the QS would be required to account for the issuance of PQS so the amount of QS issued in a region is equal to the amount of PQS in that region. In our hypothetical example, LLP B has qualified landings that would result in QS for both the North and the South Region. Before that QS could be issued, the relative distribution of PQS would need to be determined. The initial issuance of QS for LLP B in the hypothetical example will be explained after the processing sector initial allocation has been discussed.

Other Provisions of Initial QS Issuance

Additional provisions would pertain to the issuance of QS: two provisions for determining QS issuance to vessels that sank, and a provision to allow a person to receive QS for landings made by a vessel not used to qualify for a permanent, fully transferable LLP license endorsed for that fishery.

Sunken vessels. Two provisions would apply to vessels that have sunk. First, a person would receive 50 percent of their average legal landings for the qualifying years unaffected by the sinking after the time of sinking until that vessel was replaced under the provisions established for vessel replacement under the LLP, at 50 CFR 679.4(k)(5)(v). This provision would apply if a person who owned a vessel that sank, replaced that vessel under the LLP qualification rules or after satisfying the LLP qualification requirements. This provision also requires the owner of the vessel to replace the vessel and begin fishing within a specified time period. As an example, if, due to a sinking, a person's vessel was not operational in two of the four qualifying years, that person would receive QS equal to 50 percent of the average of the 2 years during which that vessel was operational to be applied toward the 2 years the vessel was not operational. This provision allows some compensation to LLP holders for some qualifying years in which the LLP holder was prevented from participating due to sinking.

The second sunken vessel provision would apply under circumstances in which a person applying to receive an initial issuance of QS: (1) was denied a request to replace the vessel under the provisions of Public Law 106-554 (Consolidated Appropriations Act of 2001); (2) replaced the vessel with a newly constructed vessel that began construction by June 10, 2002; and (3) participated in any Bering Sea crab fishery by October 31, 2002, with the replacement vessel. A newly constructed vessel would be defined as one the keel of which was laid by June 10, 2002. This provision is intended to accommodate a specific circumstance in which a person delayed construction of a vessel based on Public Law 106-554. Public Law 106-554 was in effect for less than a year during late 2000 and part of 2001. Although the law was in effect for less than a year, it may have hindered the ability of a vessel owner to replace a vessel to participate in crab fisheries and to make qualifying landings. This provision would allow a person to receive QS equal to 50 percent of the average of the years unaffected by the sinking.

For both of these provisions, the calculation methods for determining the actual amount of QS issued would follow the same methods shown earlier. The adjustment for sunken vessels would be made when determining the amount of landings that would be attributed to the LLP license used on board a vessel.

Interim LLP license history exemption. A key component of this program is that QS is awarded based on the legal landing made on a vessel that qualified for a permanent, fully transferable LLP license. The Council recommended a limited provision that would allow a person to apply to receive QS based on legal landings that were not used to qualify for a permanent, fully transferable LLP license. Under this provision, a person who applies to receive QS with an LLP license endorsed for a fishery could choose to receive the QS based either on the landings made by the vessel that was used to qualify for that LLP license or on the landings made on another vessel. The intent of this provision is to allow a vessel owner who had participated in a fishery to use historical landings as long as a permanent, fully transferable LLP license was transferred for use on that vessel after the qualifying period.

An applicant for CVO or CPO QS who deployed a vessel in a crab fishery under the authority of an interim LLP license and later transferred a permanent, fully transferable LLP

license before January 1, 2002, for use in that crab fishery, to insure that the vessel would remain authorized to participate in the fishery following the invalidation of the interim LLP license, may choose to use either: (1) the legal landings made on the vessel that gave rise to the interim LLP license for that crab fishery prior to the transfer of the permanent, fully transferable LLP license for use on that vessel; or (2) the legal landings made on the vessel that gave rise to the permanent, fully transferable LLP license and the legal landings made under the authority of that LLP license in that crab fishery prior to January 1, 2002. This exemption is meant to address a specific circumstance in which a person may have participated in a fishery legally, but required a permanent, fully transferable LLP license to continue participating in the fishery. It is not intended to address transfers of LLP licenses among persons that are undertaken for other reasons. NMFS intends that this provision provide a limited exemption and not a general opportunity to allow persons who voluntarily transferred LLP licenses to choose a specific catch history that is severable from the LLP license under which a person is applying to receive QS. NMFS specifically requests public comment on this approach relative to Council objectives (see **ADDRESSES**).

Computation of Initial Issuance of CVC and CPC QS

The method for calculating CVC and CPC QS is essentially the same as the CPO and CVO QS, with some key differences. The first difference is that, for these sectors, the harvest denominator would represent the legal landings made by individuals under the authority of a State of Alaska Interim Use Permit who met the recent participation eligibility requirements. Second, the regional designations would be noted on the QS, but would not be applied to the CVC QS until after July 1, 2008. The regional designations are not shown in this example but would be calculated in the same manner as that used for the CVO and CPO QS.

For illustration purposes, we will demonstrate the initial issuance using the same hypothetical fishery. The issuance process is shown in the following table (Table 6). As with the other example, we will assume there are two crewmembers who are qualified to receive an initial issuance of QS. The specific calculations are not detailed in this example because they are the same as those described under the CVO and CPO QS example. Note the total landings in Line 1 of Table 6 differ from those in Table 4 (CVO and CPO QS) because the recency requirements would exclude certain landings and, under the CVC and CPC QS calculations, landings made legally on a vessel would be considered even if those landings did not result in the issuance of an LLP license for those landings. Additionally, the amount of QS issued to the CVC and the CPC QS sectors is shown in Lines 12 and 13. The QS issued to these sectors is equal to 3 percent of the QS pool.

TABLE 6—HYPOTHETICAL CRAB FISHERY – BEST 3 OF 4 YEARS USED – CALCULATION OF CATCHER VESSEL CREW (CVC) AND CATCHER PROCESSOR CREW (CPC) QUOTA SHARE (QS) INITIAL ISSUANCE FOR STATE OF ALASKA INTERIM USE PERMIT HOLDERS

	Year 1	Year 2	Year 3	Year 4	Total for Years Used
(1) Harvest Denominator in Fishery (Legal Landings)	1,000 lb	200 lb	1,000 lb	1,000 lb	3,200 lb
(2) Total Legal Landings of Crew A	500 lb	20 lb	300 lb	500 lb	1,320 lb
(3) Percentage of Harvest Denominator for Crew A	50 % (Used)	10 %	30 % (Used)	50 % (Used)	43.3 % (Used)
(3A) Total Landings Landed Onshore for Crew A	*500*	10	*200*	*300*	*1,000*
(3B) Total Landings Processed At-sea for Crew A	*0*	10	*100*	*200*	*300*
(3C) Percentage of Landings Landed on Shore for Crew A = (1,000 / (1,000 + 300)) = 76.92 %					
(3D) Percentage of Landings Processed At-sea for Crew A = (300 / (1,000 + 300)) = 23.08 %					
(4) Total Legal Landings of Crew B	500 lb	180 lb	700 lb	500 lb	1,880 lb
(5) Percentage of Harvest Denominator for Crew B	50 %	90 % (Used)	70 % (Used)	50 % (Used)	70 % (Used)
(5A) Total Landings Landed Onshore for Crew B	500	*100*	*200*	*500*	*800*
(5B) Total Landings Processed At-sea for Crew B	0	*80*	*500*	*0*	*580*
(5C) Percentage of Landings Landed Onshore for Crew B = (800 / (800 + 580)) = 57.97 %					
(5D) Percentage of Landings Processed At-sea for Crew B = (580 / (800 + 580)) = 42.03 %					
(6) Sum of Percentage of Harvest Denominators for All Crew = Crew A 0.433 (Line 3) + Crew B 0.700 (Line 5) = 1.133 or 113.3 %					
(7) Percentage of the Sum of the Percentage of the Harvest Denominator for Crew A = (0.433/1.133) = 0.3822 or 38.22 %					
(8) Percentage of the Sum of the Percentage of the Harvest Denominator for Crew B = (0.700/1.133) = 0.6178 or 61.78 %					

TABLE 6—HYPOTHETICAL CRAB FISHERY – BEST 3 OF 4 YEARS USED – CALCULATION OF CATCHER VESSEL CREW (CVC) AND CATCHER PROCESSOR CREW (CPC) QUOTA SHARE (QS) INITIAL ISSUANCE FOR STATE OF ALASKA INTERIM USE PERMIT HOLDERS—Continued

	Year 1	Year 2	Year 3	Year 4	Total for Years Used
(9) Initial QS Pool = 9,000 Units					
(10) Unadjusted Initial QS Allocation for Crew A = 38.22 % × 9,000 = 3,440 QS Units					
(11) Unadjusted Initial QS Allocation for Crew B = 61.78 % × 9,000 = 5,560 Units					
(12) Initial QS Allocation for Crew A = 3,440 QS Units × (0.03) = 103 QS Units					
(13) Initial QS Allocation for Crew B = 5,560 QS Units × (0.03) = 167 QS Units					
(14) Percentage of Crew A QS Allocation as CVC QS = 103 × 0.7692 (Line 3C) = 79 CVC QS Units					
(15) Percentage of Crew A QS Allocation as CPC QS = 103 × 0.2308 (Line 3D) = 24 CPC QS Units					
(16) Percentage of Crew B QS Allocation as CVC QS = 167 × 0.5797 (Line 5C) = 97 CVC QS Units					
(17) Percentage of Crew B QS Allocation as CPC QS = 167 × 0.4203 (Line 5D) = 70 CPC QS Units					

Under our example, if the QS issued to the CVO, CPO, CVC, and CPC QS sectors is summed, then the total QS issued for all of the QS recipients is equal to 9,000 units the initial QS pool (sum the total from Lines 14 through 17 in both Table 4 and Table 6). The initial QS pool would be issued to all successful applicants. Additional QS would be issued to applicants who have a successful appeal of an initially denied application. However, it is the initial QS pool that would be used to determine the caps that apply to QS use. Those caps are discussed below.

Processor Quota Share Allocation

A processing privilege, analogous to the harvest privilege allocated to harvesters, would be allocated to processors. Qualified processors would be allocated PQS in each crab fishery. PQS represents an exclusive but revocable privilege to receive deliveries of a specific portion of the annual TAC from a fishery.

PQS allocations would be based on processing history during a specified qualifying period for each fishery. A processor's allocation in a fishery would equal its share of all qualified pounds of crab processed in the qualifying period (i.e., pounds processed by the processor divided by a denominator that represents pounds processed by all qualified processors). Unlike the QS allocation process, PQS is not allocated using a ''best of'' years provision.

A person would be eligible to receive PQS if they are a: (1) U.S. citizen, corporation, or partnership at the time of application; and (2) legally processed any crab QS species during either 1998 or 1999. In addition, the Council provided an exemption to this eligibility requirement to accommodate long term participants in the fishery who did not participate in 1998 or 1999. An applicant may receive QS if that person had processed Bering Sea snow crab during each season from 1988 through 1997 and invested at least $1,000,000 in processing equipment and facilities during the period from January 1, 1995, through June 10, 2002. NMFS has interpreted this requirement to apply from the period of January 1, 1995, through June 10, 2002, the time of final Council action on this provision. This would limit the ability of additional persons to claim eligibility under this provision. The date of final Council action would provide a suitable period of time during which to measure fiscal expenditures.

Under this proposed rule, a person who has acquired or retained legal processing history through transfer by the express terms of a written contract that clearly and unambiguously provides that the legal processing history and rights, may apply for and receive PQS based on that legal processing history. This provision would allow for the transfer or retention of legal processing history prior to the implementation of this program. This provision would apply only if the person applying for PQS either: (1) legally processed any crab during 1998 or 1999 as demonstrated on the official crab rationalization record; or (2) provides documentation of a contractual agreement for the transfer or retention of the legal crab processing history for any amount of any crab during 1998 or 1999, as demonstrated in the official crab rationalization record.

This provision differs from the requirements established for QS holders who must either have an LLP license or be named on a State of Alaska Interim Use Permit in order to apply and receive QS. There is not a licensing requirement that allows for the tracking of processing history to specific persons. State of Alaska revenue codes, port codes, and other identifying elements do not necessarily establish the identity of a processor. Additionally, the Council recognized that custom processing, in which one firm paid another to process crab at a specific facility, or allowed the lease of its facility, did occur and permitted those crab buyers to claim legal processing history and the rights to apply for PQS in cases where documentation indicated that the legal processing that occurred at a facility was conducted by someone other than the buyer of the crab at the time.

Additionally, the Council's motion establishing a qualified person could be interpreted to strictly limit the ability to apply for and receive PQS only if the person who processed crab in 1998 or 1999, or Bering Sea snow crab under the provisions provided above, applies, even if the processing facility, history, and other rights have been transferred to another person. This interpretation appears to narrowly limit the Council's overall recommendation that PQS and IPQ are access rights that may be acquired by a wide range of persons.

This interpretation of Council intent also appears to be consistent with the ability to trade legal landings in the CVO and CPO QS sectors prior to the initial issuance of QS. Legal landings, and the right to apply for and receive CVO or CPO QS may be acquired by

persons who purchase the LLP license and the rights that transfer with that LLP license prior to submitting an application for QS. This provision would require that if legal processing history has been transferred and retained that the basic qualification for eligibility established by the Council, processing of any BSAI crab species in 1998 or 1999, must still be met.

In addition, these regulations would establish that if a person applies to receive PQS, that person or that person's successor-in-interest must exist at the time of application for PQS. A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for PQS in proportion to his or her ownership interest in the dissolved partnership or corporation. Documentation of ownership interest in a dissolved partnership or corporation, association, or other entity would be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest. These requirements are similar to those used in the halibut and sablefish IFQ Program to establish who may apply to receive QS under the Program. The provisions in this proposed rule require that the person who received the crab and processed that crab, or their successor-in-intererst, is a person who is eligible to receive PQS.

The amount of PQS allocated to a person would be based on a record of receiving and processing crab based on State of Alaska fish ticket data during the qualifying years. Data from the State of Alaska fish tickets concerning legal processing of crab would be presumed to be correct unless other documentation is provided by the applicant. However, allocations can be made to a buyer not recorded on a fish ticket if the applicant can demonstrate that the entity that should receive an allocation is someone other than the entity named on the fish ticket. Proof of this eligibility can include data from the State of Alaska Commercial Operators Annual Report, fish tax records, or other documentation of direct payments to fishermen. This provision is intended to address the custom processing arrangements. The following table establishes the eligibility and qualifying years for receiving PQS.

TABLE 7—PQS ELIGIBILITY AND QUALIFYING YEARS

Eligible Person to Receive PQS	Crab Fisheries	Qualifying Year Periods for Determining PQS Allocation
The person who legally processed the crab during the qualifying years and; (1) is a US Citizen, corporation, or partnership; and (2) processed crab in 1998 or 1999; or (3) processed Bering Sea snow crab during 1988 through 1997 and invested at least $1,000,000 in processing equipment and facilities during the period from January 1, 1995, through June 10, 2002.	Eastern Aleutian Island golden king crab (EAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996, through December 25, 1996; (2) September 1, 1997, though November 24, 1997; (3) September 1, 1998, through November 7, 1998; (4) September 1, 1999, through October 25, 1999.
	Western Aleutian Island golden king crab (WAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996, through August 31, 1997; (2) September 1, 1997, though August 31, 1998; (3) September 1, 1998, through August 31, 1999; (4) September 1, 1999, through August 14, 2000.
	Bering Sea Tanner crab (BST)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea *C. opilio* fishery during the qualifying years established for the QS fishery; and 50 percent of the totally legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that crab QS fishery.
	Bering Sea snow crab (BSS)	3 years of the 3-year period beginning on: (1) January 15, 1997, through March 21, 1997; (2) January 15, 1998, through March 21, 1998; and (3) January 15, 1999, through March 22, 1999.

TABLE 7—PQS ELIGIBILITY AND QUALIFYING YEARS—Continued

Eligible Person to Receive PQS	Crab Fisheries	Qualifying Year Periods for Determining PQS Allocation
	Bristol Bay red king crab (BBR)	3 years of the 3-year QS base period beginning on: (1) November 1, 1997, through November 5, 1997; (2) November 1, 1998, through November 6, 1998; and (3) October 15, 1999, through October 20, 1999.
	Pribilof Islands red and blue king crab (PIK)	3 years of the 3-year period beginning on: (1) September 15, 1996, through September 26, 1996; (2) September 15, 1997, through September 29, 1997; and (3) September 15, 1998, through September 28, 1998.
	St. Matthew blue king crab (SMB)	3 years of the 3-year period beginning on: (1) September 15, 1996, through September 23, 1996; (2) September 15, 1997, through September 22, 1997; and (3) September 15, 1998, through September 26, 1998.
	Western Aleutian Islands red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden king crab fishery during the qualifying years established for that crab QS fishery.

In the Bering Sea Tanner crab fishery, the issuance of PQS would be based on the processing history in the Bering Sea snow crab fishery. The Bering Sea Tanner crab fishery has not been open in recent years and, in the past, both Bering Sea snow crab and Bering Sea Tanner crab were harvested together. In the Western Aleutian Islands red king crab, the issuance of PQS would be based on the processing history in the Western Aleutian golden king crab fishery. This provision recognizes the fact there has been limited processing in these fisheries in recent years and much of the participation is sporadic and conducted by processing entities who have also been involved in the Western Aleutian Islands red king crab fishery.

Computation of Initial Issuance of PQS

The amount of PQS that would initially be issued to any one person would be based on the amount of legal processing by the person as a percentage of a denominator that represents the total legal processing by all persons eligible to receive PQS. The following steps would be used to calculate PQS for an applicant.

NMFS would build the official crab rationalization record, which would contain the total legal processing for all of the crab fisheries based on the best available information by using the State of Alaska fish ticket database. The official record is presumed to be correct unless an applicant provides information that indicates a correction is necessary. The total legal processing amount is the total processing denominator (TPD).

In order to clearly explain the computation, the hypothetical example used previously for the QS issuance is repeated here. This example does not use data or persons from existing crab fisheries and is intended for illustrative purposes only. In our example, there are only two processors in the fishery: Processor A and Processor B, each with different landings patterns. The total legal processing, the region in which that processing occurred, and the amount of the processing are shown in Table 8. The computation process using two processors (A and B) is described in the table. Note this hypothetical fishery also assumes all applicable years are used to determine an initial issuance of PQS. As with all crab fisheries, the years used for selecting processing history differ from those used to determine legal landings for allocating QS. Because all years are used, the total processing denominator is not divided by the sum of the percentage of the processing denominator of all persons receiving PQS.

The percentage of the TPD for each person is multiplied by the initial PQS pool, although the initial PQS pool does not need to be set at the same number as the initial QS pool. NMFS would set both pools at the same number for each crab fishery to facilitate ease of computation for use limitations. In our hypothetical example, this means there would be an initial QS pool of 9,000 units and an initial PQS pool of 9,000 units. Although the amount of IFQ a unit of QS yields and the amount of IPQ a unit of PQS may yield would differ, the initial pools of quota would be the same. See the following table for details:

TABLE 8—HYPOTHETICAL CRAB FISHERY – FOUR YEARS USED – CALCULATION OF PQS INITIAL ISSUANCE

	Year 1	Year 2	Year 3	Year 4	Total
(1) Total Processing Denominator in Fishery (Legal Processing)	1,800 lb	400 lb	1,000 lb	1,000 lb	4,200 lb
(2) Total Legal Processing of Processor A	600 lb	200 lb	300 lb	500 lb	1,600 lb
(3) Percentage of Total Harvest Denominator for Processor A	33.3 % (Used)	50 % (Used)	30 % (Used)	50 % (Used)	40.8 % (Used)
(3A) Total Landings in the North Region for Processor A	100	0	100	200	400
(3B) Total Landings in the South Region for Processor A	500	200	200	300	1,200
(3C) Percentage of Processing in the North Region for Processor A = (400 / (400 + 1,200)) = 25.00 %					
(3D) Percentage of Processing in the South Region for Processor A = (1,200 / (400 + 1,200)) = 75.00 %					
(4) Total Legal Processing of Processor B	1,200 lb	200 lb	700 lb	500 lb	2,600 lb
(5) Percentage of Total Processing Denominator for Processor B	66.7 % (Used)	50 % (Used)	70 % (Used)	50 % (Used)	59.2 %
(5A) Total Processing in the North Region for Processor A	900	100	500	0	1,500
(5B) Total Landings in the South Region for Processor B	300	100	200	500	1,100
(5C) Percentage of Processing in the North Region for Processor B = (1,500 / (1,500 + 1,100)) = 57.69 %					
(5D) Percentage of Processing in the South Region for Processor B = (1,100 / (1,500 + 1,100)) = 42.31 %					
(6) Sum of Percentage of Total Processing Denominators for All Processors = Processor A 0.408 (Line 3) + Processor B 0.592 (Line 5) = 1.00 or 100 %—NO SCALING FACTOR REQUIRED					
(7) Initial PQS Pool = 9,000 Units					
(8) Initial PQS Allocation for Processor A = 9,000 PQS Units × 0.408 (Line 3) = 3,672 PQS Units					
(9) Initial PQS Allocation for Processor B = 9,000 PQS Units × 0.592 (Line 5) = 5,328 PQS Units					
(10) Percentage of Processor A PQS allocation as North Region PQS = 3,672 × 0.2500 (Line 3C) = 918 PQS Units					
(11) Percentage of Processor A PQS allocation as South Region PQS = 3,672 × 0.7500 (Line 3D) = 2,754 PQS Units					
(12) Percentage of Processor B PQS allocation as North Region PQS = 5,328 × 0.5769 (Line 5C) = 3,074 PQS Units					
(13) Percentage of Processor A PQS allocation as South Region PQS = 5,328 × 0.4231 (Line 5D) = 2,254 PQS Units					

Regional Designations of PQS

PQS is issued with the same regional designations as those of QS as described in Table 3.

Regional Adjustment for North and South Designations. North and South PQS regional designation is based on the location of the legal processing that is used as the basis for PQS allocation, as shown in Table 8. Once PQS is issued with regional designation, the issuance of QS would be adjusted so that the regional designations for QS would match the regional designations for PQS in each crab fishery. The adjustment would be made to the QS issued because the processing facilities are typically fixed shorebased plants. The adjustments to establish the same regional designation ratios is necessary to ensure matches in the amounts of IPQ and IFQ that are harvested and delivered in any one region.

This adjustment process would be made prior to the issuance of the QS and PQS. The ratio between the regions should be the same even if the number of QS units differs. Using our hypothetical fishery example, we illustrate this process by showing how each LLP license holder's QS allocation would be adjusted at initial allocation. Drawing on information from Table 4 and Table 6, the calculation is shown in the following table:

TABLE 9—ADJUSTMENT FOR NORTH AND SOUTH REGIONAL DESIGNATION FOR QS

(1) Percentage of Landings in the North Region for LLP A = 100 % (Line 3G of Table 4) of 1,984 QS Units (Line 14 of Table 4) = 1,984 QS Units
(2) Percentage of Landings in the South Region for LLP A = 0 % (Line 3H of Table 4) of 1,984 QS Units (Line 14 of Table 4) = 0 QS Units

TABLE 9—ADJUSTMENT FOR NORTH AND SOUTH REGIONAL DESIGNATION FOR QS—Continued

(3) Percentage of Landings in the North Region for LLP B = 56.52 % (Line 5G of Table 4) of 3,708 QS Units (Line 16 of Table 4) = 2,096 QS Units
(4) Percentage of Landings in the South Region for LLP B = 43.48 % (Line 5H of Table 4) of 3,708 QS Units (Line 16 of Table 4) = 1,612 QS Units
(5) Total QS (Sum of Lines 1-4) = 5,692 Units
(6) Total QS in North Region (Sum Lines 1 and 3) = 4,080 Units
(7) Total QS in South Region (Sum Lines 2 and 4) = 1,612 Units
(8) Percentage of North QS to South QS = 4,080/5,692 = 71.68 % North 1,612/5,692 = 28.32 % South
(9) QS issued as North Region only = 1,984 Units (Line 1)
(10) QS as both North and South Region = (Line 5 − Line 1) = 3,708 Units
(11) Percentage of Processing in the North Region for Processor A = 25.00 % (Line 3C of Table 8) of 3,672 Units (Line 8 of Table 8) = 918 Units
(12) Percentage of Processing in the South Region for Processor A = 75.00 % (Line 3D of Table 8) of 3,672 Units (Line 8 of Table 8) = 2,754 Units
(13) Percentage of Processing in the North Region for Processor B = 57.69 % (Line 5C of Table 8) of 5,328 Units (Line 9 of Table 8) = 3,074 Units
(14) Percentage of Processing in the South Region for Processor B = 42.31 % (Line 5D of Table 8) of 5,328 Units (Line 9 of Table 8) = 2,254 Units
(15) Total PQS in North Region = 3,992 Units (Sum of Line 11 and 13)
(16) Total PQS in South Region = 5,008 Units (Sum of Line 12 and 14)
(17) Ratio of North PQS : South PQS = 44.36% North, 55.64 % South
Calculations: (a) QS North Region = Total QS 5,692 (Line 5) x 44.38% (Line 17) = 2,525 Units
(b) QS South Region = Total QS 5,692 (Line 5) × 55.64 % (Line 17) = 3,167 Units
(c) QS North Region for all persons holding North Region and South Region QS = QS North Region − North Region only QS 2,525 Units − 1,984 (Line 9) Units = 541 Units
(d) QS South Region for all persons holding North Region and South Region QS = QS South Region − South Region only QS 3,167 Units − 0 Units = 3,167 Units
(e) North Region QS issued to LLP A = 1,984 QS Units
(f) North Region QS issued to LLP B = Total QS held by LLP B (3,708) × *541 Units/3,708 Units* = 541 North Region QS Units
(g) South Region QS issued to LLP B = Total QS held by LLP B (3,708) − 541 North Region QS Units = 3,167 South Region QS Units

In this example, only one of the LLP license holders holds QS that would require adjustment. Although CVC QS is not subject to regional delivery requirements until after July 1, 2008, NMFS would compute the amount of QS designated for each region prior to the issuance of the CVC QS. This would allow a holder of CVC QS to know the regional designation of the QS prior to the application of that designation. The ratio of North and South regional designation would be the same for both the CVO and CVC QS.

The adjustment for regional designation would need to occur once appeals are decided and those readjustments in regional designation would be made prior to fishing to minimize disruptions in the fishery. A person who would receive QS with more than one regional designation for that crab fishery would have his or her QS holdings regionally adjusted on a pro rata basis according to the following process:

(1) Determine the ratio of the initial PQS pool in the North and South regions.

(2) Multiply Initial QS pool by the ratio of North and South PQS. This would yield the target North QS pool and the target South QS pool.

(3) Sum the QS for all persons who are eligible to receive North QS. This is the unadjusted North QS pool.

(4) Repeat the procedure for the South Region. This is the unadjusted South QS pool.

(5) Subtract the amount of QS for persons receiving North QS only from the unadjusted North QS pool to calculate the amount of North QS available to all persons holding both North and South region QS.

(6) Subtract the amount of QS for persons receiving South QS only from the unadjusted South QS pool to calculate the amount of South QS available to all persons holding both North and South region QS.

(7) Subtract the Unadjusted North QS pool from the Target North QS pool to calculate the number of QS units that would be applied to the North QS pool to adjust the regional designations. This amount is the Adjustment Amount.

(8) Divide the Adjustment Amount by the unadjusted North QS pool for North and South QS holders. This yields the regional adjustment factor (RAF) for each person.

(9) For each person who holds both North and South Region QS, the QS adjustment (QS Adj. p) to that person's Unadjusted North QS is expressed in the following equation as:

$$\text{QS adj. p} = \text{Unadjusted North QS p} \times \text{RAF}$$

(10) If the QS adjustment for a person is negative, the QS adjustment for that person is subtracted from that person's unadjusted North QS amount and added to that person's unadjusted South QS. If the QS adjustment for a person is positive, the QS adjustment for that person is added to that person's unadjusted North QS amount and subtracted from that person's unadjusted South QS. These adjustments would yield the regional amount of QS for that person.

Regional Adjustment in the Western Aleutian Islands Golden King Crab Fishery. The PQS issued would need to be adjusted so that 50 percent of the PQS is designated as West region, and 50 percent is undesignated. However, the process for regionally allocating PQS

in the Western Aleutian Islands golden king crab fishery differs slightly from the North and South PQS regional designation, which is based on the location of the legal processing. Fifty percent of the PQS that would be issued in the Western Aleutian Islands golden king crab fishery would be issued with a West designation. The West designation applies to PQS for processing west of a line at 174° W. long. The remaining 50 percent of the PQS issued for this fishery is undesignated region PQS.

If a person owns a crab processing facility that is located in the West region at the time of application, that person would receive West PQS only. If a person applies to receive PQS and does not own a crab processing facility located in the West region at the time of application, then that person would receive West region (West) and Undesignated region (Und.) PQS. Expressed algebraically, for any person (p) allocated both West region PQS and undesignated region PQS the formula is as follows:

(1) $PQS_{West} = PQS \times 0.50$

(2) $PQS_{Und.} = PQS \times 0.50$

(3) PQS_{West} for $PQS_{West\ \&\ Und.}$ holders = $PQS_{West} - PQS_{West\ only}$

(4) PQS_{West} for $Person_p = PQS_p \times (PQS_{West}$ for $PQS_{West\ \&\ Und.})$ holders/$(PQS_{West}$ for $PQS_{West\ \&\ Und.}$ holders + $PQS_{Und})$

(5) $PQS_{Und.}$ for $Person_p = PQS_p - PQS_{West}$ for $Person_p$

For purposes of the allocation of PQS in the Western Aleutian Islands golden king crab fishery, ownership of a processing facility is defined as a sole proprietor, or a relationship between 2 or more entities in which a person directly or indirectly owns a 10-percent or greater interest in the facility. A processing facility is defined as a shorebased, or stationary floating processor. Catcher/Processors would not be considered as ownership of a processing facility operating in the West region.

The QS issued to the Western Aleutian Islands golden king crab fishery is adjusted so 50 percent of the QS issued is West QS, which can be delivered only to an RCR located west of the 174° W. longitude. The adjustment in the initial issuance of QS would be made for persons who made landings of Western Aleutian Islands golden king crab west and east of 174° W. longitude.

If a person received QS based solely on landings made east of 174° W. longitude, all of that QS would be issued to that person as regionally undesignated QS. If a person received QS based on landings made only west of 174° W. longitude, all of that QS would be issued as West QS. However, if a person received QS based on landings made both east and west of the 174° W. longitude line, then, that QS would be issued such that a portion of the QS would be issued as ''Undesignated'' and a portion as ''West'' so that all of the QS issued in the Western Aleutian Islands golden king crab fishery are issued with a 50 percent West and a 50 percent Undesignated ratio. Person's receiving QS with both regional designations would have the QS pro-rated so the total of all QS is issued initially as 50 percent West and 50 percent Undesignated QS. The following process would be followed:

(1) Sum the QS for all persons who are eligible to receive West QS. This is the unadjusted West QS pool;

(2) Sum the QS for all persons who are eligible to receive Undesignated QS. This is the unadjusted Undesignated QS pool;

(3) Subtract the amount of QS for persons receiving West QS only from the unadjusted West QS pool to calculate the amount of West QS available to all persons holding both West and Undesignated region QS;

(4) Subtract the amount of QS for persons receiving Undesignated QS only from the unadjusted Undesignated QS pool to calculate the amount of Undesignated QS available to all persons holding both West and Undesignated region QS;

(5) Subtract the Unadjusted West QS pool from the Target West QS pool to calculate the number of QS units that would be applied to the West QS pool to adjust the regional designations. This amount is the Adjustment Amount;

(6) Divide the Adjustment Amount by the unadjusted QS pool for West and Undesignated QS holders. This yields the regional adjustment factor (RAF) for each person;

(7) For each person who holds both unadjusted West and Undesignated Region QS, the QS adjustment to that person's Unadjusted West QS is determined by multiplying the Unadjusted West QS by the RAF; and

(8) If the QS adjustment for person is negative, the QS adjustment for that person is added to that person's unadjusted West QS amount and subtracted from that person's unadjusted Undesignated QS. If the QS adjustment for a person is positive, the QS adjustment for that person is subtracted from that person's unadjusted West QS amount and added to that person's unadjusted Undesignated QS. These adjustments would yield the regional adjustment amounts for that person.

Initial Issuance of Crab QS and PQS

In order to receive an initial allocation of QS or PQS, an eligible person would need to submit an Application for Crab QS or PQS. The application would be sent to the last known address of a person identified as an eligible applicant by the official crab rationalization record and would be available on the NMFS Alaska Region web page at *www.fakr.noaa.gov*. All applications would have to be submitted by the close of the application period. The application period would be specified in the **Federal Register** at the time of the publication of the Final Rule. Applications could be mailed, faxed, or hand delivered to the NMFS, Alaska Region (see **ADDRESSES**). The contents of the application vary, depending on the type of QS and/or PQS for which a person is applying. If an applicant is applying as the successor-in-interest to an eligible applicant, an application must also contain valid documentation demonstrating the applicant's status as a successor-in-interest to that eligible applicant.

An Application for Crab QS or PQS would be signed by the applicant or the individual representing the applicant and would contain the necessary information to identify the person applying, the basis for applying for QS or PQS, any necessary information on the vessel or processor, documentation of crew participation, contract provisions for community ROFR, and any other information deemed necessary by the Regional Administrator.

Additional requirements in the Application for Crab QS or PQS exist for persons applying to receive PQS from legal landings made in an ECC, or in a community in the GOA north of a line at 56°20′ N. latitude — a North GOA Community. Prior to the initial issuance of PQS based on legal processing located in an ECC, that person must provide documentation he or she has completed a contract with the entity representing the ECC that sets out the terms for ROFR for any PQS to be transferred in a future sale. In the case of a North GOA Community, a ROFR contract must be signed with the City of Kodiak and the Kodiak Island Borough.

The Regional Administrator would evaluate Applications for QS and PQS submitted during the specified application period and compare all claims in the application with the information in the official crab rationalization record. Claims in the application consistent with information in the official record would be accepted by the Regional Administrator.

Inconsistent claims in the application, unless verified by documentation, would not be accepted.

If NMFS determines the additional information or documentation submitted by the applicant is correct and supports the applicant's burden of proving the inconsistent claims, the information would be used to determine whether the applicant is eligible for a QS or PQS allocation. However, if the Regional Administrator determines the additional information or documentation does not support the applicant's burden, the applicant would be notified through an initial administrative determination (IAD), stating the applicant did not meet the burden of proof.

NMFS would specify a 30-day evidentiary period during which an applicant may provide additional information or documentation to support the claims made in his or her application. An applicant would be limited to one 30-day evidentiary period per application. Additional information or documentation, or a revised application, received after the 30-day evidentiary period, but before an IAD is issued, would be considered.

NMFS would prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if sufficient documentation is not provided. The IAD would indicate the deficiencies in the application. The IAD would also indicate which claims cannot be approved based on the available information or documentation. An applicant who receives an IAD may appeal. An applicant who avails himself or herself of the opportunity to appeal an IAD would not receive the QS or PQS being contested.

NMFS would not initiate an IAD in the case of an Application for Crab QS or PQS that is complete except for a signed ROFR contract. This provision would accommodate applicants who have complied with the application requirements with the exception of a mutually signed contract which relies on agreement of both parties. Once an application is submitted with a ROFR contract, NMFS would allocate PQS to that person.

IFQ Issuance

The annual allocations of the TAC, in pounds, to QS holders are referred to as IFQ. IFQ would be issued for each of the four QS sectors. IFQ is a permit that allows the harvesting of an amount of the TAC for a fishery. As with QS, IFQ would be issued on a fishery-by-fishery and regional basis.

IFQ would be issued once the TAC for that crab fishery in that crab fishing year has been specified by the State of Alaska. The TAC available as IFQ would be the fishery TAC minus the 10 percent CDQ allocation. For the Western Aleutian Islands golden king crab fishery, the 10 Adak allocation would be deducted from the TAC prior to allocating the IFQ. All IFQ would be issued for a crab fishing year.

QS issued after NMFS has issued annual IFQ would not result in IFQ for that crab fishery for that fishing year. If additional actions such as appeals, or other administrative decisions occur after IFQ has been issued for that fishery, the person would not receive IFQ until the following year. This single annual issuance is required for administrative purposes so that mid-year adjustments to other IFQ holders would not occur that would alter their allocation or the ratio of QS to IFQ for that year.

The account of the person holding IPQ would be debited as soon as the landings are reported. A person would be prohibited from harvesting an amount of crab in excess of the IFQ held. Penalties would be imposed for any overage in excess of a person's IFQ. The IFQ is subject to use provisions described later in this preamble. Descriptions of the types of IFQ resulting from each type of QS follow.

CVO IFQ

CVO QS yields two separate classes of IFQ: Class A IFQ and Class B IFQ. Class A IFQ limits the delivery of any crab harvested with that IFQ to an RCR holding unused IPQ with a specific regional designation. Class B IFQ could be delivered to any RCR, except to an RCR that has already used CPO or CPC IFQ in that crab fishery during that season. Class B IFQ would not be regionally designated.

The Class A/Class B IFQ distinction would be made only in the annual IFQ allocations. QS would be issued in a single class. Since the Class B IFQ are intended to provide negotiating leverage to harvesters who are unaffiliated with holders of PQS or IPQ, only QS holders who do not also hold PQS or who are unaffiliated with holders of PQS, would receive Class B IFQ. Holders of PQS or IPQ and their affiliates who hold QS would be allocated Class A IFQ for all of their QS holdings. For each region of each fishery, the allocation of Class B IFQ would be 10 percent of the total allocation of IFQ. For example, if no North QS holders are affiliated with PQS or IPQ holders, each IFQ allocation would be 90 percent North Class A IFQ and 10 percent Class B IFQ. If half of the North QS is held by persons affiliated with a PQS or IPQ holder, the holders of North QS who are not affiliated with a PQS or IPQ holder would receive 80 percent Class A IFQ and 20 percent Class B IFQ. The result would be that 10 percent of the total North IFQ in the fishery would be Class B IFQ. The absence of an affiliation with a holder of PQS or IPQ would be established by a harvester filing an annual affidavit stating the use of any IFQ held by that harvester is not subject to any control of any holder of PQS or IPQ.

Persons who hold CVO IFQ and also hold PQS or IPQ would receive only Class A IFQ. Persons who hold CVO IFQ and are affiliated with a person who holds PQS or IPQ would receive only Class A IFQ. Affiliation would be determined based on two factors: ownership and control. IFQ would be considered to be held by a processor if a PQS or IPQ holder directly or indirectly owns at least 10 percent of an entity who holds or receives IFQ. This 10 percent ownership standard has been used in other rationalization programs in the past as a means of measuring ownership and comports with the mechanism employed to measure common ownership for purposes of QS use caps. The definition of affiliation used in this proposed rule is similar to that developed for the AFA regulations, and is consistent with Council intent.

Examples of the affiliation rule follow: First, if a PQS or IPQ holder also held QS and received IFQ, that IFQ would be considered to be affiliated and issued as Class A IFQ; second, if a PQS or IPQ holder owned 50 percent of Corporation A and Corporation A owned 50 percent of Corporation B, which received IFQ, that IFQ would be considered to be affiliated with a processor because that PQS or IPQ holder indirectly owns 25 percent of Corporation B, which is receiving the IFQ; third, if a PQS or IPQ holder owned 20 percent of Corporation C and Corporation C owned 20 percent of Corporation D, which received IFQ, that IFQ would not be considered affiliated because the PQS or IPQ older indirectly owns only 4 percent of Corporation D; therefore, both Class A and Class B IFQ would be issued to Corporation D.

Control of IFQ by a PQS or IPQ holder would be measured by linkages between the PQS or IPQ holder and the IFQ holder and would serve as a means of effectively extending the ability of the PQS or IPQ holder to control the deliveries of crab to a specific processor. NMFS would interpret control in situations in which the person holding PQS or IPQ: Control exists if an individual, corporation, or other business entity that holds PQS controls a 10 percent or greater interest in the

IFQ holder. An entity controls a 10 percent or greater interest in a second entity if the first entity: (1) Controls a 10 percent ownership share of the second entity, or (2) Controls 10 percent or more of the voting stock of the second entity. In addition to this direct form of control, affiliation would also include other means whereby an entity otherwise controls another entity.

An entity otherwise controls another when the first entity has the power to exercise a controlling influence over the management or policies of the other entity, unless such power is solely the result of an official position with such entity. This definition is drawn from the Investment Company Act of 1940. This definition is intended to incorporate all forms of control. Examples of the types of control that may be encompassed by this definition, include the authority to direct the delivery of crab harvested under an IFQ permit held by the second entity to a specific RCR, or when one entity absorbs the majority of costs and normal business risks associated with the operation of a second entity, including the costs associated with obtaining and using any amount of the QS, PQS, IFQ, or IPQ held by the second entity.

NMFS would require QS holders to submit an affidavit on an annual basis, along with the Annual Application for Crab IFQ/IPQ Permit, to attest to whether an affiliation exists between a PQS or IPQ holder and the IFQ recipient.

The Regional Administrator would determine the amount of Class A and Class B IFQ that is issued to a QS holder. This is calculated by allocating 90 percent of the TAC (TAC a) as Class A IFQ. A portion of TAC a is allocated to persons eligible to hold only Class A IFQ (TAC a only), the remaining TAC (TAC r) is allocated for harvest by a person (p) eligible to receive both Class A IFQ and Class B IFQ. Expressed algebraically, for an individual person (p) eligible to hold both Class A and Class B IFQ the annual allocation formula is as follows:

1. $TAC_a = TAC \times 0.90$
2. $TAC_r = TAC_a - TAC_{a\ only}$
3. $IFQ_{ap} = TAC_r / (TAC - TAC_{a\ only}) \times IFQ_p$
4. $IFQ_{bp} = IFQ_p - IFQ_{ap}$

CPO IFQ

CPO QS yields only one class of IFQ, CPO IFQ. This IFQ allows the harvest and processing of an amount of crab. The person holding CPO IFQ can choose to harvest an amount of crab and process it on board that same vessel. Alternatively, the CPO IFQ holder can harvest crab and deliver the crab to a separate RCR. CPO IFQ is not subject to regional restrictions while used as CPO IFQ.

CVC IFQ

CVC QS yields CVC IFQ. CVC IFQ would not be subject to regional designation until July 1, 2008. After July 1, 2008, CVC IFQ would be issued as Class A and Class B IFQ, subject to the same regional designation and affiliation requirements as those described under CVO IFQ.

CPC IFQ

CPC QS yields CPC IFQ. As with CPO IFQ, there are no regional delivery requirements, and crab harvested using a CPC IFQ can be harvested and processed on board a vessel, or it can be delivered to another RCR. Unlike CVC IFQ, CPC IFQ would not convert to Class A and Class B shares annually starting July 1, 2008.

IPQ Issuance

An annual allocation of PQS is referred to as IPQ and expressed in pounds of crab. IPQ would be equivalent to the amount of the TAC that is issued as Class A IFQ for that crab fishery. Processor privileges do not apply to the amount of the TAC allocated as Class B IFQ, or prior to July 1, 2008, allocated for use by the CPO and CPC sectors. IPQs would be regionally designated for processing with the same regional designations that apply to IFQ. The account of the person holding IPQ would be debited as soon as the landings are reported.

Annual Application for Crab IFQ/IPQ Permit

Prior to the issuance of IFQ or IPQ for a crab fishery, each person that wishes to receive IFQ or IPQ must submit an Annual Application for Crab IFQ/IPQ Permit. This application is necessary for NMFS to administer several aspects of this program, specifically: (1) to determine the designation of Class A and Class B IFQ in each crab fishing year for each person based on the affidavit; (2) to determine whether the applicant would be using the IFQ as part of a crab harvesting cooperative; and (3) to ensure that an EDR has been submitted, if required. This application must be submitted prior to the start of the crab fishing year.

A complete Annual Application for Crab IFQ/IPQ Permit would include the applicant's identification and contact information, whether the applicant has joined a crab cooperative, and a completed affidavit of affiliation declaring any and all affiliations with any PQS or IPQ holder. An affidavit of affiliation would include the applicant's relationships with IPQ or PQS holders that may involve direct or indirect ownership or control of the delivery of IFQ and any supplemental documentation deemed necessary by NMFS to determine whether an affiliation exists. This includes the names of all persons, to the individual level, holding an ownership interest in the entity and the percentage ownership each person holds. The application must also include the submission of an EDR, and pay any outstanding fees, if required.

As with the other permit applications, NMFS would review the application for completeness, payment of any fees required under this program, and other provisions required for permit holders.

QS/IFQ and PQS/IFQ Transfer Provisions

After the initial allocation of QS and PQS, these shares and their corresponding IFQ and IPQ, may be transferred. All transfers must be approved by NMFS. A transfer is any change in the person holding the QS or using the IFQ, permanently or for a fixed period of time. IFQ used by a person holding a Crab IFQ Hired Master Permit issued by NMFS, and the use of IFQ assigned to a crab harvesting cooperative and used within that cooperative, are not considered to be transfers of IFQ.

Eligibility to Transfer Quota

Before receiving quota by transfer quota, a person must establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer by submitting a completed Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer, available on the NMFS Alaska Region website at *http://www.fakr.noaa.gov*, or from the NMFS Alaska Region (see **ADDRESSES**). If a person is an initial issuee of QS, an eligibility application is not required. To be eligible to receive QS, PQS, IFQ, or IPQ by transfer, a person must first meet the requirements in the following table:

TABLE 10—ELIGIBILITY REQUIREMENTS TO RECEIVE QUOTA BY TRANSFER

Quota Type	Eligible Person	Eligibility Requirements
PQS	Any person	None
IPQ	Any person	None
CVO or CPO QS	A person initially issued QS	None
	An individual	who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery
	A corporation, partnership, or other entity	with at least on individual member who is a U.S. citizen and who: (1) owns at least 20 percent of the corporation, partnership, or other entity; and (2) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery
	An ECCO	None
	A CDQ Group	None
CVO or CPO IFQ	All persons eligible for CVO or CPO QS	Same as the requirements for CVO and CPO QS
	A crab harvesting cooperative	None
CVC or CPC QS	An individual initially issued QS	None
	An individual	who is a U.S. citizen with: (1) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and (2) recent participation in the 365 days prior to the transfer.
CVC or CPC IFQ	All persons eligible for CVC or CPC QS	Same as the requirements for CVC and CPC QS
	A crab harvesting cooperative	None

Prior to receiving QS by transfer on behalf of a specific ECC, a non-profit entity that intends to represent that ECC as an ECCO must have approval from the Regional Administrator. To receive approval, the non-profit entity seeking to become an ECCO must submit a complete Application to Become an ECCO to NMFS, available on the NMFS Alaska Region website at *http://www.fakr.noaa.gov*, or from the NMFS Alaska Region (see **ADDRESSES**). If an application is disapproved, then the determination may be appealed.

An ECCO is a non-profit organization that is authorized to hold QS and lease the resulting IFQ to residents of the ECC on whose behalf it holds the QS. Each ECC would have to designate an ECCO to transfer and hold QS on its behalf. The ECCO would be identified by either the CDQ group, or the municipality in which the ECC is located, except in cases where the ECC is also located in a borough. In such case, the municipality and borough must agree to designate the same non-profit organization to serve as the ECCO. Each ECC may designate only one ECCO to hold crab QS on behalf of that community at any one time.

A complete Application to Become an ECCO consists of: (1) The articles of incorporation under the laws of the State of Alaska for that non-profit entity; (2) A statement indicating the ECC represented by that non-profit entity for purposes of holding QS; (3) Management organization information; and (4) A statement describing the procedures that would be used to determine the distribution of IFQ to residents of the community represented by that ECCO.

Transfer Applications

Once an eligibility application is submitted, and eligibility to receive QS, PQS, IPQ, or IFQ is established, a transfer application must be submitted to NMFS for the actual transfer of a specific type of quota. There are three forms of transfer applications and the application form used would vary depending on the person applying for the transfer. The three forms are: (1) Application for Transfer of Crab QS/IFQ or PQS/IPQ. This application is required to transfer any amount of QS, PQS, IFQ, or IPQ from an entity that is not an ECCO or a crab harvesting cooperative; (2) Application for Transfer of Crab QS/IFQ to or from an ECCO. This application is required to transfer any amount of QS or IFQ to or from an entity that is an ECCO; or (3) Application for Inter-cooperative Transfer. This application is required to transfer any amount of IFQ from a crab harvesting cooperative to another crab harvesting cooperative. All of these transfer forms would be available on the NMFS Alaska Region website at *http://www.fakr.noaa.gov*, or from the NMFS Alaska Region (see **ADDRESSES**).

For the transfer of PQS or IPQ, an application must contain a signature of a representative of an ECC entity with ROFR. For the transfer of CVC QS or IFQ or CPC QS or IFQ, individuals must submit proof of at least one landing of crab in any crab fishery in the 365 days prior to submission to NMFS of the application. Proof of this landing is either: signature of the applicant on an ADF&G Fish Ticket; or an affidavit from the vessel owner attesting to that individual's participation as a member

of a fish harvesting crew on board that vessel at the time of the landing.

NMFS would establish the deadline of August 1 by which QS and PQS holder must apply for their annual IFQ or IPQ permits for that crab fishing year. This deadline provides NMFS the time necessary to calculate whether, and how much, of the IFQ issued to a person should be designated as Class A or Class B IFQ based on the affidavit of affiliation provided in the application. NMFS would need to know all affiliation information for all persons to calculate the Class A/B IFQ ratios for each person accurately. Without this deadline, NMFS would not have sufficient information on affiliations and could not calculate the Class A/B ratio for a person.

This deadline date of August 1 allows NMFS time to issue the IFQ and IPQ for the Aleutian Islands golden king crab fishery (which typically begins in mid-August) and sufficient time to calculate and issue the IFQ and IPQ for all the other fisheries when the TACs are announced by the State of Alaska (in the Fall). Between August 1 and the issuance of IFQ or IPQ for a crab fishery, NMFS would not approve any transfers of QS, PQS, IFQ, or IPQ. This limit on transfer approval ensures that NMFS calculates the Class A/B IFQ ratio based on the affiliation information of all persons in the fishery at the same time. Once the IFQ and IPQ is issued, NMFS would resume the approval of valid transfer applications. For most crab fisheries, this would effectively result in a one month period when NMFS would not approve transfers. Persons may still submit applications during this time, but approval would not occur until NMFS has issued the IFQ and IPQ for the crab fishery.

Approval criteria for an Application for Transfer of Crab QS/IFQ or PQS/IPQ. An Application for Transfer of Crab QS/IFQ or PQS/IPQ would not be approved until the Regional Administrator has determined that: (1) The person applying to receive the quota is eligible to receive it; (2) The application is notarized; (3) All fees for this program are paid as well as any fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either party exist; (4) The person applying to receive quota currently exists; (5) The transfer would not cause the person applying to receive the quota to exceed the use limit; (6) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR, if required; (7) In the case of the transfer of PQS or IPQ, that the provisions for ROFR have been met; and (8) Other pertinent information requested on the application for transfer has been supplied to the satisfaction of the Regional Administrator.

Application for Transfer of Crab QS/IFQ to or from an ECCO. An Application for Transfer of Crab QS/IFQ to or from an ECCO must be approved by the Regional Administrator. This application is required for the ECCO to hold the QS and for the individual that would use the IFQ to harvest crab. Any transfer of QS from an ECC by the ECCO requires authorization of the appropriate governing body of the ECC to ensure proper oversight.

In the application, all individuals applying to receive IFQ by transfer from an ECCO must submit proof of at least one delivery of crab in any crab fishery in the 365 days prior to submission to NMFS of the application. Proof of this landing is either: the signature of the applicant on an ADF&G Fish Ticket; or an affidavit from the vessel owner attesting to that individual's participation as a member of a fish harvesting crew on board that vessel during that landing. In conjunction with the transferee, the ECCO would be a party to the Application for the Transfer of QS/IFQ to or from an ECCO. The ECCO would provide to NMFS an explanation for the transfer of QS/IFQ to be included in NMFS' review of the community benefits of ECCO's. Included among the reasons for transfer are: facilitation of ECCO management and administration; to finance future QS purchases by the ECCO; to permit community residents to fish; or, to facilitate dissolution of the ECCO. A person receiving IFQ from an ECCO must affirm that they have been a permanent resident in the ECC for a period of 12 months prior to the submission of the application.

ECCO Annual Report for an ECC. In addition to the Application to Transfer Crab QS/IFQ to or from an ECCO, the ECCO must submit an annual report for the ECC to NMFS. An ECCO would be required to submit a complete annual report by June 30 of the crab fishing year that it is required. If an ECCO did not submit an annual report for the previous year, NMFS would not approve an Application to Transfer Crab QS/IFQ to or from that ECCO. This annual report is similar to the requirement in the current halibut and sablefish community purchase program. The annual report would ensure that the ECCO maintains the intent of the ECC QS purchase provisions that the QS and IFQ benefit residents of eligible communities.

The annual report would detail the use of the QS and IFQ in that community, including information on the IFQ lease holders, crew employed, criteria used by the ECCO to distribute IFQ leases among eligible community residents, any changes in the management structure of the ECCO, and copies of decision making documents from ECCO board meetings. In addition, NMFS would request a description of efforts the ECCO has made to ensure that IFQ lessees employ crew members who are eligible community residents of the ECC aboard vessels on which IFQ derived from QS held by an ECCO is being fished.

Inter-cooperative Transfers

A crab harvesting cooperative would be permitted to transfer its IFQ only to another crab harvesting cooperative. Crab harvesting cooperatives wishing to engage in an inter-cooperative transfer must complete an Application for Inter-cooperative Transfer.

Application for Inter-cooperative Transfer. A complete application consists of the following: (1) the name and contact information of the crab harvesting cooperative transferor and transferee; (2) the identification of the crab IFQ being transferred, including the permit number, year that permit was issued, and number of pounds being transferred; (3) price paid for the IFQ; (4) whether an EDR was submitted, if required; (5) whether all fees have been paid; and (6) original notarized signatures of both the transferee and transferor. The approval criteria for an Application for Inter-Cooperative Transfer are the same as those for an Application for Transfer of Crab QS/IFQ or PQS/IPQ.

Specific Provisions on the Transfer of CVO and CPO QS and IFQ

CVO and CPO QS and the resulting IFQ would be transferrable under the Program, subject to the caps on the amount of shares a person may hold or use. Leasing would be defined for purposes of this program as the use of IFQs on a vessel in which the QS holder has less than 10 percent ownership interest or on which the QS holder is not present. The general provisions for the leasing of CVO and CPO IFQ (i.e., the temporary transfer of IFQs without the accompanying QS) would expire on July 1, 2010, which is five years after Program implementation. Leasing among crab harvesting cooperatives would not expire. The Council's intent in allowing leasing to continue through crab harvesting cooperatives is to create an incentive for cooperative membership.

Specific Provision on the Transfer of CVC and CPC QS and IFQ

CVC or CPC QS would be fully transferable to persons determined by NMFS to be eligible to receive this type of QS by transfer. In order to be eligible to receive CVC/CPC QS and/or IFQ by transfer, a person must be an individual U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery. Additionally, the person must be an ''active participant'' in the BSAI crab fisheries as demonstrated by a landing in a crab fishery in the last 365 days. Documentation of ''active participation'' includes an ADF&G fish ticket, an affidavit from the vessel owner, or other verifiable documentation.

The accompanying CVC or CPC IFQ may also be leased until July 1, 2008. After July 1, 2008, leasing would be permitted only in the case of a documented hardship for the term of the hardship, subject to a maximum of 2 years over a 10 year period. A hardship would be considered if there is: (1) a severe medical condition of the QS holder documented by a medical doctor who verifies the QS holder cannot participate in the fishery because of the medical condition, (2) a medical condition involving a person that requires the QS holder's full-time care of that person, or (3) a total or constructive physical loss of a vessel. The QS holder would be required to provide documentation to NMFS the vessel was lost and could not be replaced in time to participate in the fishery.

Specific Provisions on the Transfer of PQS and IPQ

PQS and the resulting IPQ are fully transferable subject only to use and ownership caps. This allows for the entry of new processors into the fishery. The Council did not identify any specific eligibility criteria for persons wishing to obtain PQS or IPQ by transfer. However, the Council did establish a ROFR provision that restricts transfers of PQS and IPQ out of a community.

Right of First Refusal (ROFR)

The Program contains provisions for a ROFR to be granted to ECCs, with the exception of Adak, for the purchase of PQS/IPQ that is proposed by the PQS holder to be transferred out of the ECC. ROFR would apply to all crab PSQ/IPQ derived from legal processing that occurred in that ECC except for PSQ/IPQ issued for Tanner crab, Western Aleutian Islands golden king crab, and Adak red king crab. The Tanner crab fishery is exempt because this species has been and likely would continue to be a concurrent fishery with Bristol Bay red king crab and snow crab. The Western Aleutian Islands golden king crab fishery is exempt because the fishery is regionalized in a manner that largely makes ROFR provisions unnecessary. Last, the Adak red king crab fishery was closed for several years limiting community dependence on that fishery.

To qualify as an ECC, a community must have processor history that accounts for at least 3 percent of the initial allocation of PQS in any crab fishery. The 3 percent threshold is intended to limit the ROFR to communities with historical dependence on the crab fisheries. Based on the Alaska State fish ticket database, the following nine communities meet this threshold of historical dependence as an ECC: Adak, Akutan, False Pass, St. George, St. Paul, Dutch Harbor, Kodiak, King Cove, and Port Moller. Adak is not eligible for ROFR because the Program excludes any community that receives a direct allocation of crab, which Adak does (see provisions for Adak allocation within this proposed rule). The rationale for this provision is that the direct allocation of crab is sufficient to support Adak's dependence on the crab fisheries, and any further protection of the community's interest in the fisheries is unnecessary.

ECCs would be required to designate an entity to represent it for purposes of ROFR. For those ECCs that are also CDQ communities (Akutan, False Pass, St. George, and St. Paul), the entity would be the CDQ group of which the community is a member. For non CDQ communities that are ECCs (Dutch Harbor, Kodiak, King Cove, and Port Moller), the entity would be a person or organization designated by the governing bodies of the ECCs. The entity for an ECC would be designated the right to intervene on behalf of its communities if a PQS holder proposes to transfer PQS or IPQ outside the community.

The ROFR provisions attempt to strike a balance between community and industry interests. Generally, the ROFR provides an ECC with the right to purchase PQ or IPQ from a processor for the same price and subject to the same conditions as offered by the seller in an open market. Under this system, the holder of PQS/IPQ would notify the ECC or its representative of the terms of the pending sale. The ECC would then have the opportunity to exercise the ROFR by notifying the seller of acceptance of those terms within a specified time period. If the terms are not accepted, the open market sale may proceed.

An exception to the ROFR would allow a company to consolidate operations among several commonly owned plants to achieve intra-company efficiencies. In addition, companies could lease IPQ for use outside a community. However, use of more than 20 percent of a person's IPQ holdings outside an ECC during a crab fishing year would trigger the ECC's right of first refusal. The time period of a crab fishing year to allow for this 20 percent exception differs from the Council's motion that was based on a time period of ''3 of the preceding 5 years.'' Under the Council's motion, 5 years potentially would need to pass before an ECC entity could determine whether or not to exercise ROFR. This approach would be inconsistent with the community protection objective of ROFR. Thus, NMFS proposes to base this 20 percent exception on an annual time period and specifically requests public comment on this approach relative to Council objectives and practicality (see **ADDRESSES**).

The designation of a representing entity for non-CDQ ECCs must be completed well in advance of the end of the application period for initial issuance of PQS to allow applicants for PQS and ECC entities to develop and sign contracts between the ECC entity and the applicant for PQS. The Council suggested ECCs designate the entity to represent it for purposes of ROFR at least 90 days before the end of the application period for initial issuance of PQS. This time frame would provide processors time to enter a contract that would establish ROFR. Given the proposed application period is 60 days and in order to meet a schedule that would allow for issuance of QS for the 2005 Fall crab fisheries, NMFS proposes that ECCs designate the entity to represent them within 30 days of the publication of the final rule which implements the Program. This time frame still would allow a 60-day period for processors to enter into contracts prior to submission of their application for PQS. An application for PQS would not be considered complete until it is accompanied by a valid contract signed by the applicant for initial issuance of PQS and the ECC entity.

To exercise a ROFR, an ECC would be required to meet all of the terms and conditions of the underlying transaction. As indicated above, the ROFR would be established by a contract to be entered into between the PQS holder receiving the allocation of PQS and the ECC entity. The applicant for PQS would be required to enter the

contract in order to receive the initial allocation of PQS by NMFS.

The contracts establishing the ROFR for ECCs must include specified conditions set forth at § 680.40(m). An explanation for each of these conditions is presented in section 3.6.2.2 of Appendix 1 to the EIS (see **ADDRESSES**). These conditions were developed by an ad hoc committee assigned by the Council to develop community protection measures and were ultimately adopted by the Council. They generally are intended to protect a balance between community and processor interests while providing some flexibility under contractual arrangements that would be enforced through civil contract law. NMFS does not intend to provide draft contractual language for purposes of ROFR; however, the agency would support the enforcement of some of the contract conditions, such as requiring signed contracts to be submitted as part of the application process for initial issuance of PQS. Similarly, NMFS would require the ECC entity as signatory on the contract to acknowledge in writing the community does not wish to exercise ROFR prior to agency approval of any transfer of PQS or IPQ. NMFS also could annually notify each ECC entity of the location where IPQs from the community were used and of any transfer of shares linked to the community. This notification could assist the community in tracking transfers and use of shares, thereby assisting the community efforts to enforce the ROFR. NMFS specifically requests comments on whether such notification would be helpful (see **ADDRESSES**).

The Program would establish an additional ROFR provision for ECCs located in the northern GOA. The only ECC in this area is the combined City and Borough of Kodiak. Under this provision, the ECC entity representing Kodiak would have a ROFR to purchase PQS that is proposed to be transferred from non ECC communities located in the northern GOA. The terms and conditions supporting Kodiak's ROFR would be the same as those for the general ROFR provisions referenced above. Applicants for PQS in non ECC communities in the northern GOA would be required to enter into a contract with the ECC entity representing Kodiak and to submit a copy of a signed contract with their application for initial issuance of PQS. Subsequently, a holder of PQS in a non ECC community in the northern GOA who wishes to transfer PQS out of that community must provide NMFS with a written acknowledgment from the ECC entity representing Kodiak confirming that Kodiak does not wish to exercise ROFR prior to agency approval of transfer of PQS to a community other than Kodiak.

The northern GOA ROFR provision is intended to provide Kodiak with a ROFR that would enable it to consolidate processing shares of non ECC communities in the northern GOA.

QS, PQS, IFQ, and IPQ Use Caps

This proposed rule establishes use caps on the amount of QS, PQS, IFQ, and IPQ which may be held by a person and the amount of IFQ used on a vessel. Use caps would limit the degree of consolidation of QS and PQS holders and the numbers of vessels in the crab fisheries.

QS and IFQ Use Caps

Use caps would be imposed on a person's holdings of QS. No person could use IFQ in excess of the amount of IFQ that is yielded from these QS caps unless that IFQ is derived from QS that was received by that person in the initial allocation of QS for that crab fishery. Different caps are chosen for the different fisheries because fleet characteristics and dependence differ across fisheries. Separate caps on QS holdings are established for CDQ groups. Also, separate caps would be established for persons who hold QS and PQS.

Use caps on the amount of QS and IFQ a person may hold are based on the initial QS pools to provide greater stability for participants and to determine where their allocation is relative to the overall allocations. Because the QS pool would change over time, establishing a set pool early-on would provide greater stability and would not require QS holders to divest themselves of QS should the quota pool change. The QS use caps in the halibut and sablefish IFQ program are set at a fixed amount of QS units, and a similar management approach is used to set use caps in this Program.

A person who receives an initial allocation of QS that exceeds the use caps listed here is limited to hold no more than that amount. NMFS would not issue a person QS in excess of use caps based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002. This provision would prevent excessive consolidation prior to the issuance of QS through the trading of LLP licenses and their associated history.

Non-individuals holding QS would be required to provide, on an annual basis, ownership information as required by the Annual Application for Crab IFQ/IPQ Permit. Use caps would be applied both individually and collectively. Under this rule, all of a person's direct holdings of QS and IFQ would be credited toward the cap. In addition, a person's indirect holdings would be also credited toward the cap in proportion to the person's ownership interest. For example, if a person owns a 20 percent interest in a company that holds 100 QS units, that person is credited with holding 20 QS units for purposes of determining compliance with the cap.

These caps would be applied in two steps. First, NMFS would use a threshold rule for determining whether the shares are held by a person. Second, NMFS would use the individual and collective rule for determining the extent of share ownership. Under the threshold rule, any entity with 10-percent or more common ownership is considered to be an owner for purposes of determining this cap. Any direct holding of QS by those entities would be fully credited to the QS holder for purposes of establishing use caps. See the following table for details:

TABLE 11—USE CAPS ON QS AND IFQ HOLDINGS FOR ALL PERSONS NOT HOLDING PQS, AND NON-CDQ GROUPS

Fishery	CVO and CPO Use Cap in QS Units	CVC and CPC Use Cap in QS Units
1.0 percent of the initial QS pool for Bristol Bay red king crab	3,880,000	120,000
1.0 percent of the initial QS pool for Bering Sea snow crab	9,700,000	300,000
1.0 percent of the initial QS pool for Bering sea Tanner crab	1,940,000	60,000
2.0 percent of the initial QS pool for Pribilof Islands red and blue king crab	582,000	18,000

TABLE 11—USE CAPS ON QS AND IFQ HOLDINGS FOR ALL PERSONS NOT HOLDING PQS, AND NON-CDQ GROUPS—Continued

Fishery	CVO and CPO Use Cap in QS Units	CVC and CPC Use Cap in QS Units
2.0 percent of the initial QS pool for St. Matthew blue king crab	582,000	18,000
10.0 percent of the initial QS pool for Eastern Aleutian Islands golden king crab	970,000	30,000
10.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	3,880,000	120,000
10.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	5,820,000	180,000

The use cap limits for CDQ Groups are shown in the following table (Table 12). The QS and IFQ use caps in Table 12 apply to a CDQ group regardless of whether the CDQ holds PQS and QS. No CDQ group could use IFQ in excess of the amount of IFQ that is yielded from these QS caps unless that IFQ is derived from QS that was received by that CDQ group in the initial allocation of QS for that crab fishery.

TABLE 12—USE CAPS ON QS AND IFQ HOLDINGS FOR CDQ GROUPS

Fishery	CDQ CVO and CPO Use Cap in QS Units
5.0 percent of the initial QS pool for Bristol Bay red king crab	19,400,000
5.0 percent of the initial QS pool for Bering Sea snow crab	48,500,000
5.0 percent of the initial QS pool for Bering sea Tanner crab	9,700,000
10.0 percent of the initial QS pool for Pribilof Islands red and blue king crab	2,910,000
10.0 percent of the initial QS pool for St. Matthew blue king crab	2,910,000
20.0 percent of the initial QS pool for Eastern Aleutian Islands golden king crab	1,940,000
20.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	7,760,000
20.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	11,640,000

No person who holds QS and PQS could use IFQ in excess of the amount of IFQ that is yielded from these QS caps unless that IFQ is derived from QS that was received by that person in the initial allocation of QS for that crab fishery. The use cap limits for PQS holders who also hold QS are shown in the following table:

TABLE 13—USE CAPS ON QS AND IFQ HOLDINGS FOR PERSONS WHO HOLD QS AND PQS

Fishery	CVO and CPO Use Cap in QS Units	CVC and CPC Use Cap in QS Units
5.0 percent of the initial QS pool for Bristol Bay red king crab	19,400,000	600,000
5.0 percent of the initial QS pool for Bering Sea snow crab	48,500,000	1,500,000
5.0 percent of the initial QS pool for Bering sea Tanner crab	9,700,000	300,000
5.0 percent of the initial QS pool for Pribilof Islands red and blue king crab	1,455,000	45,000
5.0 percent of the initial QS pool for St. Matthew blue king crab	1,455,000	45,000
5.0 percent of the initial QS pool for Eastern Aleutian Islands golden king crab	485,000	15,000
5.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	1,940,000	60,000
5.0 percent of the initial QS pool for Western Aleutian Islands golden king crab	2,910,000	90,000

CVC and CPC QS and IFQ use is capped based on the QS and IFQ pool that is issued to those QS sectors, not as a percentage of the whole QS pool, or TAC issued for that fishery for that year. The effect is that the use caps are set at the percentage of the QS pool for that sector. This is intended to preserve the goals of CVC and CPC QS and IFQ allocations as a means to provide participation for crew members and limit consolidation in crew employment.

PQS Use Caps

A person may not use more than 30 percent of the initial PQS pool in any crab fishery unless that person received an initial allocation of PQS in excess of this limit. A person would not be issued PQS in excess of the use caps based on processing history transferred after June 10, 2002, the same date for limiting the QS use caps. This would limit the consolidation that could occur prior to the implementation of this Program, thereby frustrating the goals of a use cap limitation.

As with vertical integration caps, PQS use caps would be applied using a threshold rule for determining whether the shares are held by a processor and then the individual and collective rule for determining the extent of share ownership. Under the threshold rule, any entity with 10 percent or more common ownership with a processor is considered to be a part of that processor. Any direct holdings of those entities would be fully credited to the processor's holdings. Indirect holdings of those entities would be credited toward the processor's cap in proportion to the entity's ownership.

IPQ Use Caps

IPQs would be capped at the same levels as those for the PQS, and the same would be established using the same threshold rule for determining the amount of PQS held by a person. In addition to this general use cap, two other provisions would apply to IPQs. In addition to the overall 30 percent PQS use cap, in the Bering Sea snow crab fishery no person would be permitted to hold in excess of 60 percent of the IPQ issued with a North region designation for that fishery.

A further restriction would exist, which limits the annual allocation of IPQs in seasons when the TAC exceeds a threshold amount in two fisheries. In the Bristol Bay red king crab fishery, IPQs would not be issued for the amount of the TAC in excess of 20 million pounds (9,072 mt). In the Bering Sea snow crab fishery, IPQs would not be issued for the amount of the TAC in excess of 175 million pounds (79,379 mt). Any Class A IFQ issued in excess of the threshold would not be required to be delivered to an RCR with unused IPQ, but it would be subject to the regional landing requirements. This Class A IFQ would be distributed among users based on their QS holdings.

Vessel Use Caps

The amount of CVO or CPO IFQ that could be used on any one vessel during a crab fishing year would be limited. This vessel use limit would apply for all vessels, except for vessels that participate solely in a crab harvesting cooperative. A vessel could not harvest crab in excess of the following percentages of the TAC for that crab fishery for that crab fishing year: (1) 2 percent of the TAC for the Bering Sea snow crab, Bristol Bay red king crab, and Bering Sea tanner crab fisheries; (2) 4 percent of the TAC for the Pribilof Islands red and blue king crab, and St. Matthew blue king crab fisheries; and (3) 20 percent for Eastern Aleutian Islands golden king crab, Western Aleutian Islands golden king crab, and Western Aleutian Islands red king crab west of 179° W. long.

CVC or CPC QS used on a vessel would not be included in determining whether a vessel use cap is met. Crab that are allocated to the CDQ program or the Adak community entity would not be included in determining whether a vessel use cap is met.

A person who receive an approval of IFQ allocation in excess of these vessel use caps may catch and retain all of that IFQ with a single vessel. However, two or more persons may not catch and retain their IFQs with one vessel in excess of these limitations.

The vessel use cap would not apply to a vessel if all of the IFQ used on that vessel in a crab fishing year is IFQ held by a crab harvesting cooperative. This exemption does not apply if that vessel is used to harvest any amount of IFQ not held by a crab harvesting cooperative during the same crab fishing year.

Catcher/Processor Vessel Activity

A person may purchase additional PQS for use on a CP vessel, but any crab processed with purchased PQS must be processed within three miles of shore in the region designated for that PQS. This effectively limits the use of PQS and the resulting IPQ to vessels that are operating as stationary floating crab processors.

A vessel operating as a CP may not accept deliveries of Class B IFQ for processing. For purposes of this provision, any vessel that receives and processes crab harvested with Class B IFQ for processing during a season would be prohibited from acting as a CP during the remainder of the season, and any vessel that operates as a CP during a season would be prohibited from receiving and processing crab harvested with Class B IFQ during that season. This provision only applies for that crab fishery for that season. A vessel could operate as a CP in one crab fishery and receive crab harvested with Class B IFQ in another crab fishery.

QS Holder On Board Provisions

A person holding CVC or CPC QS is required to be aboard the vessel upon which their IFQ is being harvested; unless the IFQ resulting from that QS has been: (1) leased to a qualified person; or (2) is used by a crab harvesting cooperative.

A person holding CVO or CPO QS does not have to be aboard the vessel being used to harvest their IFQ if they hold at least a 10 percent ownership interest in the vessel upon which the IFQ is to be harvested and are represented by a crab IFQ hired master employed by that QS holder.

Crab Harvesting Cooperatives

Consistent with the Fishermen's Collective Marketing Act (FCMA, 15 U.S.C. 521) and other applicable laws, including antitrust, QS holders may form voluntary crab harvesting cooperatives to combine and cooperatively manage their aggregate QS holdings. Each cooperative that is approved by NMFS would receive the amount of cooperative IFQ that would be yielded by the aggregate QS holdings of all of the members of the cooperative. The Program contains two primary incentives to encourage individual QS holders to join and participate in crab harvesting cooperatives. First, vessels fishing exclusively in cooperatives would be exempt from the vessel use caps that restrict vessels that harvest individually-held IFQ. Second, beginning in the sixth year of the program, only leasing within cooperatives or between cooperatives would be allowed. The proposed regulations at § 680.21 set out the provisions governing the formation and operation of crab harvesting cooperatives.

Membership Requirements

Under the Program, a minimum membership of four unique QS holders would be required for cooperative formation. The language of Amendment 18 explicitly states that the four or more unique members of a crab harvesting cooperative are to be harvester QS holders engaged in one or more crab

fisheries. Therefore, the proposed regulations concerning membership requirements for a crab harvesting cooperative require that members of a cooperative be QS holders. However, there is no explicit language in Amendment 18 as to whether QS holders who also hold PQS or IPQ, or are affiliated with persons who hold PQS or IPQ, may be members of a crab harvesting cooperative. NMFS considered this issue in developing the proposed rule and, for the reasons set forth below, proposes that QS holders who also hold PQS or IPQ or are affiliated with persons who hold PQS or IPQ be prohibited from joining a crab harvesting cooperative.

Section 313(j)(6) of the Magnuson-Stevens Act (16 U.S.C. 1862(j)(6)) states that ''Nothing in [the Magnuson-Stevens Act] shall constitute a waiver, either express or implied, of the antitrust laws of the United States.'' However, the FCMA was enacted to provide exemptions from antitrust liability for certain activities by associations of qualified members. The FCMA reads as follows:

Sec. 521. Fishing industry; associations authorized; ''aquatic products'' defined; marketing agencies; requirements

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term ''aquatic products'' includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes: Provided, however, That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own

therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

The FCMA, enacted in 1934, permits persons engaged in the fishing industry, as fishermen that catch, collect, or cultivate aquatic products or as planters of aquatic products, to act together in associations (cooperatives) for the purposes listed. The FCMA extended to the fishing industry the exemption from the operation of antitrust laws that is granted to agricultural cooperatives in the Clayton Act (15 U.S.C. 17) and the Capper-Volstead Act (7 U.S.C. 291, *et seq.*). The intent of the FCMA is to provide fishermen, acting through fishery cooperatives, an opportunity to compete on the same basis as may an individual corporation. Because there is no waiver of antitrust laws in the Magnuson-Stevens Act and because the only exemption from antitrust law for fishing cooperatives is provided by the FCMA, crab harvesting cooperatives are required to be organized and operate in a manner that is consistent with requirements of the FCMA and the proposed rule contains a provision reflecting this requirement.

According to the case law that has developed under the Capper-Volstead Act and the FCMA (particularly *National Broiler Marketing Assn.* v. *United States*, 436 U.S. 816 (1978) and *United States* v. *Hinote*, 823 F. Supp. 1350 (S.D. Miss. 1993)), all members of an FCMA-protected cooperative must be ''producers'' and any non-producer participation in the control and policy making of a cooperative would disqualify the cooperative for exemption from antitrust law provided by the FCMA. While NMFS recognizes that there is some legal uncertainty as to whether members of a cooperative who participate in both production and processing would be considered ''non-producers,'' NMFS has determined that there is a significant likelihood that a crab harvesting cooperative that is permitted to include members that hold PQS or IPQ or process Class B IFQ, or who are affiliated with persons who hold PQS or IPQ or process Class B IFQ would be found to include non-producer members and therefore would fail to have the protections from antitrust law afforded by the FCMA. Therefore, persons holding CVO, CVC, CPO, or CPC QS would be considered QS holders for purposes of crab harvesting cooperative formation. However, QS holders who also (1) hold PQS or IPQ, (2) are affiliated with a person who holds PQS or IPQ, (3) process Class B IFQ, or (4) are affiliated with a person that processes Class B IFQ would be prohibited from joining a crab harvesting cooperative.

NMFS acknowledges that the proposed exclusion of QS holders that also hold PQS or IPQ or process Class B IFQ, or that are affiliated with persons that hold PQS or IPQ or process Class B IFQ from cooperative membership would deny these QS holders from taking advantage of the vessel use cap exemption that participation in a cooperative would afford. However, even if the proposed regulations permitted the membership of such persons in a cooperative, it is likely that such participation could be excluded through other means. Additionally, NMFS notes that although the proposed rule would not exclude CP QS holders from membership in crab harvesting cooperatives, the proposed rule would exclude CP QS holders that also hold PQS or IPQ or process Class B IFQ, or who are affiliated with persons that hold PQS or IPQ or process Class B IFQ from cooperative membership.

The proposed regulations also would prohibit members of a cooperative, including CP QS holders, from acquiring PQS or IPQ during the valid duration of the cooperative IFQ permit. These measures are intended to minimize the risk of a finding that a crab harvesting cooperative's members were not ''producers'' as required by the FCMA. However, it is not clear that these limitations on membership and acquisition remove the risk entirely. NMFS stresses that although a crab harvesting cooperative may meet the regulatory requirements set for in § 680.21, the cooperative may not satisfy all of the requirements for an FCMA cooperative. Persons wishing to form a crab harvesting cooperative are strongly encouraged to consult with experts in the field of antitrust.

In addition to the requirement that crab harvesting cooperatives be organized according to the requirements of the FCMA, a cooperative also would be required to be formed as a legal business entity registered under the laws of one of the 50 states or the District of Columbia in order to be eligible for a cooperative IFQ permit issued by NMFS.

Cooperative membership would be ''all or nothing'' in that each QS holder would be able to join only one crab harvesting cooperative at the beginning of each fishing year, and all QS held by each member would be converted to cooperative IFQ. A QS holder would be prohibited from joining more than one cooperative, and would be unable to allocate only a portion of his QS holdings to a cooperative and retain the remainder for conversion to individual IFQ for his own exclusive use.

NMFS believes that because the proposed rule would allow unrestricted leasing between crab harvesting cooperatives, each cooperative would be

free to focus on harvesting IFQ for the fisheries of its choice. Thus, through leasing, cooperative members could realize the same benefits in being a member of one cooperative as they could in joining multiple cooperatives. Additionally, NMFS believes the ability to join multiple cooperatives would cause a potentially unmanageable number of cooperatives to be formed. NMFS is concerned that if membership is allowed in more than one cooperative, then it would be easy for QS holders to allocate a nominal amount of IFQ to a given cooperative and form what would be, in effect, single member cooperatives. This would undermine the Council's intent that each cooperative have at least four independent members. Also, NMFS is concerned that bycatch may increase if single-species cooperatives are formed because the cooperative would have to discard all legal crab of species for which the cooperative does not have IFQ. Finally, cooperative management by its members is complex and technical, and NMFS is concerned that cooperative management would be diluted by members who have joined multiple cooperatives, and therefore, each cooperative would be less effective at managing the harvesting of the cooperative's IFQ. NMFS specifically requests public comment on whether QS holders should be able to join more than one cooperative relative to these assumptions and Council intent (see **ADDRESSES**).

Membership in crab harvesting cooperatives would be voluntary. No QS holder would be required to join a cooperative to receive or harvest IFQ, and no cooperative would be required to accept as a member a QS holder that the cooperative does not wish to admit. Each member of a cooperative would be required to maintain their membership in the cooperative for the one-year duration of the cooperative IFQ permit, or as long as they hold any amount of QS upon which the cooperative's IFQ permit is based. However a cooperative member would have an opportunity to leave their cooperative or change cooperatives each year during the annual application process.

Members of a cooperative fishing under a cooperative IFQ permit would be governed by the same regulations that govern individuals fishing under an individual IFQ permit. The only persons eligible to fish for crab under a cooperative IFQ permit would be the members of the cooperative, or a crab IFQ hired master who is fishing on board a vessel that is affiliated with (i.e. owned or controlled) by a member of the cooperative. In addition, the members of a cooperative may be held liable for any violations of the regulations applicable to fishing for crab made by any person fishing under the cooperative.

Application for an Annual Crab Harvesting Cooperative IPQ Permit

Cooperatives would be required to apply for a cooperative IFQ permit on an annual basis prior to July 1 of each year. If a cooperative's application is approved by NMFS, the cooperative would receive the sum of the annual IFQ allocations of its members in the form of a cooperative IFQ permit that is issued to the cooperative rather than the individual QS holders. Cooperative IFQ permits would maintain all of the region, species, and sector designations of the underlying QS held by the members of the cooperative with the following exception.

CVC IFQ would lose their ''C'' designation (and associated holder on board and leasing restrictions) when converted to cooperative IFQ so that the CVC QS holders would be able to participate in cooperatives on an equal basis with other QS holders. This means CVC IFQ could be harvested by the cooperative without the CVC IFQ holder on board the vessel. NMFS has determined that this approach is necessary to allow the CVC QS holders to join and participate in cooperatives. The primary purpose of crab harvesting cooperatives is to allow crab fishermen to consolidate and collectively manage their QS holdings. If each cooperative is required to treat CVC IFQ separately from other types of IFQ, and if each CVC QS holder is required to be on board the vessel any time the cooperative's CVC IFQ are being fished, then CVC QS holders gain nothing from participating in a cooperative and would have incentives to avoid joining cooperatives. This is because CVC QS holders could otherwise retain their shares as individually-held IFQ and fish their shares on board any vessel fishing for crab in the BSAI. Without the ability to participate fully in the cooperative, CVC QS holders would have no incentive to join any cooperative. In fact, they would have reasons to avoid joining cooperatives because they would gain no benefits from cooperative participation while at the same time subjecting themselves to the increased complexity and potential liability of participating in a cooperative.

Incentives to Join Crab Harvesting Cooperatives

The Program provides two incentives for QS holders to join cooperatives. First, fishing vessels that are used to harvest cooperative IFQ exclusively and that do not harvest any amount of non-cooperative-held IFQ would be exempt from the vessel use caps that apply to vessels used to harvest non-cooperative-held IFQ. Second, beginning July 1, 2011, only cooperatives would be allowed to lease IFQ and leasing of IFQ by non-cooperative IFQ holders would be prohibited.

Transfers of QS and IFQ by Members of a Cooperative

The regulations governing the transfer of QS and IFQ would apply somewhat differently to members of a cooperative who wish to transfer QS and IFQ during the fishing season than they would to QS holders who are not members of a cooperative. This is because at the time a QS holder joins a cooperative, all of his or her QS would be converted to cooperative IFQ that is held in common by the cooperative. A member of a cooperative may buy or sell QS at any time during the fishing season or between seasons simply by following the general requirements for the transfer of QS at § 680.41. A member of a cooperative also may obtain IFQ at any time by following the general requirements for the transfer of IFQ at § 680.41 and may individually hold that IFQ or may transfer the IFQ to the member's cooperative. However, once a cooperative has been issued an IFQ permit, the members of that cooperative cannot transfer away IFQ because they hold no IFQ of their own. Only the cooperative may transfer away cooperative IFQ, and only by following the requirements for the transfer of cooperative IFQ at § 680.41. Additionally, members of a cooperative would be prohibited from acquiring any amount of PQS or IPQ during the valid duration of the cooperative IFQ permit. The rational for this provision is provided under the discussion of cooperative membership requirements.

A cooperative that has been issued cooperative IFQ is not allowed to hold QS directly, even though as a legal business entity, a cooperative would otherwise be eligible to acquire and hold QS. This prohibition on cooperatives holding QS is necessary to maintain the regulatory distinctions between non-cooperative-held IFQ and cooperative IFQ, and to simplify the administration of the Program.

Inseason Membership Changes

Because cooperative IFQ permits are annual permits, and cooperatives are required to apply annually for each year's cooperative IFQ permit, any changes in cooperative membership that

occur between fishing seasons would simply be reflected in the following year's cooperative IFQ permit application. However, inseason transfers of QS by members of a cooperative may result in the situation where a current member of the cooperative no longer holds QS and/or a new person holds QS that has been allocated to the cooperative in the form of IFQ. If this occurs, then the cooperative has the option of amending its membership to add or remove members through the submission of an amended cooperative IFQ permit application. If the cooperative chooses to amend its membership during the fishing season, then the cooperative would be required to submit to NMFS an amended application for cooperative IFQ reflecting the membership change. If the change to cooperative membership is approved, NMFS would issue an amended IFQ permit application to the cooperative reflecting the change in membership. The same process may be used by a cooperative to accommodate the rights of a successor in interest in the event that a member dies (in the case of an individual), or dissolves (in the case of a business entity).

Each cooperative would be free to develop its own procedures for dealing with inseason membership changes. Cooperatives may choose to grant automatic membership to persons who obtain QS through purchase or as successors-in-interest to a member that died. Conversely, they may establish their own procedures for deciding whether to admit new members on an inseason basis. However a cooperative decides to address the issue of inseason membership changes a cooperative would not be required by NMFS to grant membership to a QS holder with whom it does not wish to associate, regardless of how that person acquired the QS in question. It is important to note that the inseason membership process could not be used by a cooperative for inseason expulsions of a member who holds QS that is allocated to the cooperative in the form of IFQ. If a cooperative wishes to expel a member that holds QS upon which the cooperative's IFQ is based, it must wait until the end of the fishing year. In addition, this inseason process could not be used to add a member that has not obtained QS that is allocated to the cooperative in the form of IFQ. These two types of membership changes can only be accomplished between fishing years through the annual permit application process.

Protections for GOA Groundfish Fisheries

Protections, called sideboards limits, restrict the ability of vessels with Bering Sea snow crab fishing history to participate in GOA groundfish fisheries. The purpose of the proposed sideboard limits is to prevent vessels that traditionally participated in the Bering Sea snow crab fishery from using the flexibility of the Program to increase their level of participation in the GOA groundfish fisheries, and primarily the GOA Pacific cod fishery. Historically, the Bering Sea snow crab fishery and GOA groundfish fisheries operated concurrently from January through March, meaning that a crab vessel owner had to decide whether to fish for Bering Sea snow crab or GOA groundfish but could not participate fully in both fisheries. With crab rationalization, vessel owners have the flexibility to fish for snow crab whenever they want, or to lease their crab IFQ and not fish at all. This increased flexibility for crab fishermen could lead to increases in fishing effort in GOA groundfish fisheries, especially the Pacific cod fishery, which is the primary groundfish target species for pot vessels, negatively affecting the other participants in those fisheries. This concern about spillover effects is limited primarily to the GOA where the Pacific cod TAC is not allocated among gear types. In the BSAI, most of the Pacific cod TAC is allocated to vessels using longline and trawl gear and LLP license restrictions prevent the entry of new pot vessels into the BSAI Pacific cod fishery, meaning that snow crab fishermen who wish to increase their groundfish fishing activity would need to look primarily to the GOA Pacific cod fishery.

The GOA groundfish sideboard restrictions would apply to any non-AFA crab vessel with a fishing history that generated any amount of Bering Sea snow crab QS, and to any LLP licenses earned in whole or in part by the crab fishing history of such vessels. Because AFA catcher vessels are already subject to sideboard restrictions in the GOA under the implementing regulations for the AFA, no additional restrictions for AFA catcher vessels with snow crab history are proposed here. Those snow crab vessels subject to GOA groundfish sideboard restrictions would be limited, in the aggregate, from harvesting an amount of each GOA groundfish species that exceeds the percentage of each species that such vessels retained, in the aggregate, from 1996 to 2000 relative to the total retained catch of each species by all groundfish vessels during the same period. The sideboard restrictions are also apportioned by season and/or area for each GOA groundfish TAC that is apportioned by season or area.

There are some additional sideboard restrictions and exemptions for GOA Pacific cod that do not apply to other GOA groundfish species. Specifically, any vessel subject to GOA groundfish sideboards that landed less than 50 mt (110,231 lb) of GOA groundfish between 1996 and 2000 would be prohibited from engaging in directed fishing for Pacific cod at all times. Additionally, any vessel that landed less than 100,000 pounds (45.4 mt) of Bering Sea snow crab and more than 500 mt (1,102,311 lb) of GOA Pacific cod between 1996 and 2000 would be exempt from the GOA Pacific cod sideboard restrictions. NMFS would notify all persons who own a vessel or hold a LLP license as to whether they are subject to the sideboard restrictions by issuing amended Federal fisheries permits and LLP licenses to each affected vessel owner or LLP license holder. The amended Federal fisheries permits and LLP licenses would display the type of sideboard restriction on the face of the permit or license.

Arbitration System

The Council developed the Arbitration System to compensate for complications arising from the creation of both QS/IFQ and PQS/IPQ. These complications include price negotiations that could continue indefinitely and result in costly delays, and the ''last person standing'' problem where the last parties to contract will have a single market for their product or service. The Arbitration System is designed to alleviate many of the concerns arising from the parity of supply and demand under the Program. If an IPQ holder or IFQ holder were unable to reach an agreement on price during open negotiations, the negotiation approaches prescribed in the proposed regulations could be used by certain participants to settle their disputes. This also encourages more efficient negotiations by preventing indefinite stalemates.

The Council, along with considerable input from the potential participants, developed the Arbitration System to accommodate the varied interests of the parties involved as well as reflect the historical negotiations between harvesters and processors. The Arbitration System identifies the general structure of the system and the general principles that guide oversight and management. It also identifies the roles and fundamental standards for the

Market Analyst in developing and producing a preseason Market Report for each fishery, the Formula Arbitrator in developing a single annual fleet-wide pricing formula (non-binding price formula), the Contract Arbitrators in making decisions, and the last best offer binding arbitration method as the arbitration procedure for participants.

Section 313(j)(6) of the Magnuson-Stevens Act, as amended by section 801 of Pub. L. 108-199, stipulates that the legislation does not provide any exemption to the antitrust laws. To the extent the Arbitration System, as approved by the Council, would have permitted actions that put the participants at risk of subjecting themselves to antitrust liability, the Council approved minor changes, primarily to address information exchanges that could have occurred under the Arbitration System as originally approved. At its June 2004, meeting, the Council adopted changes to the Arbitration System for approval by January 1, 2005. The Council's changes are in Amendment 19 to the FMP and would be implemented by these proposed regulations.

Council-Approved Changes to the Arbitration System

First, the Council eliminated a provision that would have allowed PQS or IPQ holders to participate in common discussions concerning historical prices in the fisheries. The intent of the provision was to facilitate the development of information about historic division of revenues, which is one of the primary bases upon which the Formula Arbitrator establishes the non-binding price formula and upon which the Contract Arbitrators will base a decision. The only limitation upon PQS or IPQ holders was that the discussion would be about historical prices. The provision, however, could have allowed PQS or IPQ holders to engage in collective, direct discussions regarding pricing information. The potential anticompetitive risks associated with encouraging competitors to discuss pricing information, even historical information, was too great. There was a high probability that competitors could move beyond discussions on strictly ''historical'' information. Moreover, the availability of pricing information facilitates collusion, especially when the processors will be identified with the prices they charge. Further, information about historical prices could be generated through other means, such as information provided to the Market Analyst.

Second, the Council adopted changes to limit access of parties to an arbitration proceeding to information provided directly by them to the Contract Arbitrator in the proceeding in which they participate. The Program originally provided all participants in an arbitration access to all information provided to their Contract Arbitrator, which could include information provided to other Contract Arbitrators in binding arbitration proceedings to assist them in reaching decisions. This provision could have allowed participants to access pricing and other competitively sensitive information submitted to a Contract Arbitrator by every Arbitration IFQ holder and IPQ holder during all prior arbitration proceedings. Accordingly, it presented a serious antitrust risk. Under the antitrust immunity provided by the FCMA, a crab harvesting cooperative or members of a cooperative could share sensitive competitive information with other members of the same cooperative, but the arbitrator would not be the person to disseminate such information. All participants in an arbitration proceeding would be required to sign a confidentiality agreement stating they would not disclose any information received from the Contract Arbitrator.

Third, the Arbitration System permitted harvesters to act collectively during binding arbitration to the extent permitted by the FCMA. The FCMA authorizes the establishment of cooperatives comprised of fishermen. Pursuant to the FCMA, cooperative members may freely exchange information, agree among themselves on the price they will accept for their products, bargain jointly and agree on the basis for negotiations without risking antitrust liability. If the cooperative or members of the cooperative share sensitive competitive information or attempt to collaborate with non-member harvesters on any issues relating to price or costs, they would risk antitrust liability. The Council adopted a change to clarify that IFQ holders that are members of a FCMA crab harvesting cooperative can participate collectively as a member of that FCMA cooperative in binding arbitration and that non-member harvesters cannot participate collectively with cooperative members during the arbitration procedures.

The proposed rule would clearly prohibit crab harvesting cooperative members from sharing sensitive competitive information or any issues relating to costs or price or collaborate with nonmembers at any stage of the arbitration proceedings without risking antitrust liability. Moreover, the proposed rule would prohibit collaboration among members of different FCMA cooperatives for purposes other than nominating and selecting the arbitrators and market analysts to avoid behavior that is outside the scope of the antitrust immunity provided by the FCMA.

Fourth, the Council eliminated a provision that required the Market Analyst to survey the crab product throughout the year and periodically publish prices in the crab product market. The periodic announcement of prices presented a serious antitrust risk since it could provide a way of matching up prices with individual market participants. To the extent the information about product prices is necessary for the Formula and Contract Arbitrators to perform their functions, they will have it from other sources. The more frequent the periodic price updates, the smaller would be the number of IFQ and IPQ holders as well as distributors or customers generating the composite price that was reported. Aggregation would have been less effective and if market participants could know or learn which particular IPQ and IFQ holders had completed negotiations or arbitrations during a particular survey period, then it could be difficult to ensure price anonymity.

The announcement of recent prices and the lack of anonymity could have made it easier for IPQ holders to arrive at agreements to set prices and for IPQ holders to enforce the agreements. Under the proposed rule, the Market Analyst would prepare only one annual Market Report for each fishery and would be prohibited from issuing interim or supplemental reports for each fishery.

Fifth, the Council changed the Arbitration System to limit the announcement of the results of each arbitration decision as it occurs to an IPQ holder and IFQ holders in that particular arbitration as well as to IFQ holders that are not affiliated and have not committed to an IPQ holder and who may want to opt-in to a previously completed contract. The Program would have allowed the public announcement of the outcome of each binding arbitration proceeding to inform IFQ holders with uncommitted IFQ so they could decide whether to opt into the completed contract. The provision raised antitrust concerns. If the results of an arbitration decision were announced before all binding arbitration proceedings were completed, they could influence what was asked by the parties in a subsequent arbitration, resulting in price stabilization. The change allows disclosure of all arbitration decisions to

the Contract Arbitrators and to non-affiliated IFQ holders who have not committed to an IPQ holder. The parties to an arbitration would be required to agree to make the terms and conditions of the arbitration decision available to non-affiliated uncommitted IFQ holders.

Arbitration System Requirements

The Council intended the Arbitration System to function as an ''industry-run'' system with minimal involvement by NMFS. The Program establishes a structure for the negotiation of price, delivery and other contract terms between an IPQ holder and IFQ holders. It specifies the basic elements of the Arbitration System: the standards for arbitration; the roles of the Market Analyst, Formula Arbitrator and Contract Arbitrators; the data available to the Market Analyst and Arbitrators; restrictions on participation by PQS and IPQ holders (processors) and IFQ holders that are affiliated with PQS and IPQ holders (processor-affiliates); last best offer binding arbitration procedures; and payment for the system. The Program also specifies that processor-affiliated shares can participate to the extent allowed under the antitrust laws and that processors can participate individually and not collectively, except in the choice of the Market Analyst and the Arbitrators. The Arbitration System also is mandatory for all IPQ and IFQ holders participating in the Program.

First, at any time prior to the season opening date, IPQ and IFQ holders can initiate discussions through open negotiations. Open negotiation is available to both affiliated and non-affiliated IFQ holders and all IPQ holders. If they are unable to conclude a contract through open negotiations, eligible persons, as defined by the proposed rule, may use several other negotiation approaches to reach agreement, including share-matching, mediation and binding arbitration procedures.

The negotiation approaches and Binding Arbitration procedure are limited to IPQ holders and Arbitration IFQ holders. Under the proposed rule, Arbitration IFQ means: (a) Class A CVO IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ; (b) prior to July 1, 2008, CVC IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ that the holder has elected to submit to the Arbitration System; (c) after July 1, 2008, Class A CVC IFQ held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ; and (d) IFQ held by a crab harvesting cooperative as long as no member of such cooperative holds PQS or IPQ or is affiliated with a person who holds PQS or IPQ.

Under the proposed rule, the structure of the Arbitration System would be managed and carried out primarily by the participants in the crab fisheries through contractual arrangements, with NMFS oversight. The proposed rule would require that participants in the crab fisheries join and maintain membership in an Arbitration Organization. The persons who are eligible to join an Arbitration Organization are: (a) holders of CVO and CVC QS; (b) holders of PQS; (c) holders of Arbitration IFQ, (d) holders of Class A IFQ affiliated with a PQS or IPQ holder; and (e) holders of IPQ.

While the Program does not require the establishment of arbitration organizations and membership in such organizations, NMFS believes the structure is necessary to facilitate the industry's ability to coordinate among its members and carry out the Council's intent to establish the Arbitration System primarily as an ''industry-run'' system. This approach also facilitates the ability of NMFS to monitor the activities of members more efficiently and effectively than monitoring numerous contracts among unique quota holders. NMFS believes industry participants will have sufficient interest in establishing the arbitration organizations, agreeing to the contracts, and selecting the Market Analysts, Formula Arbitrators and Contract Arbitrators necessary for the Arbitration System to function. NMFS particularly invites public comment on the feasibility of basing the structure of the Arbitration System upon intra-industry contracts.

To minimize antitrust risks, this proposed rule would not allow harvesters and processors to be members of the same Arbitration Organization. The proposed rule would require that PQS and IPQ holders and QS and IFQ holders must be members of different arbitration organizations. Holders of PQS or IPQ could only be a member of a PQS/IPQ Arbitration Organization, and they may join separate such organizations. Holders of QS or IFQ who neither hold nor are affiliated with a person who holds PQS or IPQ could only be a member of an Arbitration QS/IFQ Arbitration Organization, and they may join separate such organizations. Holders of QS or IFQ who are affiliated with a person who holds PQS or IPQ could only be a member of an Affiliated QS/IFQ Arbitration Organization, and they may join separate such organizations. There could be Arbitration Organizations comprised solely of members who hold QS or IFQ or PQS or IPQ.

Under the proposed rule, the Arbitration QS/IFQ Arbitration Organizations and PQS/IPQ Arbitration Organizations would be responsible for nominating and mutually selecting persons for the positions of Market Analyst, Formula Arbitrators, and Contract Arbitrators and establishing contracts with such persons. The contracts would stipulate the functions and obligations of those positions consistent with the roles and standards for the Market Analyst, Formula Arbitrator, and Contract Arbitrators, as specified by the Program and reflected in the proposed rule. They also would provide certain information to NMFS. All arbitration organizations, among other matters, would be responsible for ensuring the collection and payment of all fees required to fund the Arbitration System; providing information to their members, such as copies of the contracts with the Market Analyst, Formula Arbitrator and Contract Arbitrators; and enforcing the terms of various contracts to which they are a party. The Arbitration Organizations would be prohibited from engaging in any contract negotiations on behalf of their members except to the degree necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrators. This is not intended to prohibit the members of an Arbitration IFQ Arbitration Organization from negotiating as a crab harvesting cooperative under the FCMA.

Arbitration Standard

Reflecting the economic reality faced by both harvesters and processors, the Council determined that preserving the historical division of revenues in the fisheries in order to protect the investment and reliance of the harvesters and processors should guide the Arbitration System. The Program requires the Market Analyst, Formula Arbitrator and Contract Arbitrators, in developing the non-binding price formula and deciding an individual arbitration, to consider: (1) current pricing; (2) consumer and wholesale product prices; (3) innovations and developments of the different sectors; (4) efficiency and productivity of the different sectors; (5) quality standards for each market; (6) maintaining financially healthy and stable harvesting and processing sectors; (7) safety; (8) the timing and location of deliveries; and (9) reasonable underages to avoid

penalties for overharvesting IFQ and reasonable deadloss.

Under the proposed rule, the Arbitration System would commence preseason when the Arbitration QS Arbitration Organizations and the PQS Arbitration Organizations nominate persons for the positions of Market Analyst, Formula Arbitrator, and Contract Arbitrators. The PQS and QS holders, who are members of their respective Arbitration Organizations, then choose, by mutual agreement, the persons for these positions.

NMFS has interpreted ''mutual agreement'' to mean the agreement of not less than 50 percent of the PQS holders and not less than 50 percent of the QS holders in a fishery. This standard does not require complete consensus, but requires a majority of harvesters and processors to agree on specific individuals. This approach increases the likelihood of the selection of Market Analysts, Formula Arbitrators, and Contract Arbitrators who are acceptable to the majority of participants. Because the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrators is critical to the effective implementation of the Arbitration System, the standard for the selection process should not be so stringent so as to prevent the possibility of actually selecting a mutually acceptable Market Analyst, Formula Arbitrator, and Contract Arbitrators.

To ensure the market analyses and pricing formula are available to inform all negotiation among the IFQ and IPQ holders, the Arbitration QS/IFQ Arbitration Organizations and PQS/IPQ Arbitration Organizations would mutually agree through their contract to notify NMFS of the selection of the Market Analysts, Formula Arbitrator and Contract Arbitrators by June 1 for that crab fishing year, except during 2005, they would be required to notify NMFS by July 1, 2005. The proposed rule reflects the Program in that the same person could be selected as Market Analyst and Formula Arbitrator; but the Contract Arbitrators could not be the same person as the Market Analyst and Formula Arbitrator, and could not be employed or associated with those persons.

Market Report

The Program requires the promulgation of a preseason Market Report for each crab fishery to help inform all negotiations among all IPQ and IFQ holders. The Market Report would be produced annually by a Market Analyst selected jointly by the arbitration organizations. It would provide an analysis of the market based on a survey of the market for crab products from that fishery as well as information provided by the IPQ and IFQ holders.

NMFS recognized the potential antitrust risk involved in exchanges of cost and price information, and so the proposed rule requires that the information provided by the participants must be historical in nature and that the Market Report cannot identify which participants provided specific information. These requirements are consistent with the U.S. Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care (1966) (Guidelines). The Guidelines create an antitrust ''safety zone'' around the exchange of cost and price information when (1) the collection of the data is managed by a third party, including a government agency; (2) the information shared is based on information more than three months old; and (3) there are at least five providers reporting data such that recipients would be unable to identify the prices charged by any particular firm. In adhering to the Guidelines, the proposed regulations require that the IFQ holders and IPQ holders would give information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders who are members of any single crab harvesting cooperative may share such information with other members of the same crab harvesting cooperative who are authorized to participate in the Arbitration System, that the information provided would be more than three months old, and the information and data would be aggregated in the report so that prices would not be identifiable with the person offering the price.

The Market Report could include information that is provided through surveys, directly from IFQ and IPQ holders, and from other sources that voluntarily provide data. The Market Analyst would not have subpoena power to obtain information. The Market Analyst could meet with crab harvesting cooperative members collectively, but would have to meet individually with: (a) IPQ holders; (b) distinct crab harvesting cooperatives; and (c) IFQ holders who are not members of the same crab harvesting cooperative. The proposed rule prohibits the Market Analyst from disclosing any information to any person except as allowed by the requirements of the contract. The contract with the Market Analyst would specify that the Market Analyst will provide the Market Report not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to each Arbitration Organization in that fishery and NMFS.

Non-binding Price Formula

To further guide the negotiations among all IFQ and IPQ holders, the proposed rule would mirror the Program by requiring the development and announcement of a non-binding pricing formula. Under the proposed rule, the Arbitration QS Arbitration Organizations and the PQS Arbitration Organizations contract with a Formula Arbitrator to develop a non-binding price formula. The contract would specify that the Formula Arbitrator must conduct a single annual fleet-wide analysis of arbitrations to establish a non-binding pricing formula under which a fraction of the weighted average first wholesale prices for crab products from each fishery may be used to set an ex-vessel price. The contract also would require that the non-binding price formula: (a) must be based upon the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and (b) must establish a price that preserves the historical division of revenues in the fishery while considering the nine factors described in the Arbitration Standard.

The non-binding pricing formula would be guided by the general factors for the fishery as well as arbitration decisions from the previous season. IPQ and IFQ holders could furnish relevant information and data upon the request of the Formula Arbitrator subject to the antitrust requirements that the information be historical and the persons submitting information should not be identified as having submitted specific information in the report. The contract would require the Formula Arbitrator to provide the non-binding pricing formula not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to each Arbitration Organization in that fishery and NMFS.

Open Negotiations

The Program provides that prior to the crab fishing season, any IFQ holder can negotiate with any IPQ holder on price and delivery terms for the upcoming season. It allows the IFQ and IPQ holders to freely contact each other to initiate open negotiations. If they reach an agreement on all price and delivery terms during the preseason, a binding contract would result. Due to the limitations of the antitrust laws, IPQ

holders would be required to negotiate individually with IFQ holders, whereas IFQ holders who are members of the same crab harvesting cooperative can negotiate collectively with a single IPQ holder. An affiliated IFQ holder could negotiate during the open negotiations period, but individually, and not as part of a crab harvesting cooperative. The proposed rule provides the period of open negotiations would end at the date of the first crab fishing season for that crab QS fishery in that crab fishing year. In effect, this removes the ability of affiliated IFQ holders to negotiate contracts once the crab fishing season has begun because they cannot use the negotiation methods in the Arbitration System due to antitrust constraints.

Lengthy Season Approach

Rather than mediate immediately during the preseason, the Program provides and the proposed rule would allow IPQ holders and Arbitration IFQ holders to choose to adopt a ''Lengthy Season'' approach and postpone negotiation of specific contract terms and binding arbitration until during the regular season. If the parties reach a final agreement on contract terms, binding arbitration is not necessary. If the parties are unable to reach an agreement on whether to adopt a Lengthy Season, they could request mediation or determine whether to adopt the approach. If mediation is unsuccessful, the parties enter binding arbitration to determine whether to adopt a Lengthy Season approach.

Share Matching Approach

To facilitate the ability of Arbitration IFQ holders to find IPQ holders with available quota, the proposed rule implements the Program's provision for a share-matching approach. Under the proposed rule, 25 days prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year, IPQ holders would be required to make known to holders of uncommitted Arbitration IFQ the amount of IPQ that is uncommitted and remains available. An uncommitted Arbitration IFQ holder could match up its uncommitted IFQ by indicating its intention to deliver its catch to a specific IPQ holder with sufficient available uncommitted IPQ.

The Arbitration IFQ holder must offer the IPQ holder a substantial amount of the Arbitration IFQ holder's uncommitted IFQ. While the Program does not define ''substantial,'' the proposed rule defines ''substantial'' as not less than 50 percent of the Arbitration IFQ holder's total uncommitted IFQ in order to prevent IPQ holders from potentially coordinating countless arbitration sessions. After matching, an Arbitration IFQ holder and IPQ holder could either arbitrate or, at the discretion of both parties, try to mediate to determine the contract terms. The Program and the proposed rule require the IPQ holder to accept all proposed matches up to the amount of its uncommitted IPQ.

Last Best Offer Binding Arbitration

The centerpiece of the Arbitration System is the last best offer binding arbitration procedure. It would be available to resolve price and delivery disputes arising from open negotiations among Arbitration IFQ holders and IPQ holders, lengthy season approach, share matching or performance disputes. Specifically, Arbitration IFQ holders and IPQ holders would be eligible to participate in binding arbitration. As with the other negotiation approaches, the role of the Contract Arbitrator would be specifically detailed in the contracts among the Arbitration Organizations and the Contract Arbitrator.

In a last best offer arbitration, the parties each would submit a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is a crab harvesting cooperative could submit a last best offer that defines terms for the delivery of crab harvested by members of that crab harvesting cooperative with IFQ held by the cooperative. The Contract Arbitrator would choose one of the last best offers for price made by the IPQ holder and IFQ holder(s). The arbitration organizations' contract with the Contract Arbitrator would require that the Contract Arbitrator base the decision on specific information, including consideration of the factors in the Arbitration Standard, the historical distribution of first wholesale revenues between fishermen and processors, and the Market Report. The Contract Arbitrator also could use information from previous arbitrations, the non-binding price formula and other information provided to the Contract Arbitrator by the parties to the arbitration. The Council chose to adopt a last best offer arbitration with the intent that it would deter parties from exaggerating their offers in hopes of achieving a more favorable result.

The proposed rule provides that at any point more than 15 days prior to the date of the first crab fishing season for a crab QS fishery, an Arbitration IFQ holder or IPQ holder may initiate a binding arbitration procedure. Prior to the submission of the last best offer, the Contract Arbitrator would work with the parties to generate the information the Contract Arbitrator would require for reaching a decision. To minimize antitrust risk, the proposed rule reflects the Council's change and provides that only the parties to the arbitration and the Contract Arbitrators would have access to information provided directly by the parties to the Contract Arbitrator for that particular arbitration. To further preclude antitrust risk, the Program and the proposed rule require the parties to sign a confidentiality agreement stipulating they shall not disclose any confidential information generated during the arbitration proceeding.

To ensure the parties understand their obligations as early as possible, the Program requires the Contract Arbitrator to notify the parties to an arbitration of the arbitration decision no later than 10 days before the season opening date. In order to implement that provision, the proposed rule requires that if last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, the Contract Arbitrator must issue arbitration decisions no later than 10 days before the first crab fishing season for that crab fishing year for that crab QS fishery. In effect, the Contract Arbitrator would have 5 days to render a decision in order to notify the parties 10 days before the season opening date. The proposed rule provides that in other situations, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

The proposed rule provides that the arbitration decision would result in a binding contract between the parties that could be enforced by the parties to that contract, not NMFS. The parties would have to agree to make the contract terms available, when requested, to Arbitration IFQ holders with uncommitted IFQ to enable an IFQ holder to determine whether to opt into the completed contract. The Contact Arbitrator would need to provide this information within 5 days of receiving the request for that information.

At its June 2004 meeting, the Council considered the antitrust risks of sharing the arbitration results among IPQ holders or affiliated IFQ holders or Arbitration IFQ holders that already have committed to an IPQ holder. The Council agreed that such information sharing would raise antitrust concerns regarding illicit price stabilization or collusion. To the extent IFQ holders are members of a crab harvesting cooperative under the FCMA, they are allowed to share the information with other members of the same cooperative and set prices with antitrust immunity.

However, sharing the results of arbitrations with IPQ holders or affiliated IFQ holders or Arbitration IFQ holders that already committed to an IPQ holder and so have no need to opt-in could create serious antitrust risks. If IPQ holders shared the results of completed arbitrations with other PQS or IPQ holders, they would risk antitrust violations. Without antitrust immunity, sharing current pricing information could facilitate illicit price stabilization or collusion. Also, if IPQ holders shared the results of arbitrations before all arbitrations were completed, an IPQ holder could alter its final offer to the Contract Arbitrator to make it closer to the price in previous arbitrations in a manner similar to what would occur if the IPQ holders coordinated on prices.

Therefore, the proposed rule allows the disclosure of arbitration results only to Arbitration IFQ holders that have not committed to an IPQ holder so they have access to the real-time results of completed arbitrations for purposes of determining whether to opt-in to a completed contract. The information would be provided to the Arbitration Organization of which the parties the arbitration are members in order for the Arbitration Organization to make such information available to the uncommitted Arbitration IFQ holders.

The proposed rule also would require the Contractor Arbitrator to provide NMFS, among other information, any last best offers made during the binding arbitration process, including all contract details, the names of participants in the arbitration, the arbitration decision and the completed contract. This information is necessary for DOJ to carry out its mandate under section 313(j)(6) of the Magnuson-Stevens Act to determine whether any acts of anti-competition, antitrust or price collusion have occurred among PQS or IPQ holders under the Program.

Post Binding Arbitration Opt-In

The post binding arbitration opt-in provisions reflect the Council's belief in the efficiency and fairness of the arbitration procedure. The proposed rule reflects the Program's opt-in provisions. The proposed rule allows a holder of uncommitted Arbitration IFQ to opt-in to any contract that results from a completed arbitration with any IPQ holder with available uncommitted IPQ. To facilitate the process, the Program requires that IPQ holders provide information regarding the amount of uncommitted IPQ they have available. The proposed rule would require the arbitration organizations to agree in their contract to establish a system to ensure access to such information by Arbitration IFQ holders that have uncommitted IFQ. All the same terms from the original contract would apply. Once exercised, the opt-in is a binding contract.

To initiate the process, the Arbitration IFQ holder would notify the IPQ holder and the Contract Arbitrator to the original contract of its intent to opt-in, specifying the amount of IFQ involved, and indicating acceptance of the terms of the original contract. However, if a dispute arose regarding whether the opt-in offer was consistent with the terms of the completed contract, the dispute could be decided by the Contract Arbitrator who arbitrated the original contract.

Performance and Quality Disputes

Building on the arbitration infrastructure, the Program provides that performance and quality disputes that could not be resolved through commercial channels could be arbitrated following procedures similar to those laid out for binding arbitration. The disputes could be raised at any point in time prior to the commencement of the first crab fishing season for the following crab fishing year in that crab fishery. Meanwhile, when disputes over the quality of the harvested crab arise within the context of an existing contract, if the parties employed a formula-based price, the proposed rule provides they each will receive their share of the value of the amount of crab delivered based on the provisions of the contract. When the Arbitration IFQ holder prefers to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm with both parties sharing the costs.

Payment of Costs for Arbitration

The Program provides that the costs of the market analysis and the arbitrators must be shared by the two sectors. The proposed rule interprets that provision to require the costs of the Arbitration System to be shared equally by all IPQ holders and Arbitration IFQ holders and Class A IFQ holders. The costs of the system would include all costs of the Market Analyst, Formula Arbitrator and Contract Arbitrator, dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such person associated with lengthy season approach, share matching approach, binding arbitration, and quality and performance disputes.

The proposed rule requires the arbitration organizations to develop a system to determine such costs, assess them equally among the participants, and collect the fees. The proposed rule provides that such costs must be shared based on the amount of IPQ or IFQ held by each person and that the costs must be divided so that the IPQ holders pay 50 percent of the costs and the Arbitration IFQ and Class A IFQ holders pay 50 percent of the costs. Consistent with the Program, PQS holders would be required to advance all costs and collect the contribution of Class A IFQ holders at landing subject to terms mutually agreed upon by the arbitration organizations.

Monitoring and Catch Weighing Requirements for Catcher/Processors, Registered Crab Receivers, and Catcher Vessels

NMFS has identified three primary objectives for monitoring catch in rationalized fisheries. First, monitoring must ensure independent verification of catch weight, species composition, and location data for every delivery by a catcher vessel or every pot by a CP. Second, all catch must be weighed accurately. Third, the system must provide a verifiable record of the weight of each delivery.

To effectively manage the crab fisheries, NMFS must have data that will provide reliable independent estimates of the total catch by quota sector for all crab harvested. Because participants are operating under their own IFQ, they have a strong interest in ensuring that catch data do not overestimate the amount of crab harvested. Based on experience gained under other quota-based programs, NMFS anticipates estimates of catch will be questioned frequently by industry. Further, individual harvesters and processors would benefit directly if catch is under reported because each processor or vessel is operating under an individual allocation. For these reasons, NMFS is proposing a catch-weighing system for the crab fisheries under this Program that is more rigorous than that required in non-rationalized fisheries.

In order to implement the Program, NMFS proposes new monitoring and catch weighing requirements for RCRs taking deliveries of crab, catcher vessels harvesting crab, and CPs catching and/or harvesting crab. These proposed new requirements are summarized in the following table:

TABLE 14—SUMMARY OF MONITORING REQUIREMENTS FOR CRAB FISHERY PARTICIPANTS

Requirement	RCR Taking Deliveries of Crab	Catcher Vessel Harvesting Crab	Catcher Processor Harvesting or Processing Crab
Weigh all retained quota by quota category prior to processing.	Yes. On a scale approved by the State in which the RCR is located.	No.	Yes. On a scale approved by NMFS.
Scale testing requirements.	Yes. On demand.	N/A	Yes. Scale must be tested daily when use is required.
Printed record of scale weights.	Yes.	N/A	Yes. Printed record of scale weights for unprocessed crab as well as for processed product.
Operate under an approved catch monitoring plan (CMP).	Yes.	No.	No.
Offload requirements.	No.	Yes. All offloads must be to an RCR. Vessel may not leave RCR until reporting of offload is completed.	Yes. All product must be offloaded on shore.
Product weighing requirements.	No.	N/A	Yes. All product must be weighed on a scale approved by the State in which product offload takes place.
Vessel Monitoring System (VMS) requirements.	N/A	Yes.	Yes.
Provide Observer work station.	No.	No.	Yes.

Catcher/Processors Catch-Weighing and Monitoring Requirements

NMFS proposes to require all crab IFQ harvested and processed by CPs be weighed at-sea prior to processing. These catch weighing requirements include the following:

(1) Scales must meet the performance and technical requirements specified in appendix A to part 679. At this time, NMFS has approved scales produced by Marel hf and Skanvaegt International A/S for weighing total catch. Marel hf, Skanvaegt International A/S and Pols hf manufacture scales that have been approved for use by observers.

(2) Each scale must be inspected and approved annually by a NMFS-approved scale inspector.

(3) Each observer sampling scale must be accurate within 0.5 percent when its use is required.

(4) The observer sampling scale must be accompanied by accurate test weights sufficient to test the scale at 10, 25 and 50 kg or, if the scale is denominated in pounds, at 25, 50 and 100 lb.

(5) Each scale used to weigh crab must be tested daily. Automatic hopper scales must be tested at their minimum and maximum capacity using certified test weights. Flow scales must be tested with no less than 400 kg of fish or other test material.

(6) When tested, a flow scale and the observer sampling scale must agree within 3 percent. An automatic hopper scale must be accurate within 2 percent when compared with the known weight of the certified test weights.

(7) Scales must produce a printed record of all crab retained by the vessel. This record must be printed no less than once every 24 hours when use of the scale is required.

In other programs where NMFS requires all catch be weighed at-sea, NMFS also requires that an observer be on duty whenever catch may be weighed. Because fishing operations occur on a 24 hour basis, this generally requires that the vessel carry two observers. This is necessary because no catch-weighing system is tamper proof and NMFS ensures that all catch is being weighed by requiring an observer to be on duty at all times. This allows NMFS to audit the vessel's reported weight of groundfish against the observer's data. However, the crab fisheries differ from the groundfish fisheries in two important ways. First, the final Council motion establishing the Program delegated observer coverage responsibility to the State of Alaska, and, at this time, the State requires CPs to provide only a single observer. Second, crab are far more valuable per pound than groundfish. Thus, while it is probably not practical for vessel crew to attempt to bypass the scale with groundfish, it may be more tempting to do so with a comparatively high value product such as crab. Because of these differences, NMFS believes crab weights must be audited at the point of offload. This would require a crab CP to offload all product shoreside at a designated port and weigh that product on a scale approved by the State in which the offload takes place. These offload product-weighing requirements include the following:

(1) Offload all product to a shoreside location in the United States accessible by road service or regularly scheduled air service.

(2) Weigh all product on a scale approved by the State in which the RCR is located, which must be equipped with a printer.

(3) Report the total weight of the offload to NMFS.

Observer sampling stations provide a location where observers can work safely and effectively. While the Program delegates observer coverage requirements to the State of Alaska, NMFS believes a quota type program necessarily imposes new duties on observers because of the increased season length and subsequent need to be on station more often. In spite of the requirements detailed above for full accounting of product, observers would still play an important role in ensuring catch weights are accurately reported. In order to facilitate these duties, NMFS is proposing to require vessels to provide minimal work areas and facilities for the

use of the observer. NMFS proposes to require that CPs provide the following for observers:

(1) An observer work area for sampling unsorted crab. The work area must be no less than 6 square meters and no less than 1 meter on each side. The work area must be located within 3 meters of where the vessel crew sort crab.

(2) An observer work area for sampling retained crab. The work area must be no less than 1 meter on each side. The work area must be located downstream from the scale used to weigh total catch and upstream from the area where crab are processed.

(3) The observer work area for sampling retained crab must be provided with a NMFS-approved motion compensated platform scale located within 5 meters of the work area. Clear and unobstructed passage must be provided between the scale and the observer work area. The scale must be accompanied with certified test weights sufficient to test the scale at 10, 25 and 50 kg (or 25, 50 and 100 lb if scale is denominated in lb). The scale may also be used by vessel crew, but must be available to the observer at all times.

(4) Both observer work areas must be protected from extreme weather and unusual safety hazards.

(5) Vessel crew may use both observer work areas, but the entire area must be available to the observer whenever the observer is working.

(6) The vessel owner must prepare a diagram, drawn to scale, showing the location of both observer work areas. The diagram must be retained on board the vessel whenever the vessel is harvesting or processing crab quota.

Registered Crab Receivers Catch-Weighing and Monitoring Requirements

This proposed rule would establish a new catch monitoring system for RCRs. The catch management goals established by NMFS for the crab fisheries are the same for the inshore and offshore sectors. However, NMFS does not believe the regulations developed for CPs are adequate for inshore processors and other RCRs for two reasons. First, inshore processors vary more in size, facilities and layout than do CPs. Second, the State is responsible for approving scales used for trade within the State in which the landing is made and has developed an effective program for their inspection and approval.

Catch Monitoring Plans

The catch monitoring system developed by NMFS for CPs is based on a standardized system of round weight accounting and offload monitoring. Because of the wide variation among RCRs, NMFS believes a performance-based catch monitoring system is more appropriate for this sector. Under this system, each RCR would be required to submit a Catch Monitoring Plan (CMP) to NMFS for approval. The CMP would detail how the RCR would meet the following standards for each location where crab would be received:

(1) All crab, including crab parts, and dead or otherwise unmarketable crab, must be sorted and weighed by quota category. The CMP must detail how and where crab are sorted and weighed.

(2) Scales used for weighing crab must be identified by serial number.

(3) Scales identified in the CMP must be accurate within specified limits. For each scale identified in a CMP, a testing plan must be developed showing how the RCR will test the scale, where the required test weights are located, and what personnel are responsible for scale testing.

(4) A printed record of the weight of each delivery must be produced. A sample copy of the printed record must be included in the CMP.

(5) The CMP must designate an observation area. The observation area is a location where an individual may monitor the offloading and weighing of crab during a delivery. From the observation area, an individual must have an unobstructed view or be able otherwise to monitor the entire offload of crab between the first location where crab are removed from the boat and a location where all sorting has taken place and all quota has been weighed. The observation area must be accessible to authorized personnel, be sheltered from the weather, and not be exposed to undue safety hazards.

(6) The CMP must designate a plant liaison. The plant liaison is responsible for orienting new observers or NMFS-authorized personnel to the plant, assisting in the resolution of NMFS or observer concerns, and informing NMFS if changes are made to the CMP.

(7) The CMP must be accompanied by a scale drawing of the plant showing where crab are removed from a delivering vessel, the observation area, all scales used to weigh crab, and each location where crab is sorted.

(8) All offloading and weighing locations detailed in the CMP must be located on the same vessel or in the same geographic location. If a CMP describes facilities for the offloading of vessels at more than one location it must be possible to see all locations simultaneously.

Each CMP location would be inspected by NMFS or NMFS authorized personnel to ensure the layout conforms to the elements of the plan. A CMP that meets all of the standards would be approved by NMFS for 1 year, unless during the year changes are made in plant operations or layout that do not conform to the CMP. After 1 year, NMFS would review the CMP with plant management to ensure the CMP has been implemented and the standards continue to be met.

Proposed catch weighing standards for CPs are based on the use of scales approved by NMFS. Because Federal and State scale approval standards differ, most NMFS-approved scales are not legal for trade in most States and most State-approved scales do not meet NMFS criteria for inseason testing and auditing. NMFS believes the State in which the landing is made should be the primary authority responsible for approving and testing scales located onshore or on vessels anchored inside the territorial sea and that weighing crab delivered inshore on scales approved by NMFS is unnecessary. Under existing State regulations, crab buyers and processors are required to weigh all catch that is bought or sold on State-approved scales. In most states, including Alaska, these scales must be inspected annually by State-authorized inspectors.However, State regulations generally do not provide for inseason testing of scales nor do they require that scales produce a printed record of each delivery. NMFS believes these are essential features of an acceptable catch weighing system. Therefore, NMFS has developed a catch-weighing system that implements these additional features within the existing framework of State scale inspection and approval.

Thus, this proposed rule reflects cooperative State and Federal development of catch weighing requirements for RCRs and includes the following provisions:

(1) As described above, each RCR would be required to submit a scale testing plan as part of its CMP that describes the procedure the plant will use to test each scale identified in the CMP. The testing plan would list the test weights and equipment required to test the scale, where the test weights and equipment are stored, and the names of the plant personnel responsible for testing the scale. Test amounts for various scale types are shown in Table 15.

(2) Test weights would have to be certified at least biannually by a metrology laboratory approved by the

National Institute of Standards and Technology (NIST).

(3) NMFS or NMFS-authorized personnel could request that any scale be tested in accordance with the testing plan, provided the scale had not been tested and found accurate within the past 24 hours.

(4) Each scale would have to be accurate within the limits specified in Table 15 when tested by the plant staff.

(5) Each scale used to weigh catch must be equipped with a printer to provide a printout or printouts showing the total weight of each delivery, which would have to be generated after each delivery had been weighed. The printouts must be retained by the plant and made available to NMFS-authorized personnel, including observers. See Tables 15 and 16 for details:

TABLE 15—TEST WEIGHT AND TEST LOAD AMOUNTS THAT WOULD BE REQUIRED TO PERFORM INSEASON TESTING ON VARIOUS SCALE TYPES AND CAPACITIES

Scale Type	Capacity[1]	Test Weights[2]	Test Loads[3]
Automatic Hopper	0 to 150 kg	Minimum Weighment[1] or 10 kg, whichever is greater	Minimum[1]
		Maximum[1]	Maximum[1]
Automatic Hopper	>150 kg	Minimum weighment[1] or 10 kg, whichever is greater	Minimum[1]
		25 percent of Maximum[1] or 150 kg, whichever is greater	Maximum[1]
Platform or flatbed	0 to 150 kg	10 kg	Not Acceptable
		Midpoint	
		Maximum[1]	
Platform or flatbed	>150 kg	10 kg	Not Acceptable
		12.5 percent of Maximum[1] or 75 kg, whichever is greater	50 percent of Maximum[1] or 75 kg, whichever is greater
		25 percent of Maximum[1] or 150 kg, whichever is greater	75 percent of Maximum[1] or 150 kg, whichever is greater

[1]These amounts will be shown on the scale marking plate.
[2]Test Weights are weights that have been approved by a NIST-approved laboratory.
[3]Test load is any combination of approved test weights and other material specified in the scale testing plan. Test material other than test weights must be weighed on an accurate observer platform scale at the time of each use.

TABLE 16—PROPOSED MAXIMUM PERMISSIBLE ERRORS FOR INSEASON SCALE TESTING[1]

Test Load in Scale Divisions[2]	Maximum Error in Scale Divisions
0-500	1
501-2,000	2
2,001-4,000	3
>4,000	4

[1]Maximum permissible errors and testing procedure for inseason testing are not the same as for State scale approval. A scale that is accurate for the purposes of inseason testing may or may not be accurate enough to be approved by the State.
[2]Division size is shown on the scale's marking plate.

Catcher Vessels Catch Monitoring Requirements

Under this proposed rule, NMFS is not requiring catcher vessels to weigh their own catch. Rather, the proposed catch-accounting system would be based on data received from the RCR. Because this is the location where all non-CP catch accounting would take place, NMFS would require that all crab retained by a catcher vessel be landed to an RCR. The proposed regulations do not make any exceptions for activities such as dockside sales or tendering. Thus, if a holder of CVO or CVC IFQ wished to sell their own catch to the general public, the quota holder would be required to be an RCR and to conduct the offload of crab from the vessel in accordance with the requirements described above for an RCR.

Interagency Electronic Reporting System (IERS)

The RCR would obtain at his or her own expense, hardware, software, and Internet connectivity to support Internet submissions of the crab rationalization (CR) crab landing report on the IERS.

IERS application for user ID. Each RCR permit holder would submit a data-entry application to the Regional Administrator to provide information needed to process account access into the IERS. The IERS will provide a web page where the applicant would enter information. The IERS would confirm that all required information is submitted, that the information entered is in correct format, and also that the requested user ID is not already in use. The IERS would generate a PDF document from the information entered by the applicant. The user would sign and submit the form. An Agency IERS staff would review the form, confirm that the user should be authorized for the system, and would activate the user on the IERS. The IERS would then send the user(s) an email telling them they can now use their new user ID.

CR Crab Landing Report. The CR crab landing report (internet version and fax version) would be submitted through the IERS, which is the result of collaboration among NMFS Alaska Region, International Pacific Halibut Commission, and State of Alaska, Department of Fish and Game (ADF&G). The CR crab landing report is the first step of a complete, unified IERS that would be extended in future years to the groundfish fisheries, IFQ, and CDQ halibut fisheries. This internet report would replace the paper ADF&G fish ticket for debiting CR crab landings. All

retained CR crab catch would be weighed, reported and debited from the appropriate IFQ or IPQ account under which the catch was harvested or received, as appropriate. The IERS is a more convenient, accurate, and timely method of reporting.

Additionally, the proposed IERS would provide continuous access to IFQ and IPQ accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor his or her accounts and fishing activities.

Catcher/Processor Offload Report

An RCR receiving CR crab that were harvested and processed by a CP must complete a CP offload report at the time of offload and attach a scale printout showing gross product offload weight. Crab weights must be audited at the point of offload. This report would allow audit comparisons of catch accounting information between the vessel's reported weight of crab with the observer's data.

ECCO Annual Report for an ECC (see Approval criteria for an Application for Transfer of QS/IFQ to or from an ECCO).

Vessel Monitoring System (VMS) Requirements

Under the proposed rule, a vessel that harvests crab in the crab fisheries, including a vessel harvesting CDQ or Adak allocations, would be required to have aboard an operating NMFS-approved VMS transmitter at any time when the vessel has crab gear on board. These transmitters automatically determine the vessel's location several times per hour using Global Positioning System (GPS) satellites and send the position information to NMFS via a mobile communication service provider. The VMS transmitters are designed to be tamper-resistant and automatic. The vessel owner should be unaware of exactly when the unit is transmitting and would be unable to alter the signal or the time of transmission.

NMFS believes a VMS system is an essential component of a rationalized crab fishery. A VMS system would allow NMFS to verify where fishing is taking place and ensure that vessels harvesting crab were permitted to do so and that harvested IFQ is properly debited. A VMS system also allows NMFS to track vessels as they arrive in port to offload crab or crab product. This helps to ensure all landings are properly made to an RCR and the landing is properly debited from the IFQ holder's account.

NMFS has approved VMS system components manufactured by several vendors. Additional details concerning these VMS components may be found in the NMFS' notice of approval of these VMS components published in the **Federal Register** on April 15, 2004 (69 FR 1986).

Economic Data Collection

The Program includes a comprehensive economic data collection program to aid the Council and NMFS in assessing the success of the Program and developing amendments necessary to mitigate any unintended consequences. The data would be used to study the economic effects of the Program on harvesters, processors, and communities. Participation in the data collection program would be mandatory for all participants in the fisheries.

The Magnuson-Stevens Act authorizes a mandatory economic data collection system that would provide analysts with information necessary to study the impacts of the Program and to ensure the Program would equitably distribute benefits between the harvesting and processing sectors and provide a stable economic environment. The Magnuson-Stevens Act also authorizes NMFS to supply economic data to the Federal Trade Commission (FTC) and the Department of Justice (DOJ) for analysis by those agencies. The authority to collect a wide variety of economic data from both harvesters and processors is exclusive to the crab fisheries.

Selection and Scope of Work for the Data Collection Agent

To address concerns for strict control over sensitive economic data, collection of economic data would not be performed by NMFS but by a third-party agent, or Data Collection Agent. NMFS has determined the Pacific States Marine Fisheries Commission (Pacific States) would be the Data Collection Agent, although NMFS is authorized to select any appropriate entity. NMFS would establish the regulatory structure for mandatory submission of economic data by harvesters and processors. Pacific States would establish systems for the collection and compilation of the data.

Pacific States, in a cooperative agreement or another form of a procurement agreement with NMFS, would be authorized to collect data, ensure confidentiality of the data by following all statutory and regulatory data confidentiality guidelines, and release the data to NMFS and other authorized users. Among other duties, Pacific States, acting as an agent for NMFS, would identify submitters, forward EDRs to submitters and collect the data. Once received, Pacific States would act as a storehouse for the data and provide it only to authorized users and only in authorized form.

In instances where NMFS economists, Council staff, or other authorized users accessing the data for crab management analysis or report purposes request data, Pacific States would furnish them but eliminate or remove the identifiers for the submitter. This would make the data ''blind'' to these users. However, if the data are requested by NMFS Enforcement, NOAA GC, RAM, DOJ, or FTC, and the purpose is connected to law enforcement or qualification for QS, PQS, IFQ, IPQ, and other Federal permits, Pacific States would provide the data and the identity of the submitter.

Pursuant to a procurement agreement with NMFS, Pacific States would be authorized to establish a method and protocol for ensuring accuracy of the data submissions. Measures to verify the accuracy of the data would include consultation with NMFS economists and analysts to ascertain anomalies, outliers, and other deviations from averaged variables. The principle means to verify data would be consultation between Pacific States staff and the submitter when questions arise regarding data. To assure timely resolution of verification consultations, submitters would be required to respond to Pacific States inquiries within 15 days. Pacific States would request oral or written confirmation of data submissions and request copies of or review documents or statements that would substantiate data submissions. Data in EDRs would be amended by Pacific States in response to submitter requests and the results of the follow-up verification processes.

EDR audits would occur either through random selection or when circumstances require more thorough review of the submissions. Pacific States, in instances where a random audit occurs or an audit is otherwise justified, would retain a professional auditor/accounting specialist who would review and request financial documents substantiating economic data that is questioned. In an instance where data cannot be verified or concerns resolved by Pacific States, NMFS would request referral of the matter to the auditor for further disposition.

Pacific States would provide support for arbitrators for binding arbitration. If an arbitrator is involved in price determinations for parties to binding arbitration, Pacific States would, at the request of a binding arbitrator, supply

detailed revenue, landing, and production data to the binding arbitrator. The information supplied to the arbitrator by Pacific States would be aggregated so as to avoid releasing confidential information.

Type of Data to Be Submitted

Cost, revenue, production, and ownership data would be submitted in an EDR. Relevant state and local fishing-related taxes would be reported. The data would assist in the analysis of the variable costs of processors and harvesters. Data on fixed costs would not be collected unless such data informs the analysis of industry variable costs. NMFS would require submission of data recommended for collection by the Council's data collection committee. This committee reviewed NMFS' economist's data surveys and proposed additional data to be collected. The surveys that resulted from the committee deliberations are the foundation for the EDRs.

To analyze local and regional seafood employment, owners and lease holders of vessels submitting annual EDRs would submit State of Alaska crew license numbers and Commercial Fisheries Entry Commission permit serial numbers of their harvesting and processing employees. Additionally, identification of number of employees or crew, and their home state or country would be provided in the EDRs.

There would be two variations of the EDRs, an historic EDR and an annual EDR. The first would require submission of historical-based economic data. Historical data would capture economic data from 1998 through 2004. It would capture pre-Program implementation data for comparison to the economics of harvesting and processing before and after Program implementation. The annual EDR would capture economic data on an annual basis at the conclusion of each calendar years' crab fisheries.

For a crab harvester or CP, the annual EDR data collection system is based on collection of data relating to costs and revenues for a vessel. For crab processing entities, the data collection system is based on collection of costs and revenues for a processing company or plant. Processor submitters would distinguish data stemming from custom processing and business with affiliated processors from otherwise standard operations data.

The EDR forms would be accessible to submitters on the NMFS Alaska Region website at *www.fakr.noaa.gov*. Persons may download the form to complete manually or may complete it electronically on the website. Paper copies of the forms would also be mailed directly to identified persons. Persons would submit the completed EDRs to Pacific States.

Who Must Provide an EDR

Participants in the crab fishing industry harvesting or processing fish under Magnuson-Stevens Act authority after enactment of Pub. Law 108-199 on January 23, 2004, would submit data in the EDR. The members of the crab industry include a potentially broad range of individuals, corporations, partnerships, and other business formations. Both owners and lessees of fishing vessels and processing operations would be responsible for submission of the EDR.

Because of the contractual nature of leasing vessels or processing operations, whether someone has leased a vessel or processing operation remains a private business matter and not apparent to NMFS. To ascertain leasing arrangements and determine who is a lessee that should submit an EDR, NMFS would be requiring the lessors to identify his or her lessees in the EDR and QS or transfer applications.

Some members of the harvesting and processing industry who NMFS has the authority to require submission of an EDR would not be required to submit an annual EDR. Persons who hold QS, such as those who hold CPC QS, that do not own or lease a vessel, would not be required to submit an annual EDR. Additionally, harvesters and processors of crab not included in the Program, such as Norton Sound red king crab, would not be obligated to submit annual or historic EDRs for that crab.

For catcher vessels owners submitting historic data, there would be a sample based selection of owners of these vessels for submission of any 3 years selected between1998 through 2004. Catcher vessel owners would not be required to submit historical data for all years 1998 through 2004 because of the extraordinary reporting burden this would entail. A notice published in the **Federal Register** would identify each vessel selected for submission of catcher vessel historical data. The owner or lessee of the vessel would be required to submit the EDR.

Catcher/processor EDRs would consist of one form for annual data and one form for historical data and would not require submission of both ''harvester'' and ''processor'' EDRs, unless, the person owned or leased a vessel that also operated as a catcher vessel during the specified year. The submitter of the historical EDR for a CP would be the owner or lessee of a vessel that made at least one landing of crab in the years 1998, 2001, or 2004, as there is an insufficient number of CPs to apply a sample based selection submission requirement.

For shore-side and stationary floating processors, the submitter of the EDR would be the owner or lessee of a processing company consisting of one or more fish processing plants. For processors, the submission of the EDR is required if they qualified for or received QS, PQS, IFQ, or IPQ. Data would be reported for individual plants owned by the submitter. For historical data submissions, owners or lessees of processing companies processing crab in 1998, 2001, or 2004, and who would be participating in the Program, would be required to submit these data in the EDR.

NMFS has determined that there are persons that do have historic data from the years 1998 to 2004 that would not be required to submit an EDR. The effect of eliminating this historical data on the 18 month and 3 year review of Program is not possible to determine at this time, but would be better understood at the conclusion of the verification process for historical EDR data.

The owner or lessee of the fishing vessel or processing company required to submit the EDR may appoint a contact individual, who on his or her behalf, would respond to inquiries and verification processes from Pacific States regarding data and the EDR.

Because EDR submission is mandatory, NMFS must ensure there are compliance incentives. In addition to incentives to avoid enforcement actions, another incentive would be to withhold issuance or transfer of IPQ, PQS, IFQ, or QS should a submitter fail to submit an EDR. For example, if a prior year's EDR is not submitted by a crab IFQ applicant who was obligated to submit the EDR, the permit application would be considered incomplete by NMFS, the permit application denied and an IAD issued setting forth the facts, a discussion and determination. Upon issuance of the IAD, NMFS may withhold issuance of any new IFQ or IPQ and disapprove any transfer of IFQ, IPQ, and/or QS, PQS to or from a permit holder until final agency action. An aggrieved permit or transfer applicant could appeal an IAD through the Office of Administrative Appeals (OAA) in NMFS as described at § 680.43. An IAD that is not appealed within 60 days of issuance of the OAA, would become a final agency action. To facilitate NMFS' determination of whether an application is complete by virtue of completion of a prior years' EDR, Pacific States would inform NMFS of the status of EDR submissions. If the application was

otherwise complete, NMFS would provide the permit for IFQ or IPQ once the submitter files the EDR with Pacific States.

Submission Deadlines for EDRs

Submission deadlines for both historical and annual EDRs would correspond with availability of the data to the submitters, providing sufficient time for preparation, and providing NMFS with sufficient time to prepare reports based on the data for Program review. NMFS would require an annual EDR be submitted each year on or before May 1, encompassing the previous calendar year. An EDR for historical data would be submitted no later than 60 days after the effective date of the final rule. The EDR for catcher vessel historic data would be required to be submitted within 60 days of publication of a **Federal Register** notice identifying vessels that must submit historic data to Pacific States.

DOJ/FTC Review of the Program

Section 313(j)(6) of the Magnuson-Stevens Act states there is no waiver of the anti-trust laws of the United States for persons receiving PQS. Anti-trust laws include the Sherman Act, (15 U.S.C. sec. 1, *et seq.*), the Clayton Act, (15 U.S.C. sec 12, *et seq.*), and the Federal Trade Commission Act (15 U.S.C. sec. 41, *et seq.*). The Federal anti-trust laws are enforced by criminal and civil enforcement actions brought by the Antitrust Division of the DOJ, and civil enforcement actions brought by the FTC.

Although the Program proposes caps and limitations on the accumulation and holding of PQS, there remains potential for consolidations resulting in anti-competitive conduct or price collusion. To the extent possible through information collectible in the Program and to reduce the potential for violations of the anti-trust laws and related concerns, the Program would provide for review of processor activity by DOJ, or FTC. This information would assist analysis of consolidations and market impacts of processor activities.

Pursuant to section 313(j)(6) of the Magnuson-Stevens Act, NMFS has consulted with DOJ and FTC to develop and implement a system for accessing data and information DOJ and FTC have identified as helpful to them. In general, access to collected information in the Program would shorten investigation time by DOJ or FTC and possibly lead to earlier detection of anti-competitive conduct. Access to the information would be for the perpetuity of the Program. Should DOJ and FTC require additional information in the future, NMFS would take appropriate actions to provide for its collection to the extent authorized under the Magnuson-Stevens Act.

To assist determination of whether anti-competitive conduct, price collusion, or violations of the anti-trust law exist, the Program, principally through memorandums of understanding and administrative precesses, would authorize and allow access to data and information to DOJ or FTC. When either DOJ or FTC request information held by NMFS or any NMFS agent, access to it would not be conditioned or restricted, and access would be contemporaneous with the request, or provided routinely through a data report. For example, Pacific States, who would be a NMFS agent for collection of economic data from members of the crab harvesting and processing industry, would provide DOJ and FTC access to these data. DOJ and FTC would also have access to the identity of the submitters of the data both for the economic data and any other information held by NMFS or its agents.

The information that would be available to DOJ and FTC includes the following: all data submitted in EDRs by any submitter, including catcher vessel owners and lessees, and all varieties of processors, including owners and lessees of processing entities. All QS holder information would be accessible by DOJ or FTC. This includes information required by and provided in permit applications, transfer of QS , and related forms submitted to RAM. If an application requires submission of a copy of a contract for sale of QS or a permit for annual issuance of IFQ or IPQ, a copy of such contract could be accessed by DOJ or FTC.

Cost Recovery and Fee Collection

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to ''collect a fee to recover the actual costs directly related to the management and enforcement of any...individual fishing quota program [or] community development quota program.'' As a quota program, the Program must follow the statutory provisions set forth by section 304(d) and section 313(j) of the Magnuson-Stevens Act.

Paragraphs 304(d)(2)(B) and (C) of the Magnuson-Stevens Act specify an upper limit on fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in a loan program to aid in financing the purchase of quota by entry-level and small-vessel fishermen.

The Magnuson-Stevens Act specifies the following with respect to the imposition of cost-recovery fees:

(1) Fees are collected to recover actual costs directly related to actual enforcement and management of an individual fishing quota program or community development quota program that allocates a percentage of the total allowable catch of a fishery to such program;

(2) Fees must not exceed 3 percent of ex-vessel value;

(3) Fees collected under this program are in addition to any other fees charged under the Magnuson-Stevens Act;

(4) With the exception of money reserved for the loan program, fees must be deposited in the Limited Access System Administrative Fund (LASAF) in the U.S. Treasury; and

(5) Fees must be collected at either the time of a legal landing of harvested fish, filing of a landing report, or the sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish are harvested.

Section 313(j) of the Magnuson-Stevens Act provides that the Secretary will approve a cost recovery program for the Program, conducted in accordance with the existing halibut and sablefish cost recovery program. Similar to the halibut and sablefish cost recovery program, the Crab Rationalization cost recovery program would allow for the collection of actual management and enforcement costs up to 3 percent of ex-vessel gross revenues and a loan program based on 25 percent of the fees collected.

Section 313(j) provides several additional provisions specific to the cost recovery program to accommodate the processing component of the Program and to address problems experienced under the halibut and sablefish cost recovery program. Unique to Crab Rationalization, the Council authorized the collection of 133 percent of actual costs of management, which would provide for fuller reimbursement of the management and enforcement costs of the program after allocation of 25 percent of the cost recovery to the loan program. Additionally, the Council provided that cost recovery fees would be paid in equal shares by the harvesting and processing sectors and that CPs, being a combination of both sectors, would pay the full fee percentage.

Cost Recovery Program Description

NMFS developed the cost recovery program in conformance with statutory requirements and to provide for partial

compensation to the agency for the added costs of management and enforcement of the Program. Key provisions of the cost recovery program include (1) a new definition and application of ''fee liability,'' (2) the establishment of an RCR permit system to streamline management and reporting, (3) the establishment of a ''crab fishing year'' for biological and administrative purposes, and (4) a new administrative process that requires the collection and submission of fees by RCRs rather than requiring separate billings for each individual crab rationalized allocation (crab allocation) holder. The crab allocations include IFQ, Crew IFQ, IPQ, CDQ, and the Adak community allocation. This system would impose less of an administrative burden on the industry as a whole, provide more efficiency in the agency administrative process, and reduce the overall cost of managing the Program.

Generally, any crab allocation holder would incur a cost recovery fee liability for every pound of crab landed in the crab fisheries. The RCR permit holder would be responsible for collecting any fee liability for the crab allocation holder landing crab and self-collecting any fee liability for all crab landed at that facility. Under a CDQ or the Adak community allocation, the harvester delivering the crab on behalf of the community entity to the RCR would be responsible for paying the harvester share of the fee liability at the time of landing to the RCR. The RCR permit holder would be responsible for submitting this payment to NMFS on or before the due date of July 31 following the crab fishing year in which payment for the crab was made. The dollar amount of the fee due would be determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation.

Registered Crab Receiver

NMFS determined the need for a focal point for landing crab to ensure proper monitoring and enforcement of the rationalized fishery. Subsequently, NMFS determined that, under the Program, it must identify and receive reporting from all entities that receive and/or process crab. As a result, NMFS concluded that all persons who receive and/or process crab must apply for and possess an RCR permit before receiving any crab. This designation would ensure that all processors who receive crab, whether or not they possess IPQ, would be responsible for any fee liabilities associated with any crab received by those processors.

Fee Percentage

Three percent of the ex-vessel value of crab harvested under a quota program is the maximum fee amount allowed by section 304(d)(2)(B) of the Magnuson-Stevens Act. This proposed rule would set a 3 percent fee at the start of each crab fishing year, but would allow the Regional Administrator to reduce the fee percentage if actual management and enforcement costs could be recovered by using a smaller percentage. NMFS recognizes that in order for fishermen to budget their costs, they need to know the fee percentage that would apply to any crab deducted from a crab allocation in a crab fishing year at the time of sale. Based on preliminary calculations, NMFS expects that 3 percent of ex-vessel value would not cover the management and enforcement costs of the Program. NMFS proposes to begin the cost recovery program by using the maximum of 3 percent and, if possible, adjusting the fee downward in the following season. The fee percentage calculation adjusts for overpayment of the management and enforcement costs through a variable that considers the balance in the LASAF account.

Calculating Ex-vessel Value

The ex-vessel value of a crab landing would equal the sum of all payments of monetary worth made to fishermen for the sale of crab (e.g., ex-vessel value = cash payment + bait discount from processor + bonus). This would include any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to any crab allocation holder for previously received crab. Retro-payments would be part of the ex-vessel value and, as such, carry a fee liability. The fee liability for retro-payments would be based on the crab fee percentage in effect at the time the crab was received by the RCR. If crab allocation holders receive retro-payments after the initial payment, but during the same crab fishing year, the cost recovery fee for those retro-payments would be due by the following July 31. If retro-payments were received by crab allocation holders during the year following the crab fishing year when those crab were landed, cost recovery fees associated with those post-season retro-payments would be due the following July 31. In other words, no matter when the crab was received by the RCR, the cost recovery fee would be due by July 31 of the crab fishing year following the crab fishing year in which payment was received.

Ex-vessel Value

Throughout this section, ''value'' refers to the worth, in U.S. dollars, of any amount of crab as determined by the sale, or potential economic return for the sale, of those crab. ''Value'' shall also include any money, services, or goods-in-kind exchanged for crab. ''Price'' is the worth in U.S. dollars, for 1 lb (0.45 kg) of crab debited from any allocation. Therefore, in this context, value and price mean the same thing only when describing the worth of 1 lb (0.45 kg) of crab when sold. For purposes of determining cost recovery fees, NMFS would distinguish between two types of ex-vessel values: ''shoreside ex-vessel value'' and ''CP ex-vessel value.'' Shoreside ex-vessel value would be the amount of money an RCR permit holder paid for any crab he or she received. As explained below, this proposed rule would establish CP ex-vessel values to accommodate the special conditions for CPs who conduct processing on board the vessel.

Shoreside Processor Ex-vessel Value

For the shoreside processing sector, NMFS would define ex-vessel value as the value paid by the RCR to the allocation holder at the time of receipt. Shoreside RCR permit holders would calculate and retain both the harvesting and processing sector's fee liability portions for any crab debited from an allocation based on the value paid for that crab. This method of determining ex-vessel value for the shoreside processing sector requires no prior calculation of ex-vessel value by NMFS because the shoreside processors would determine the ex-vessel value at the time they receive the crab from the allocation holder. Shoreside processors would pay the actual ex-vessel value, which they would also use to calculate fee liability.

CP Ex-vessel Value

For the CP sector, NMFS would calculate the ex-vessel value based on a weighted average of previous years' shoreside ex-vessel values. This method correlates with an existing method used to calculate standard prices under the halibut and sablefish IFQ program. NMFS determined that using the weighted average method for CPs represents the method best suited for achieving both equity and accurate accounting for the CP sector. Based on the information received through the electronic reporting system, NMFS would annually calculate and publish in the **Federal Register** a list of CP standard prices broken down by crab species, month, and port or port group.

The CP standard prices would remain in effect until changed by the Regional Administrator through publication in the **Federal Register** the following year. The Regional Administrator would revise the CP standard prices annually based on information regarding current volume and value provided by RCRs operating as shoreside processors. The CP standard prices would be calculated by NMFS to reflect as accurately as practical the seasonal and regional variations in the shoreside ex-vessel prices of crab.

The information that would be reviewed by the Regional Administrator to determine CP standard prices would include the following: (1) Landed pounds by crab species, port or port-group, and date; (2) Total ex-vessel value by species, port or port-group, and date; and (3) Price adjustments based on retro-payments.

Fee Liability

Under this proposed rule, NMFS would identify the crab cost recovery fee liability as the total fee owed by a crab allocation holder based on the applicable period's fee percentage and the ex-vessel value for the crab species, as calculated according to § 680.44(a)(2)(ii), including any retro-payments, penalties, or interest. Fee liability would be calculated by multiplying the fee percentage by the ex-vessel value of the crab. For example, a crab allocation holder who lands 10 pounds (4.54 kg) of crab at an ex-vessel price of $1 a pound under a fee percentage of 3 percent is subject to and must pay a fee of $0.03 for that crab.

A fee liability would attach to any crab debited from an allocation during a crab fishing year. By using the ''debited'' designation rather than the term ''landed,'' NMFS created a more specific method of ensuring that RCRs properly apply fee liability to crab. The use of the term ''landed'' contradicts Council intent to avoid imposing fees on forfeited or confiscated crab. Although deadloss must be debited from allocations by statute and thus be subject to crab cost recovery fee liability, the ex-vessel value of deadloss would most likely be $0 and would result in no fees.

Fee Liability Calculation. The fee amount would be the product (in U.S. dollars) of multiplying the appropriate ex-vessel value by the fee percentage (up to 3 percent). The RCR permit holder would document the calculations of fees based on applicable ex-vessel values through the electronic reporting system provided by NMFS. The following example shows how an RCR permit holder would calculate fee liabilities.

Example of Ex-vessel Value Determination. A crab allocation fisherman makes a landing of Bristol Bay red king crab at Dutch Harbor in February that results in a debit of 1,000 lb (0.35 mt) from his or her allocation (1,000 raw crab pounds). He or she sells all the crab to a shoreside processor for $1.00 per pound. If the fee percentage is 3 percent, then a shoreside RCR who receives the crab would deduct $.015 for each pound of crab received from what he or she pays the allocation holder who landed the crab. The RCR would be responsible for an additional $.015 for each pound of crab received after payment to the allocation holder for a total of $.03 on every $1.00 of crab, or 3 percent. On the other hand, a CP would be responsible for the full 3 percent from the same landing of crab. The RCR would determine the ex-vessel value as follows:

(Raw Crab Pounds Sold × Price per crab lb) × Fee Percentage = allocation or RCR Permit Holder Fee

CP: (1,000 IFQ lb × $1.00/IFQ lb) × 0.03 = $30.00

Shoreside Processor: (1,000 IFQ lb × $1.00/IFQ lb) × 0.015 = $15.00

Allocation Harvester: (1,000 IFQ lb × $1.00/IFQ lb) × 0.015 = $15.00

Fishing Year

NMFS determined the need for a ''crab fishing year'' to accommodate biological and administrative requirements of the crab fishery. The proposed crab fishing year would run from July 1 to June 30 to support molting and mating requirements for crab, required biological surveys, the State's calculation of the TAC, and Federal administrative application and permitting requirements. The proposed rule would require all RCRs to submit all fee liabilities and any associated documentation by July 31 of the following crab fishing year.

Payment Submission

Instead of a billing system similar to the halibut and sablefish IFQ program, this proposed rule would require all RCRs to retain, document, and submit all fee liabilities for themselves and any crab allocation holders from which they receive crab. NMFS determined that this method provides the highest degree of administrative efficiency with the lowest burden on the affected public. Under this method, NMFS would establish the fee percentage for the pending year based on a calculation similar to that used under the halibut and sablefish model. NMFS would publish the fee percentage calculation in the **Federal Register** prior to fishing for the pending crab fishing year. All RCRs would apply that fee percentage to any crab they receive or process during the period in which the fee percentage applies.

RCR permit holders must collect all fee liabilities for any crab received and debited from a crab allocation throughout the fishing year and submit those fees by July 31 of the following crab fishing year. Early payments would be allowed but would not relieve an RCR permit holder from any associated reporting requirements.

Payment Compliance

An RCR permit holder who has incurred a fee liability would be required to pay the fee to NMFS by July 31 of the year following the crab fishing year in which the applicable crab was debited from a crab allocation and payment was made. The issuance of new permits would be contingent on an RCR's submission of his or her full fee liability as indicated by his or her own reporting. NMFS would provide due process under an administrative appeals system similar to that of the halibut and sablefish IFQ program for any RCRs who choose to challenge any dispute regarding fee liability based on the RCRs own submitted data. However, no permit would be issued until his or her full fee liability is received or there is final agency action resolved in favor of the RCR. Furthermore, any RCR that fraudulently submits required information regarding cost recovery fee collection would face an enforcement action under the prohibitions for this section.

If an RCR permit holder has made a timely payment to NMFS of any amount less than the fee liability indicated by the RCR permit holder's own reporting, the RCR permit holder has the burden of demonstrating the fee amount submitted is correct. If, upon preliminary review of the accuracy and completeness of a fee payment, NMFS determines the RCR permit holder has not paid a sufficient amount, NMFS would, at any time thereafter, send an IAD to the RCR permit holder. The IAD would present the facts, explain those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. In the IAD, NMFS would explain that the RCR permit holder's estimated fee liability failed to correspond with the RCR permit holder's own reporting and would provide the correct fee liability due as calculated from the RCR permit holder's own reporting. Upon issuance

of an IAD, NMFS may withhold issuance of any new IFQ, IPQ, or RCR permit and disapprove any transfer of IFQ, IPQ, PQS, and/or QS to or from the RCR permit holder until final agency action is taken. An aggrieved RCR permit holder could appeal an IAD through the OAA as described at § 679.43. An IAD that is not appealed to the OAA within 60 days of issuance in NMFS would become a final agency action.

Upon final agency action, the RCR would remain subject to several conditions. If the final agency action determines the RCR permit holder owes additional fees and if the RCR permit holder has not paid such fees, no new RCR, IFQ, or IPQ permit(s) would be issued to the RCR permit holder for the current or subsequent crab fishing years until the required payment is received by NMFS. Additionally, the RCR permit holder would continue to be restricted from transferring or receiving by transfer any PQS, QS, IFQ or IPQ. An RCR permit holder could pay, under protest, the disputed fee difference in order to avoid permit restrictions. If NMFS does not receive the required payment within 30 days of the issuance of the final agency action, NMFS would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection.

Limited Access System Administrative Fund (LASAF)

Most of the fees collected would be deposited in the LASAF established in the U.S. Treasury. Up to 25 percent could be deposited separately in the U.S. Treasury and made available to cover the costs of the loan program, as required by sections 304(d)(2)(C) and 313(j) of the Magnuson-Stevens Act. Separate accounts would be created within the LASAF to ensure that NMFS would use funds from the Program's cost recovery only to pay for the costs directly related to the management and enforcement of the Program, and not other limited access programs.

Community Development Quota Fee Provisions

Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to collect a fee to recover the actual costs directly related to the management and enforcement of any community development quota program. Community development quota programs under the Program include those CDQ allocations established under section 305(i). Additionally, Magnuson-Stevens Act section 313(j) requires the Secretary to collect a fee to recover the actual costs directly related to the management and enforcement of the Adak community allocation. NMFS and ADF&G believe there would be increased management and enforcement costs associated with the CDQ and Adak community allocations under the Program. Therefore, all fee liability provisions would apply equally to any allocation of crab regardless of its designation under the Program.

Section 305(i)(3), requires the Secretary to deduct the costs incurred by participants in a community development quota program for observer and reporting requirements that are in addition to observer and reporting requirements of other participants in the fishery from any fees collected under section 304(d)(2). ADF&G confirmed its intention to manage the Adak community allocation similar to a CDQ allocation under its management authority. ADF&G also stated it does not intend to impose any observer and reporting requirements for the community allocations beyond those required for any other allocation under the Program. Therefore, no deductible costs would exist for any community development quota program under this Program. This allows for a uniform and administratively simple fee calculation and payment system for the entire cost recovery program.

Annual Report

NMFS would publish an annual report on the performance of the cost recovery program. The annual report, which could be included with other reports on the performance of the Program, would provide information regarding the amount of the fees received by NMFS, the disposition of the fees, the status of the Program's account in the LASAF, and the Program costs for the previous year.

Section 679.5 Recordkeeping and Reporting (R&R)

In § 679.5, paragraph (a)(7)(i) would be revised by adding a new paragraph (a)(7)(i)(B) to describe the added fishing activities of shoreside processors and stationary floating processors (SFPs) of ''purchase or arrange to purchase'' and by redesignating (a)(7)(i)(B) through (E) as (a)(7)(i)(C) through (i)(F), respectively. Newly redesignated paragraph (a)(7)(i)(C) would be revised by removing reference to shoreside processors and SFPs.

The longline and pot gear daily fishing logbook (DFL) and longline and pot gear daily cumulative production logbook (DCPL) would be revised for use by the operator on crab catcher vessels of all lengths and on all crab CPs. In § 679.5, paragraph (C)(1) would be revised to include crab numbers, crab weight in pounds, and Federal crab vessel permit number.

In § 679.5, regulations for the product transfer report (PTR), as well as the PTR form, would be revised so the PTR could also be used to document shipments of crab managed under 50 CFR part 680. Paragraph (g)(1) would be revised by splitting the paragraph into three subparagraphs. Paragraph (g)(1)(i) would describe PTR requirements when documenting shipments of groundfish. The operator of a mothership or CP or the manager of a shoreside processor or SFP is responsible for the PTR. Paragraph (g)(1)(ii) would describe PTR requirements when documenting shipments of IFQ halibut, IFQ sablefish, and CDQ halibut. The Registered Buyer is responsible for the PTR. Paragraph (g)(1)(iii) would describe new PTR requirements when documenting shipments of crab. The RCR would be responsible for the PTR.

The requirements for the receiver of fish to submit a PTR would be removed from § 679.5(g). The NOAA Fisheries Office for Law Enforcement (OLE) has determined that it is no longer necessary for a receiver to submit a PTR. Therefore, only shipments of fish would be documented on a PTR.

In § 679.5, a new heading, ''Exceptions'' would be added as new paragraph (g)(2). Paragraphs (g)(1)(i) through (iii) and (g)(1)(v) and (vi) would be redesignated as (g)(2)(i) through (v), respectively. Paragraph (g)(1)(iv) would be removed because the requirement for receivers to submit a PTR is removed. Newly redesignated paragraph (g)(2)(i) ''Bait sales (non-IFQ groundfish only)'' would be revised to clarify the requirement. Newly redesignated paragraph (g)(2)(ii) ''Retail sales'' would be revised to create paragraphs (g)(ii)(A) and (ii)(B). Paragraph (g)(ii)(A) would address existing requirements for retail sales of IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish. Paragraph (g)(ii)(B) would add new requirements for retail sales of crab. Newly redesignated paragraph (g)(iv)(A) ''Dockside sales'' would be revised by removing ''IFQ fish'' and adding in its place ''IFQ halibut and IFQ sablefish.'' Newly redesignated paragraph (g)(v) ''Transfer directly from the landing site to a processing facility ...'' would be revised to include shipment of crab. Paragraph (g)(v)(A) would address the current IFQ landing report receipt requirements for CDQ halibut, IFQ halibut, and IFQ sablefish. Paragraph (g)(v)(B) would describe new requirements for crab landing report receipt. Paragraphs (g)(v)(A) and

(g)(v)(B) would further be revised by removing ''(Internet or transaction terminal receipt)'' and by adding in its place ''(Internet receipt).'' Paragraphs (g)(v)(C) and (g)(v)(D) would be revised to include the crab landing report receipt.

Newly redesignated paragraph (g)(3) would be revised to include requirements for an RCR. Paragraph (g)(3)(iii) would be revised to remove ''ensure ... a revised PTR is submitted'' and would be replaced by ''submit a revised PTR.''

The heading of newly redesignated paragraph (g)(4) would be revised by removing ''general information'' and by adding in its place ''required information.'' Paragraph (g)(4) would be revised to include requirements for an RCR. Paragraph (g)(4)(i) would be revised. The OLE has determined that a confirmation number documenting receipt of a PTR by NMFS would be beneficial to record tracking. The fishermen would submit the PTR to OLE, who would return by e-mail the confirmation number for each PTR submitted.

The vessel activity report (VAR) would be revised for use by the operator on crab vessels required to obtain a Federal Crab Fishing Vessel permit. Section 679.5(k) would be revised to require a catcher vessel of any length that is required to obtain a Federal Crab Fishing Vessel permit that has fish, fish products, shellfish, or shellfish products to submit a VAR prior to crossing the seaward boundary of the EEZ off Alaska or the U.S.-Canadian international boundary between Alaska and British Columbia.

Use of the ATM terminals for submitting IFQ landing reports for IFQ halibut, IFQ sablefish, and CDQ halibut would be removed, because ATM terminals and associated printers have become obsolete, in fact have not been manufactured since 2001. It is no longer possible to obtain new units or parts for existing terminals or ribbons for the printers.

Internet and ATMs are completely different technologies, that require entirely separate software to run them. NMFS Alaska Region can no longer afford staff resources to maintain two electronic reporting systems for IFQ halibut, CDQ halibut, and IFQ sablefish.

Internet is easier and more convenient for constituents to use and less prone to result in incorrect account. Users would have a larger screen with which to review all data at the same time and make corrections before submitting as compared with the small LED display for ATMs. Another advantage of the Internet is the fact that users won't have to upgrade every time software changes. Internet use costs are relatively low. There would be no NMFS telephone charges or equipment maintenance. Because IFQ fees are charged for NMFS program costs, user fees may well be lower when ATMs are no longer used.

All of NMFS Alaska Region reporting within the next 1–2 years is planned to be via an Internet- based interagency electronic ''fish ticket'' or ''shared reporting system'' with the State of Alaska and International Pacific Halibut Commission. The ATMs are obsolete when compared with this envisioned new system.

NMFS Alaska Region introduced use of an Internet alternative for IFQ landing reports in June 2002. In 2004, 97 percent of reports were submitted electronically, and of all reports, 84 percent were made using the Internet system. In 2004 to date, all but 12 of the locations from which landings were filed have used the Internet at least once, indicating that almost everyone has the capability to use the Internet. However, since 1995, NMFS Alaska Region has offered a limited-use manual backup system for those persons who are unable to report electronically.

In § 679.5, text referring to the ATM terminal would be removed from paragraphs (l)(2)(iii)(M), (l)(2)(iv), (l)(2)(iv)(A), (l)(2)(iv)(C), and (l)(2)(iv)(D). In addition, the Federal Fisheries Permit application would be revised to remove references to the ATM terminal.

In § 679.5(l), two of the existing IFQ forms would be revised for use by the operator on crab vessels of any length required to obtain a Federal Crab Fishing Vessel permit: Paragraph (l)(3) would be revised to require a transshipment authorization from an OLE clearance officer prior to crab or crab products being transferred between vessels.

In § 679.5, paragraph (l)(4) would be revised to require the RCR to submit a Departure Report prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when crab are on board.

In § 679.28, paragraph (f)(4)(i) would be changed by adding the requirements to enter the Federal crab vessel permit number to the VMS check-in report and by removing outdated text ''and approximately when and where the vessel began fishing.'' Removal of this outdated text would align the regulations at § 679.28 with NMFS' current VMS policy.

A new Table 13 to part 679—Transfer Form Summary—would be added. This table previously occurred in the regulatory text at § 679.5(a)(15) as an intext table. Table 13 would be revised to include paperwork requirements for crab transfers. In Section 679, paragraph (a)(15) would be revised to reference Table 13.

Table 14a to part 679—Port of Landing Codes, Alaska—and Table 14b to part 679—Port of Landing Codes, Non-Alaska—would be indicated for use by crab participants completing paperwork requirements. Table 14b would be revised by moving the port of Olympia from the state of Oregon and placing it under the state of Washington. Table 14c At-sea Operation Type Codes would be added for use by crab participants.

Table 15 to part 679—Gear Codes, Descriptions, and Use—would be indicated for use by crab participants completing paperwork requirements. Table 15 would be revised by adding a column for crab and indicating pot gear.

Part 680 would have nine tables to support the regulatory text. Table 1 to Part 680—Crab Rationalized (CR) Fisheries—presents the crab species that are included in the Crab Rationalization Program and areas where each crab species occurs. The coordinates for each area are given in latitude and longitude. A 3-digit alphabetic code is given for each combination of crab species and area.

Table 2 to Part 680—Crab Species Codes—presents 3-digit numeric species codes for the crab species that occur in the EEZ off the coast of Alaska. Both common names and Latin names are provided.

Table 3a to Part 680—Crab Delivery Condition Codes—presents codes to represent the condition of the shellfish at the point it is weighed and recorded on an ADF&G fish ticket.

Table 3b to Part 680—Crab Disposition or Product Codes—presents codes to represent the product that was made from the crab or whether the crab was used for personal use.

Table 4 to Part 680—Crab Process Codes—presents codes to represent the process used to create the crab product.

Table 5 to Part 680—Crab Size—presents codes to represent the size of crab product.

Table 6 to Part 680—Crab Grade—presents codes to represent quality of crab product.

Table 7 to Part 680—Eligibility for Initial Issuance of Crab QS by Crab QS Fishery—presents the qualifying years for CVO and CPO QS, the qualifying years for CVC and CPC QS, recent participation seasons for CVC and CPC QS, and subsets of qualifying years that

can be used to calculate QS for each QS fishery.

Table 8 to Part 680—Initial QS and PQS Pool for each Crab QS Fishery—presents the initial QS pool for the eight crab QS fisheries.

Table 9 to Part 680—Eligibility for Initial Issuance of Crab PQS by Crab QS Fishery—presents for each crab QS fishery, the qualifying periods used to determine the allocation of PQS.

Classification

The Magnuson-Stevens Act mandates that NMFS approve Amendment 18 to the FMP by January 1, 2005. At this time, NMFS has not determined that Amendment 19 and the provisions in this rule that would implement Amendments 18 and 19 are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the determination that this proposed rule is consistent, will take into account the data, views, and comments received during the comment period (see **DATES**).

A Regulatory Impact Review (RIR) was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. The Program was chosen based on those measures that maximize net benefits to affected participants in the BSAI crab fisheries. Additionally, a draft initial regulatory flexibility analysis (IRFA) was prepared that describes the impact this proposed rule would have on small entities. Copies of the RIR/draft IRFA prepared for this proposed rule are available from NMFS (see **ADDRESSES**).

The complete IRFA includes the draft IRFA and this preamble document. The IRFA describes in detail the reasons why this action is being proposed, describes the objectives and legal basis for the proposed rule, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. Section 313(j) of the Magnuson-Stevens Act provides the legal basis for the proposed rule, namely to achieve the objective of reducing excessive fishing capacity and ending the race for fish under the current management strategy for commercial fishing vessels operating in the BSAI crab fisheries. By ending the race for fish, NMFS expects the proposed action to increase resource conservation, improve economic efficiency, and address social concerns.

The IRFA contains a description and estimate of the number of small entities to which the proposed rule would apply. Approximately 236 entities own crab harvest vessels that are directly regulated under the alternatives considered. Of those entities, 223 are small entities because they either generated 3.5 million or less in gross revenue, based on participation in 1998, 1999, or 2000, or they are independent entities not affiliated with a processor that would increase the entities average revenue above the small business size standards. Thirteen of the entities (owning 38 vessels) are considered non-small entities. NMFS requests public comment on which small business size standard is appropriate for catcher processors: the catcher vessel size standard or the processor size standard (see **ADDRESSES**).

A total of 134 entities made at least one crab landing from 1991 to 2000, but do not appear to qualify for an initial allocation of QS. Five of these entities are not small entities and 129 qualify as ''small'' by SBA standards. The non-small entities owned a total of nine catcher vessels. The small entities owned a total of 155 catcher vessels and one CP. By and large, vessels that do not qualify for the Program either left the fishery or currently fish under interim LLP licenses. Moreover, the vessels the IRFA considers ''non-qualified'' could not or would not be allowed to continue fishing under the current LLP. The impacts to the small entities that would be prohibited from fishing by the LLP were analyzed in the RIR/IRFA and FRFA prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this IRFA.

Eight small entities and nine non-small entities appear to qualify for processor allocations based on participation during 1998 and 1999. These totals exclude CPs, which are included in the vessel discussion. The nine inshore processors are considered non-small entities because they appear to exceed the ''500 or more employees'' threshold when all their affiliates, worldwide, are included. The nine large processing entities owned 28 separate crab processing facilities, and the eight small processing entities owned 10 plants. Forty-three small processing entities (owning 50 plants) appear not to qualify for initial PQS allocations.

Thirteen communities could be directly impacted by the regionalization provisions under consideration. The overall impact on communities cannot be determined until NMFS makes all of the allocations of processing shares. At a minimum, St. Paul, St. George, Adak, Akutan, Dutch Harbor, King Cove, False Pass, Ninilchik, Homer, Port Moller, Cordova, and Kodiak possess recorded landings in the crab fisheries under any of the alternatives. The communities where these processors are located would all be considered small government jurisdictions. Each of the communities have populations well under the 50,000 limit for consideration as a small entity.

Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are treated in the RIR prepared for this action (see **ADDRESSES**).

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for rationalization of the BSAI crab fisheries, including the ''no action'' alternative. The RIR presents the complete set of alternatives, in various combinations with the complex suite of options. The EIS presents four alternative programs for management of the BSAI crab fisheries, namely, Status Quo/No Action (Alternative 1); the Crab Rationalization Program (Alternative 2); an Individual Fisherman's Quota (IFQ) Program (Alternative 3); and a Cooperative Program (Alternative 4). These alternatives constitute the suite of ''significant alternatives'', under the proposed action, for RFA purposes. Each is addressed briefly below. Please refer to the EIS and its appendices for more detail (see **ADDRESSES**). The following is a summary of the contents of those more extensive analyses, specifically focusing on the aspects which pertain to small entities.

Under the status quo, the BSAI crab fisheries have followed the well known pattern associated with managed open access. Enticed by the prospect of capturing 100 percent of the benefits, while externalizing all but a very small ''common'' share of the cost of an individual fishing decision (i.e., no enforceable ownership rights to ration access) these BSAI crab fisheries have been characterized by ''race-for-fish'', capital stuffing behavior, excessive risk taking, and a dissipation of potential rents. In the face of substantial stock declines, participants in these fisheries are confronted by significant surplus capacity (in both the harvesting and processing sectors), financial distress (for some, failure), and widespread economic instability, all contributing to resource conservation and management difficulties.

In response to worsening biological, economic, social, and structural conditions in many of the BSAI crab fisheries, the Council found that the status quo management structure was causing significant adverse impacts to the participants in these fisheries, as well as the communities that depend on these fisheries. As indicated in the

IRFA, many small entities, as defined under RFA, are negatively impacted under current managed open access rules. The management tools in the existing FMP (e.g., time/area restriction, LLP, pot limits) do not provide managers with the ability to effectively solve these problems, thereby making Magnuson-Stevens Act goals difficult to achieve and forcing reevaluation of the existing FMP.

In an effort to alleviate the problems caused by excess capacity and the race for fish, the Council determined that the institution of some form of rationalization program is needed to improve crab fisheries management in accordance with the Magnuson-Stevens Act.

The IFQ alternative would, as the name implies, allocate individual shares of the crab TAC to harvesters, imparting a ''quasi-private property interest'' (i.e. a transferrable access privilege) in a share of the TAC, thus removing the undesirable ''common property'' attributes of the status quo on qualifying harvesters. The rationalization of the BSAI crab fisheries would likely benefit the approximately 223 businesses that own harvest vessels and are considered small entities. In recent years these entities have competed in the race to fish against larger businesses. The IFQ alternative would allow these operators to slow their rate of fishing and give more attention to efficiency. Some of these operations and the vessels they use could be negatively impacted if the allocations they qualify for are small and cannot be fished economically. The participants, however, would be permitted to lease or sell their allocations, and could obtain some return from their allocations. Differences in efficiency implications of rationalization by business size cannot be predicted. Some participants believe that smaller vessels could be more efficient than larger vessels in a rationalized fishery because a vessel only needs to be large enough to harvest the IFQ. Conversely, under open access, a vessel has to be large enough to out compete the other fishermen and, hence, the overcapacity problems under the race for fish. If that is true, it is possible that some of the smaller participants in the fishery could increase their activity (by purchasing or leasing QS/IFQ) in a rationalized fishery.

However, the IFQ alternative would fail to protect the economic and social interests of other participants, also dependent on these crab fisheries, namely, processor and community entities. As the analysis in the RIR demonstrates, while harvesters clearly benefit, the IFQ alternative likely would increase the negative economic impacts relative to status quo on processor and community small entities. Specifically, as discussed in the RIR and SIA, harvesters may deliver crab to new processors in locations with more access to the outside world, forcing the closing of processing facilities in remote areas, such as Saint Paul, Saint George, and Unalaska/Dutch Harbor.

The Cooperative alternative yields many of the positive economic, social, and structural results cited above for the IFQ alternative. In addition, however, the Cooperative alternative holds out the promise of providing efficiency gains to both small entity harvesters and the processors. Data on cost and operating structure within each sector are unavailable, so a quantitative evaluation of the size and distribution of these gains, accruing to each sector under this management regime, cannot be provided. Nonetheless, it appears that the Cooperative alternative offers all of the same ''improvements'' over the status quo as does the IFQ alternative (e.g, institution of ''rights-based-management'' structure, reduction in uncertainty) while including another of the populations of participants the Council expressed explicit concern about protecting, in its problem statement and objectives for this action (i.e., crab processors). While, on the basis of available information, the Cooperative alternative appears to minimize negative economic impacts on small entities to a greater extent than does an IFQ alternative, and both appear to minimize negative economic impacts compared to the Status Quo, it is apparent, on the basis of the EIS and RIR analyses, that the Cooperative alternative does not extend the benefits of rationalization to the third population of small entities, fishery dependent communities.

After an exhaustive public process, spanning several years, the Council concluded that the Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities. This proposed rule would implement the Program.

The Program makes three separate allocations; one to the harvest sector, one to the processing sector, and one to defined regions. All three allocations are based on historic participation to protect investment in and reliance on the fisheries. Harvesters would receive harvest allocations, processors would receive processing allocations, and regions would receive allocations of landings and processing activity. These three separate allocations are also intended to mitigate the negative effects of the transition from a regulated open access race-for-fish to rationalized fisheries, burdens which tend to fall most heavily on small entities.

The competing interests of harvesters and processors, many of which are small entities, are balanced by allocating different portions of the total harvest to the two sectors. Harvesters would be allocated harvest shares for 100 percent of the TAC, minus the community allocations. Processors would be allocated processing shares for 90 percent of the TAC. To ensure corresponding allocations to the two sectors, 90 percent of the harvest allocation is allocated as Class A IFQ that require delivery to a processor that holds IPQ. The remaining 10 percent would be Class B IFQ shares that can be delivered to any processor. Under the Program, harvesters (many of whom, as noted, are small entities) would be permitted to form cooperatives to achieve efficiencies and reduce transaction costs through the coordination of harvest activities and deliveries to processors.

Small harvester entities that receive allocations large enough to support their participation could benefit from not needing to participate in the race for fish, as with the IFQ alternative. The portion of the fishery allocated as Class B IFQ, also known as open delivery IFQ, would also impact the effects of the Program on small harvesters, since Class B IFQ are likely to provide harvesters with additional power in their delivery negotiations with processors.

Small processors appear to have been exiting the crab fishery in recent years as the harvest levels have declined and seasons have been compressed. The proposed rule would allocate PQS to processors that participated in the fishery in either 1998 or 1999. ''Small'' processors that plan to enter or reenter the crab fisheries (but did not participate during the qualifying years) would be allowed to process crab harvested with Class B IFQ and CDQ crab. Class B IFQ and CDQ crab would provide a mechanism for small processors to enter the fishery without large capital outlays to purchase PQS or IPQ. Class B IFQ, however, would reduce the allocation of PQS to the small and large processors that qualify for the Program. Class B IFQ therefore may negatively impact small processors, if they are unable to compete with large processors in the market place for the Class B IFQ.

To resolve impasses in price negotiations, a potentially crippling occurrence for the smaller operators, the Program would include a mandatory binding arbitration program for the settlement of price disputes between harvesters and processors. Historically, prices have been settled by protracted, often contentious negotiations, from time to time resulting in harvesters delaying fishing (i.e., strikes), which can be detrimental to all concerned. An effective system of binding arbitration could protect the interests of both sectors in negotiations, while avoiding costly delays in fishing due to strikes.

A number of small governmental jurisdictions would be directly regulated by, and therefore could be impacted by, this proposed rule. All communities benefitting from these special provisions of the proposed rule are ''small'', under SBA criteria. Community interests have been explicitly considered in the Program, and special provisions have been included to minimize (to the extent practicable) adverse impacts on these small entities. Under these provisions the degree of protection would likely vary community-to-community.

The allocation to regions is accomplished by regionally designating all Class A IFQ (delivery restricted) and all corresponding IPQ. In most fisheries, regionalized IFQ and IPQ are either North or South, with North IFQ designated for delivery in areas on the Bering Sea north of 56°20′ north latitude and South IFQ designated for any other areas, including Kodiak and other areas on the Gulf of Alaska. IFQ and IPQ designations are based on the historic location of the landings and processing that gave rise to the shares. The proposed rule would also increase the allocation of crab to CDQ groups from 7.5 percent to 10 percent, providing additional aid to the 65 CDQ communities (all small entities).

Community processing requirements in the first two years of the Program and ROFR would benefit communities with history supporting initial allocations and are intended to protect community interests. The ROFR provisions are likely to benefit communities that are more capable of exercising the right. Under the more general regional protection, processing activity could move between communities in a region. This is likely to benefit those communities able to attract additional processing activity from other communities in the region and harm communities that processing activity leaves. IPQ caps would benefit communities able to attract processing in years of high total harvest. Additionally, CDQ groups would be able to purchase QS and PQS to increase their participation in the BSAI crab fisheries above the CDQ allocation.

The proposed rule also contains several additional measures to protect various interests. Eligible crew would receive 3 percent of the initial allocation of QS. Sideboards would limit the activity of crab vessels in other fisheries (such as the GOA groundfish fisheries) to protect participants in those fisheries from a possible influx of activity that could arise from vessels that exit the crab fisheries, or are able to time activities to increase participation in other fisheries. While these benefactors of this provision are not directly regulated, and therefore not counted among the entities addressed in this IRFA, they are predominantly small entities.

Fish taxes would likely be redistributed with any redistribution of processing activity. In addition, the provision of support services and associated sales taxes would likely be redistributed to some extent by redistribution of landings in a rationalized fishery. Increased efficiency in the fisheries arising from the Program could reduce the demand for support services, impacting sales tax revenues, if the fleet is able to reduce their overall costs. These impacts may occur in large and small communities. Since the redistribution of activity and the increased efficiency cannot be predicted these effects cannot be fully characterized. Additional analysis of community impacts is contained in the Social Impact Analysis, EIS Appendix 3 (see **ADDRESSES**).

Implementation of the proposed rule would change the overall reporting structure and recordkeeping requirements of the participants in the BSAI crab fisheries. Under the statutorily mandated proposed rule, all participants would be required to provide additional reporting. Each harvester would be required to track harvests to avoid exceeding his or her allocation. As in other North Pacific rationalized fisheries, processors would provide catch recording data to managers to monitor harvest of allocations. Processors would be required to record deliveries and processing activities to aid in the Program administration.

NMFS would be required to develop new databases to monitor harvesting and processing allocations. These changes could require the development of new reporting systems. The costs of NMFS' monitoring of the fisheries would be passed to participants through the cost recovery program.

To participate in the Program, persons would be required to complete application forms, transfer forms, EDR forms, reporting requirements, and other collections-of-information. These the forms are either required by the Magnuson-Stevens Act or required for the administration of the Program. These forms impose costs on small entities in gathering the required information and completing the forms.

We have estimated the costs of complying with the reporting requirements based on the burden hours per response, number of responses per year, and a standard estimate of $25 per burden hour (except the estimate for the EDR forms is $100 per burden hour). Persons would be required to complete most of the forms at the start of the Program, like applications for initial issuance of QS/PQS and the historic EDR. Persons would be required to complete some forms every year, like applications for IFQ/IPQ and annual EDRs. Participation in the binding arbitration program would be also be annual. Additionally, reporting would be completed more frequently.

The proposed rule also includes a comprehensive data collection program, which would require participants to submit detailed economic data concerning their participation in these fisheries. The data collection program is intended to provide managers with better information concerning the fisheries to aid in management and to limit negative unintended consequences arising from management decisions. Under the required data collection program, NMFS minimized the cost and time burden associated with the data collection components by breaking down the program into specific forms directed at specific segments of the fishery. Although most participants collect data similar to that which would be collected by the data collection program for making business decisions, the data collection program could impose additional recordkeeping requirements on participants in the fisheries. The detailed level of data required would likely require some additional data compilation and reporting beyond the status quo. Professional assistance, such as accounting services, are likely to be necessary for most participants to comply with these requirements. NMFS estimates that it would cost small entities that hold CVO QS and PQS approximately $1,503 to complete the historic EDR and an additional $1,503 to complete the annual EDR every year. It would cost small entities that hold CPO QS $2,503 to complete each EDR

because they would report both harvesting and processing information.

It would cost participants in the Program $56 to complete applications to receive an initial allocation of QS and PQS, $55 for the annual application for IFQ and PQS, $61 to complete the one-time application to be eligible to receive transfers, and $61 to complete a transfer application. Additionally, it would cost processors who intend to process crab $16 to complete an RCR permit application. It would cost an ECCO $64 to complete the Application to Become an ECCO and $54 to complete the Application to Transfer Crab QS/IFQ to or from the ECCO. Additionally, it would cost an ECCO $206 to complete the required annual report.

Congress directed the implementation of much of the proposed Program through statute. To the extent that the statute allowed flexibility, NMFS considered multiple alternatives to effectively implement specific provisions within the proposed Program through regulation. In each instance, NMFS attempted to impose the least burden on the public, including the small entities subject to the Program.

The CR crab landing report (internet version and optional fax version) would be used to debit crab landings. All retained crab catch must be weighed, reported, and debited from the appropriate IFQ account under which the catch was harvested and IPQ account under which the catch was processed. Under recordkeeping and reporting, NMFS considered the options of a paper based reporting system or an electronic reporting system. NMFS chose to implement an electronic reporting system as a more convenient, accurate, and timely method of reporting. Additionally, the proposed electronic reporting system would provide continuous access to IFQ and IPQ accounts. These provisions would make recordkeeping and reporting requirements less burdensome on participants by allowing participants to more efficiently monitor their accounts and fishing activities. NMFS recognizes that participants in the current fishery might be more comfortable with the paper based fish ticket system, but believes that the added benefits of the electronic reporting system outweigh any benefits of the paper based system. However, NMFS would also provide an optional lower tech backup using existing telecommunication and paper based methods, which would reduce the burden on small entities in more remote areas possessing less electronic infrastructure.

As an IFQ system, the Magnuson-Stevens Act requires NMFS to collect cost recovery fees associated with the monitoring and enforcement of the proposed Program. The fees would be charged to harvesters and processors based on the amount of IFQ and IPQ used by each IFQ and IPQ holder. The initial amount of the fee would be 3 percent of the ex-vessel value of each fishery. We can not calculate the actual amount of the fee for each fishery in each year because we can not predict the future TACs or future ex-vessel values. NMFS considered options that included: (1) collection and payment individually by harvesters and processors under a billing system, and (2) collection of fees from the harvester by the processor and self-collection of processor fees under an annual fee submission process. NMFS determined that the collection of all fees from the harvesting and processing sector by the receiving processor for submission to NMFS on an annual basis would impose the least administrative burden on the affected public. The collection of fees by the receiving processor corresponds with the existing requirement for many processors to collect excise taxes from delivering harvesters in other fisheries. Additionally, rather than use the calendar year for administrative purposes, NMFS negotiated an administrative year for the program that accommodates fee collection by imposing the most significant administrative burden on the affected participants during the time of year when the crab fisheries are closed.

Under this proposed rule, CPs would be required to purchase and install motion-compensated scales to weigh all crab at-sea. Such scales would cost on a one-time basis, approximately $25,000 per vessel. Additional costs on a one-time basis associated with the installation of the scales are estimated to be between $10,000 and $40,000, depending on the extent to which the vessel must be reconfigured to install the scale. Scale monitoring requirements would cost approximately $6,235 per year. Based on discussions with equipment vendors, NMFS estimates that 8 CPs, one of which is a small entity, would choose to fish CPO or CPC IFQ.

NMFS considered, but rejected, the use of product weight and recovery rates (PRRs) in favor of the use of at-sea scales for catch accounting on CPs. NMFS rejected the use of PRRs for several reasons. First, the technology for weighing catch at-sea is well developed, and NMFS believes that the catch weights generated from these scales produce the best available data for catch accounting purposes. Second, recovery rates are not well known for many stocks, and, because recovery could vary with season, the rates may change when fishing occurs over a larger portion of the year. Third, glaze percentages on CPs product vary widely. If NMFS chose to use PRRs, NMFS must either apply vessel specific rates that incorporate glaze percentages or develop a standard glaze percentage that would either unfairly penalize the boats with high amounts of glaze or underestimate the amount of harvest on boats with low glaze percentages. Finally, CPs conduct different cooking, precooking, prefreeze brining and freezing processes. These procedural differences create significant uncertainty in calculating and verifying recovery. NMFS acknowledges that PRRs would be less costly to the affected public, particularly the small entities, but determined that the added management benefits of scales outweigh their costs. To the extent that additional PRR data become available to NMFS for analysis, future rules may allow PRR based catch accounting. CPs not wishing to incur the costs associated with scale installation prior to that time have the option of either joining a cooperative or leasing their quota.

NMFS considered, but rejected, requirements for increased observer coverage for the CP fleet. Under existing State regulations, CPs are required to pay for and carry one observer when engaged in crab fishing operations. In similar NMFS managed quota fisheries, NMFS requires that all fishing activity be observed. In most cases, this means that a vessel must carry two observers. NMFS rejected this approach in the crab fisheries for two reasons. First, the Council motion specifically delegated observer coverage responsibility to the State of Alaska. Second, NMFS felt that the monitoring approach developed for the fishery (total catch weighing plus a requirement for a total offload weight) provided for more effective monitoring at a lower cost. NMFS estimates that a requirement for increased observer coverage would have cost CPs approximately $400/day plus the additional costs associated with reconfiguring vessels to ensure that adequate space was available for the additional observer.

For monitoring of processing activity, it would cost shore-based processors approximately $416 to complete the catch monitoring plan and an additional $2,800 annually to complete all landing reports.

NMFS determined that a VMS program is essential to the proper enforcement of the Program. Therefore, all vessels participating in the Program

would be required to participate in a VMS program. Depending on which brand of VMS a vessel chooses to purchase, NMFS estimates that this requirement would impose a cost of $2,000 per vessel for equipment purchase, $780 for installation and maintenance, and $5 per day for data transmission costs. Based on the number of qualified vessels, NMFS estimates that a maximum of 276 vessels, of which 238 are considered small entities, could incur this cost if they choose to participate in the Program.

Collection-of-information

This rule contains new collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden per response for these requirements are listed by topic.

Crab Permits, Transfers, and Fees

These requirements and their associated burden estimates per response are: 2 hours for Annual Application for Crab IFQ/IPQ Permit; 2 hours for Application for Crab QS/IFQ or PQS/IPQ; 2 hours for Application for annual crab harvesting cooperative IFQ permit; 30 minutes for Application for Crab IFQ Hired Master permit; 30 minutes for Application for RCR Permit; 20 minutes for Application for Federal crab vessel permit; 2 hours for Application for eligibility to receive Crab QS/IFQ or PQS/IPQ by transfer; 2 hours for Application to Become an Eligible Crab Community Organization (ECCO); 2 hours for Application for transfer of Crab QS/IFQ or PQS/IPQ; 2 hours for Application for transfer of crab QS/IFQ to or from an ECCO; 2 hours for Application for Inter-cooperative Transfer; 30 minutes for RCR fee submission form; and 4 hours for a letter of appeal, if denied a permit.

Crab Reports

These requirements and their associated burden estimates per response are: 35 minutes to electronically submit crab landing report and print receipts, 35 minutes to submit crab landing report paper backup (ADF&G fish ticket), 15 minutes for application for user ID, 20 minutes for CP offload report, 40 hours for ECCO annual report for an ECC.

Crab Economic Data Reports

These requirements and their associated burden estimates per response are: 25 hours for Catcher processor historical EDR, 25 hours for Catcher processor annual EDR, 15 hours for Catcher vessel historical EDR, 15 hours for Catcher vessel annual EDR, 15 hours for Catcher vessel annual EDR, 15 hours for Stationary crab floating processor historical EDR, 15 hours for Stationary crab floating processor annual EDR, 15 hours for Shoreside crab processor historical EDR, 15 hours for Shoreside crab processor annual EDR, and 3 hours for historical and annual audits.

Crab Arbitration Reports

These requirements and their associated burden estimates per response are: 4 hours for Annual Arbitration Organization Report, 1 hour for Arbitration Organization miscellaneous reporting, 40 hours for Market Report, 40 hours for Non-binding Price Formula Report, and 45 minutes to establish price for arbitration negotiations.

This rule also contains revised requirements that have been submitted to OMB for approval. These requirements are listed by OMB control number.

OMB No. 0648—0213

This requirement and its associated burden estimate per response is: 14 minutes for Vessel Activity Report, 20 minutes for Product transfer report, and 28 minutes for Catcher vessel longline and pot gear daily fishing logbook.

OMB No. 0648—0272

These revised requirements and their associated burden estimates per response are: 6 minutes for Application for Replacement of Certificates, Permits, or Cards; 6 minutes for Transshipment authorization; and 6 minutes for Departure report.

OMB No. 0648—0330

These revised requirements and their associated burden estimates per response are: 6 minutes for At-sea inspection request, 45 minutes for Record of daily scale tests, 45 minutes for printed output of at-sea scale weight, 45 minutes for printed output of State of Alaska scale weight, 80 hours for scale type evaluation, 6 minutes for at-sea scale approval report/sticker, 2 hours for Observer sampling station inspection request, 2 minutes for prior notice to Observers of scale tests, and 40 hours for Crab catch monitoring plan.

OMB No. 0648—0445

These revised requirements and their associated burden estimates per response are: 12 minutes for VMS check-in form, 6 hours for VMS installation, 4 hours for VMS annual maintenance, and 6 seconds for each VMS transmission.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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, Alaska Region at the **ADDRESSES** above, and e-mail to *DRostker@omb.eop.gov*, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

A Draft Environmental Impact Statement (EIS) (dated March 2004) was prepared for this rule and made available to the public for comment (69 FR 13036, March 19, 2004). The Final EIS was prepared and made available to the public on September 3, 2004 (69 FR 53915). Copies of the Final EIS for this action are available from NMFS (see **ADDRESSES**).

Dated: October 22, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended and new 50 CFR part 680 is proposed to be added as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.1, revise paragraphs (g) and (j) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(g) *Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.* Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, and supersede State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutian Islands Area EEZ that are determined to be inconsistent with the FMP (see subparts A, B, and E of this part). Additional regulations governing commercial fishing for, and processing of, king and Tanner crab managed pursuant to section 313(j) of the Magnuson-Stevens Act and the Crab Rationalization Program are codified at 50 CFR part 680.

* * * * *

(j) *License Limitation Program (LLP).* (1) Regulations in this part implement the LLP for the commercial groundfish fisheries in the EEZ off Alaska and the LLP for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area.

(2) Regulations in this part govern the commercial fishing for groundfish under the LLP by vessels of the United States using authorized gear within the GOA and the BSAI and the commercial fishing for crab species under the LLP by vessels of the United States using authorized gear within the Bering Sea and Aleutian Islands Area.

* * * * *

3. In § 679.2, revise the definitions of ''Alaska local time,'' and ''Shoreside processor,'' revise paragraphs (2) and (3) of the ''Directed fishing'' definition, and add a definition of ''Registered crab receiver'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Alaska local time (A.l.t.) means the time in the Alaska time zone.

* * * * *

Directed fishing means:

* * * * *

(2) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition.

(3) With respect to crab species under this part, the catching and retaining of any crab species.

* * * * *

Registered crab receiver (RCR) means a person issued by the Regional Administrator an RCR permit described under 50 CFR part 680.

* * * * *

Shoreside processor means any person or vessel that receives, purchases, or arranges to purchase, unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for personal consumption or bait.

* * * * *

4. In § 679.3, revise paragraph (d) to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(d) *King and Tanner crabs.* Additional regulations governing conservation and management of king crab and Tanner crab in the Bering Sea and Aleutian Islands Area are contained in 50 CFR part 680 and in Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

* * * * *

5. In § 679.4, revise paragraph (k)(1)(ii), remove and reserve paragraphs (l)(3)(ii)(D), (l)(4)(i), and (l)(5)(ii), and remove paragraphs (l)(4)(ii)(D), (l)(4)(ii)(E), (l)(5)(iv)(E), and (l)(5)(iv)(F) to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(ii) Each vessel must have a crab species license issued by NMFS on board at all times it is engaged in fishing activities, defined in § 679.2, for the crab fisheries identified in this paragraph. A crab species license may be used only to participate in the fisheries designated on the license and on a vessel that complies with the vessel designation and MLOA specified on the license. NMFS requires a crab species license for participation in the following crab fisheries:

(A) Aleutian Islands red king crab in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44′ W. long.) to 53°30′ N. lat., then west to 165° W. long., a western boundary of 174° W. long., and a northern boundary of a line from the latitude of Cape Sarichef (54°36′ N. lat.) westward to 171° W. long., then north to 55°30′ N. lat., and then west to 174° W. long.;

(B) Aleutian Islands Area *C. opilio* and *C. bairdi* in waters of the EEZ with an eastern boundary the longitude of Scotch Cap Light (164°44′ W.long.) to 53°30′ N. lat., then west to 165° W. long, a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of a line from the latitude of Cape Sarichef (54°36′ N. lat.) westward to 171° W. long., then north to 55°30′ N. lat., then west to 174° W. long.;

(C) Norton Sound red king and Norton Sound blue king in waters of the EEZ with a western boundary of 168° W. long., a southern boundary of 62° N. lat., and a northern boundary of 65°36′ N. lat.;

(D) Bering Sea brown king crab (*Lithodes aequispinus*) in waters of the EEZ east of the U.S.-Russian Convention line of 1867 with a southern boundary of 54°36′ N. lat. to 171° W. long., and then south to 54°30′ N. lat.

(E) Scarlet or deep sea king crab (*Lithodes couesi*) in the waters of the Bering Sea and Aleutian Islands Area;

(F) Grooved Tanner crab (*Chionoecetes tanneri*) in the waters of the Bering Sea and Aleutian Islands Area; and

(G) Triangle Tanner crab (*Chionoecetes angulatus*) in the waters of the Bering Sea and Aleutian Islands Area.

* * * * *

6. In § 679.5, revise paragraphs (a)(7)(i) table only, (a)(15), (c)(1), (g), (k), (l) introductory text, (l)(2)(iii)(M), (l)(2)(iv) introductory text, (l)(2)(iv)(C), (l)(2)(iv)(D), (l)(3)(i), and (l)(4), and remove and reserve (l)(2)(iv)(A) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(7) * * *

(i) * * *

If participant is...	And fishing activity is...	An active period is...	An inactive period is...
(A) CV[1]	Harvest or discard of groundfish	When gear remains on the grounds in a reporting area (except 300, 400, 550, or 690), regardless of the vessel location	When no gear remains on the grounds in a reporting area

If participant is...	And fishing activity is...	An active period is...	An inactive period is...
(B) SS, SFP	Receipt, purchase or arrange to purchase, or processing of groundfish	When checked in or processing	When not checked in or processing
(C) MS	Receipt, discard, or processing of groundfish	When checked in or processing	When not checked in or not processing
(D) CP	Harvest, discard, or processing of groundfish	When checked in or processing	When not checked in or not processing
(E) BS	Receipt, discard, or delivery of groundfish	When conducting fishing activity for an associated processor	When not conducting fishing activity for an associated processor

[1]CV = Catcher vessel; SS = Shoreside processor; SFP = stationary floating processor; MS = mothership; Catcher/processor = CP; BS = Buying station

* * * * *

(15) *Transfer comparison.* The operator, manager, Registered Buyer, or Registered Crab Receiver must refer to Table 13 to this part for paperwork submittal, issuance, and possession requirements for each type of transfer activity of non-IFQ groundfish, IFQ halibut, IFQ sablefish, CDQ halibut, and CR crab.

* * * * *

(c) *Catcher vessel DFL and catcher/processor DCPL*—(1) *Longline and pot gear catcher vessel DFL and catcher/processor DCPL.* (i) In addition to information required at paragraphs (a) and (b) of this section:

(A) *Groundfish fisheries.* (*1*) The operator of a catcher vessel using longline or pot gear to harvest groundfish and that retains any groundfish from the GOA, or BSAI, must maintain a longline and pot gear DFL.

(*2*) The operator of a catcher/processor using longline or pot gear to harvest groundfish and that retains any groundfish from the GOA, or BSAI, must maintain a longline and pot gear DCPL.

(B) IFQ halibut, CDQ halibut, and IFQ sablefish fisheries. (*1*) The operator of a catcher vessel using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA, or BSAI, must maintain a longline and pot gear DFL.

(*2*) The operator of a catcher/processor using longline or pot gear to harvest IFQ sablefish, IFQ halibut, or CDQ halibut from the GOA, or BSAI, must maintain a longline and pot gear DCPL.

(C) *CR crab fisheries.* (*1*) The operator of a catcher vessel using longline or pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DFL.

(*2*) The operator of a catcher/processor using longline or pot gear to harvest CR crab from the BSAI, must maintain a longline and pot gear DCPL.

(ii) *Required information.* The operator of a catcher vessel or catcher/processor identified in paragraph (c)(1)(i) of this section must record in the DFL or DCPL, the following information:

(A) *Federal reporting area.* Federal reporting area code (see Figures 1 and 3 to this part) where gear retrieval (see § 679.2) was completed, regardless of where the majority of the set took place. Use a separate logsheet for each reporting area.

(B) *Number of crew.* If a catcher vessel, the number of crew, excluding observer(s), on the last day of a trip. If a catcher/processor, the number of crew, excluding observer(s), on the last day of the weekly reporting period.

(C) *Gear type.* Use a separate logsheet for each gear type.

(*1*) Circle gear type used to harvest the fish. If gear is other than those listed, circle ''Other'' and describe. If using hook-and-line gear, enter the alphabetical letter that coincides with gear description.

(*2*) If gear information is the same on subsequent pages, mark the box instead of re-entering the gear type information.

(*3*) *Pot gear.* If you checked pot gear, enter the number of pots set and the number of pots lost (if applicable).

(*4*) *Hook-and-line gear.* If hook-and-line gear:

(*i*) Indicate whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations).

(*ii*) *Skates.* Indicate length of skate to the nearest foot (optional, but may be required by IPHC regulations), number of skates set, and number of skates lost (optional, but may be required by IPHC regulations).

(*iii*) *Hooks.* Indicate size of hooks, hook spacing in feet, number of hooks per skate (optional, but may be required by IPHC regulations).

(*iv*) *Seabird avoidance gear code.* Record seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to this part).

(D) *Permit numbers.* Enter the permit number(s) for the applicable fishery in which you participated.

(*1*) IFQ permit number of the operator and of each IFQ permit holder aboard the vessel.

(*2*) CDQ group number (if applicable).

(*3*) Halibut CDQ permit number (if applicable).

(*4*) Federal crab vessel permit number (if applicable).

(E) *Observer information.* Record the number of observers aboard, the name of the observer(s), and the observer cruise number(s).

(F) *Management program.* Use a separate logsheet for each management program. Indicate whether harvest occurred under one of the following management programs. If harvest is not under one of these management programs, leave blank:

(*1*) *Exempted Fishery.* Record exempted fishery permit number (see § 679.6).

(*2*) *Research Fishery.* Record research program permit number (see § 600.745(a) of this chapter).

(G) *Catch by set.* (See § 679.2 for definition of set). The operator must record the following information for each set, if applicable:

(*1*) If no catch occurred for a day, write ''no catch;''

(*2*) Set number, sequentially by year;

(*3*) Gear deployment date (month-day), time (in military format, A.l.t.), and begin position coordinates (in lat and long to the nearest minute);

(*4*) Gear retrieval date (month-day), time (in military format, A.l.t.), and end position coordinates (in lat and long to the nearest minute);

(*5*) *Begin and end buoy or bag numbers* (optional, but may be required by IPHC regulations);

(*6*) *Begin and end gear depths,* recorded to the nearest fathom (optional, but may be required by IPHC regulations);

(*7*) *Target species code.* Enter the species code of the species you intend to catch;

(*8*) *Estimated haul weight.* Enter the total estimated haul weight of all retained species. Indicate whether to the nearest pound or to the nearest 0.001 mt (2.20 lb);

(*9*) *IR/IU Species (see § 679.27).* If a catcher/processor, enter species code of IR/IU species and estimated total round weight for each IR/IU species; indicate whether to the nearest pound or the nearest 0.001 mt (2.20 lb);

(*10*) Estimated total round weight of IFQ halibut and CDQ halibut to the nearest pound;

(*11*) Number and estimated total round weight of IFQ sablefish to the nearest pound;

(*12*) Circle to indicate whether IFQ sablefish product is Western cut (WC), Eastern cut (EC), or round weight (RD); and

(*13*) Number and scale weight of raw CR crab to the nearest pound.

(H) *Data entry time limits.* (*1*) The operator must record in the DFL or DCPL within 2 hours after completion of gear retrieval: Set number; time and date gear set; time and date gear hauled; begin and end position; CDQ group number, halibut CDQ permit number, IFQ permit number, and/or Federal crab vessel permit number (if applicable), number of pots set, and estimated total haul for each set.

(*2*) If a catcher vessel, the operator must record all other required information in the DFL within 2 hours after the vessel's catch is off-loaded, notwithstanding other time limits.

(*3*) If a catcher/processor, the operator must record all other required information in the DCPL by noon of the day following completion of production.

(*4*) If a catcher/processor, the operator must record product information in the DCPL by noon each day to record the previous day's production information.

* * * * *

(g) *Product transfer report (PTR)*—(1) *General requirements.* Except as provided in paragraph (g)(1)(i) through (vi) of this section:

(i) *Groundfish.* The operator of a mothership or catcher/processor or the manager of a shoreside processor or SFP must complete and submit a separate PTR for each shipment of groundfish and donated prohibited species caught in groundfish fisheries. A PTR is not required to accompany a shipment.

(ii) *IFQ halibut, IFQ sablefish, and CDQ halibut.* A Registered Buyer must submit a separate PTR for each shipment of halibut or sablefish for which the Registered Buyer submitted an IFQ landing report or was required to submit an IFQ landing report. A PTR is not required to accompany a shipment.

(iii) *CR crab.* A Registered Crab Receiver (RCR) must submit a separate PTR for each shipment of crab for which the RCR submitted a CR crab landing report or was required to submit a CR crab landing report. A PTR is not required to accompany a shipment.

(2) *Exceptions*—(i) *Bait sales (non-IFQ groundfish only).* During one calendar day, the operator or manager may aggregate and record on one PTR the individual sales or shipments of non-IFQ groundfish to vessels for bait purposes during the day recording the amount of such bait product shipped from a vessel or facility that day.

(ii) *Retail sales*—(A) *IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish.* During one calendar day, the operator, manager, or Registered Buyer may aggregate and record on one PTR the amount of transferred retail product of IFQ halibut, IFQ sablefish, CDQ halibut, and non-IFQ groundfish if each sale weighs less than 10 lb or 4.5 kg.

(B) *CR crab.* During one calendar day, the RCR may aggregate and record on one PTR the amount of transferred retail product of CR crab if each sale weighs less than 100 lb or 45 kg.

(iii) *Wholesale sales (non-IFQ groundfish only).* The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a vessel or facility in one calendar day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(iv) *Dockside sales.* (A) A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ halibut and IFQ sablefish have been landed and reported in accordance with paragraph (l) of this section.

(B) A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with paragraph (l) of this section.

(C) A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut, CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include:

(*1*) Date of sale;

(*2*) Registered Buyer permit number;

(*3*) Weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred.

(D) A Registered Buyer must maintain a copy of each dockside sales receipt as described in § 679.5(l).

(v) *Transfer directly from the landing site to a processing facility (CDQ halibut, IFQ halibut, IFQ sablefish, or CR crab only).* A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, CDQ halibut, or CR crab directly from the landing site to a facility for processing, provided the following conditions are met:

(A) A copy of the IFQ landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded IFQ halibut, IFQ sablefish, or CDQ halibut while in transit.

(B) A copy of the CR crab landing report receipt (Internet receipt) documenting the IFQ landing accompanies the offloaded CR crab while in transit.

(C) A copy of the IFQ landing report or CR crab landing report receipt is available for inspection by an authorized officer.

(D) The Registered Buyer submitting the IFQ landing report or RCR submitting the CR crab landing report completes a PTR for each shipment from the processing facility pursuant to paragraph (g)(1) of this section.

(3) *Time limits and submittal.* The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer, or RCR must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the shipment.

(ii) Submit a PTR by facsimile or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the shipment occurred.

(iii) If any information on the original PTR changes prior to the first destination of the shipment, submit a revised PTR by facsimile or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred and indicate the confirmation number of the original PTR.

(4) *Required information.* The operator of a mothership or catcher/processor, the manager of a shoreside processor or SFP, the Registered Buyer,

or RCR must include the following information on a PTR:

(i) *Original or revised PTR.* Whether a submittal is an original or revised PTR. If revised, record the confirmation number of the original PTR.

(ii) *Shipper information.* Name, telephone number, and facsimile number of the representative. According to the following table:

If you are shipping...	Enter under "Shipper"...
(A) Non-IFQ groundfish	Your processor's name, Federal fisheries or Federal processor permit number.
(B) IFQ halibut, CDQ halibut or IFQ sablefish	Your Registered Buyer name and permit number.
(C) CR crab	Your RCR name and permit number.
(D) Non-IFQ groundfish, IFQ halibut, CDQ halibut or IFQ sablefish, and CR crab on the same PTR	(*1*) Your processor's name and Federal fisheries permit number or Federal processor permit number, (*2*) Your Registered Buyer's name and permit number, and (*3*) Your RCR name and permit number.

(iii) *Receiver information.* Using descriptions from the following table, enter receiver information, date and time of product transfer, location of product transfer (e.g., port, position coordinates, or city), mode of transportation, and intended route:

If you are the shipper and...	Then enter...			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
(A) Receiver is on land and transfer involves one van, truck, or vehicle.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the shipping company; destination city and state or foreign country.
(B) Receiver is on land and transfer involves multiple vans, trucks, or vehicles.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when loading of vans or trucks is completed each day.	Port or city of product transfer	Name of the shipping company; destination city and state or foreign country.
(C) Receiver is on land and transfer involves one airline flight.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the airline company; destination airport city and state.
(D) Receiver is on land and transfer involves multiple airline flights.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time of shipment when the last airline flight of the day leaves.	Port or city of product transfer	Name of the airline company(s); destination airport(s) city and state.
(E) Receiver is a vessel and transfer takes occurs at sea.	Vessel name and call sign	Start and finish dates and times of transfer.	Transfer position coordinates in latitude and longitude, in degrees and minutes.	The first destination of the vessel.
(F) Receiver is a vessel and transfer takes place in port.	Vessel name and call sign	Start and finish dates and times of transfer.	Port or position of product transfer.	The first destination of the vessel.
(G) Receiver is an agent (buyer, distributor, or shipping agent) and transfer is in a containerized van(s).	Agent name and location (city, state).	Transfer start and finish dates and times.	Port, city, or position of product transfer.	Name (if available) of the vessel transporting the van; destination port.
(H) You are aggregating individual retail sales for human consumption. (see paragraph 679.5(g)(2)).	"RETAIL SALES"	Date of transfer.	Port or city of product transfer	n/a
(I) You are aggregating individual bait sales during a day onto one PTR (non-IFQ groundfish only).	"BAIT SALES"	Date of transfer.	Port or city of product transfer	n/a

If you are the shipper and...	Then enter...			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
(J) *Non-IFQ Groundfish only.* You are aggregating wholesale non-IFQ groundfish product sales by species during a single day onto one PTR and maintaining invoices detailing destinations for all of the product for inspection by an authorized officer.	''WHOLESALE SALES''	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a

(iv) *Products shipped.* The operator, manager, Registered Buyer, or RCR must record the following information for each product shipped:

(A) *Species code and product code.* (*1*) For non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut, the species code and product code (Tables 1 and 2 to this part).

(*2*) For CR crab, the species code and product code (Tables 1 and 2 to 50 CFR part 680).

(B) *Species weight.* Use only if recording 2 or more species with 2 or more product types contained within the same production unit. Enter the actual scale weight of each product of each species to the nearest kilogram or pound (indicate which). If not applicable, enter ''n/a'' in the species weight column. If using more than one line to record species in one carton, use a brace ''}'' to tie the carton information together.

(C) *Number of units.* Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

(D) *Unit weight.* Unit weight (average weight of single production unit as listed in ''No. of Units'' less packing materials) for each species and product code in kilograms or pounds (indicate which).

(E) *Total weight.* Total weight for each species and product code of shipment less packing materials in kilograms or pounds (indicate which).

(F) *Total or partial offload.* (*1*) If a mothership or catcher/processor, the operator must indicate whether fish or fish products are left onboard the vessel (partial offload) after the shipment is complete.

(*2*) If a partial offload, for the products remaining on board after the transfer, the operator must enter: species code, product code, and total product weight to the nearest kilogram or pound (indicate which) for each product.

* * * * *

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Fish or fish product other than crab onboard.* Except as noted in paragraph (k)(4) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership required to hold a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by facsimile or electronic file to OLE, Juneau, AK (907–586–7313) before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(2) *Combination of non-IFQ groundfish with IFQ halibut, CDQ halibut, IFQ sablefish or CR crab.* If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut, IFQ sablefish or CR crab, the operator must submit a VAR in addition to an IFQ Departure Report required by paragraph (l)(4) of this section.

(3) *Revised VAR.* If fish or fish products are landed at a port other than the one specified on the VAR, the operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.

(4) *Exemption: IFQ Departure Report.* A VAR is not required if a vessel is carrying only IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab onboard and the operator has submitted an IFQ Departure Report required by paragraph (l)(4) of this section.

(5) *Information required.* (i) Whether original or revised VAR.

(ii) Name and Federal fisheries permit number of vessel.

(iii) Type of vessel (whether catcher vessel, catcher/processor, or mothership).

(iv) Name, daytime telephone number (including area code), and facsimile number and COMSAT number (if available) of representative.

(v) *Return report.* ''Return,'' for purposes of this paragraph, means returning to Alaska. If the vessel is crossing the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a ''return'' report and enter:

(A) Intended Alaska port of landing (see Table 14 to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

(C) The estimated position coordinates in latitude and longitude where the vessel will cross.

(vi) *Depart report.* ''Depart'' means leaving Alaska. If the vessel is crossing the seaward boundary of the EEZ off Alaska and moving out of the EEZ or crossing the U.S.-Canadian international boundary between Alaska and British Columbia and moving into Canadian waters, indicate a ''depart'' report and enter:

(A) The intended U.S. port of landing or country other than the United States;

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross the boundary; and

(C) The estimated position coordinates in latitude and longitude where the vessel will cross.

(vii) *The Russian Zone.* Indicate whether the vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(viii) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter:

(A) Harvest zone code;

(B) species codes;

(C) product codes; and

(D) total fish product weight in lbs or to the nearest 0.001 mt (2.20 lb).

(l) *IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab R&R.* In addition to the R&R requirements in this section, in 50 CFR 680.5 with respect to CR crab, and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title, the following reports and authorizations are required, when

applicable: IFQ Prior Notice of Landing, Product Transfer Report (see § 679.5(g)), IFQ landing report, IFQ Transshipment Authorization, and IFQ Departure Report.

* * * * *

(2) * * *

(iii) * * *

(M) After the Registered Buyer enters the landing data in the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ cardholder or CDQ cardholder must sign the receipts to acknowledge the accuracy of the IFQ landing report.

* * * * *

(iv) Submittals. Except as indicated in paragraph (l)(2)(iv)(C) of this section, IFQ landing reports must be submitted electronically to OLE, Juneau, AK by using the Internet as indicated below:

* * * * *

(C) *Manual landing report.* Waivers from the Internet reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer. If a waiver is granted, manual landing instructions must be obtained from OLE, Juneau, AK, at 800-304-4846 (Select Option 1). Registered Buyers must complete and submit manual landing reports by facsimile to OLE, Juneau, AK, at 907-586-7313. When a waiver is issued, the following additional information is required: whether the manual landing report is an original or revised; and name, telephone number, and facsimile number of individual submitting the manual landing report.

(D) *Properly debited landing.* A properly concluded printed Internet submission receipt or a manual landing report receipt which is sent by facsimile from OLE to the Registered Buyer, and which is then signed by both the Registered Buyer and cardholder constitutes confirmation that OLE received the landing report and that the cardholder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in § 679.5(l).

(3) * * *

(i) No person may transship processed IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab between vessels without authorization by a local clearing officer. Authorization from a local clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

* * * * *

(4) *IFQ departure report*—(i) *General requirements*—(A) *Time limit and submittal.* A vessel operator who intends to make a landing of IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab at any location other than in an IFQ regulatory area or in the State of Alaska must submit an IFQ Departure Report, by telephone, to OLE, Juneau, AK, at 800–304–4846 or 907–586–7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(B) *Completion of fishing.* A vessel operator must submit an IFQ Departure Report after completion of all fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab are on board.

(C) *Permit*—(*1*) *Registered Crab Receiver permit.* A vessel operator submitting an IFQ Departure Report for CR crab must have a Registered Crab Receiver permit.

(*2*) Registered Buyer permit. A vessel operator submitting an IFQ Departure Report for IFQ halibut, CDQ halibut, or IFQ sablefish must have a Registered Buyer permit.

(D) *First landing of any species.* A vessel operator submitting an IFQ Departure Report must submit IFQ landing reports for all IFQ halibut, CDQ halibut, IFQ sablefish, and CR crab on board at the same time and place as the first landing of any IFQ halibut, CDQ halibut, IFQ sablefish, or CR crab.

(E) *Permits on board.* (*1*) A vessel operator submitting an IFQ Departure Report to document IFQ halibut, IFQ sablefish, or CR crab must have one or more IFQ cardholders on board with a combined IFQ balance equal to or greater than all IFQ halibut, IFQ sablefish, and CR crab on board the vessel.

(*2*) A vessel operator submitting an IFQ Departure Report to document CDQ halibut must ensure that one or more CDQ cardholders are on board with enough remaining CDQ halibut balance to harvest amounts of CDQ halibut equal to or greater than all CDQ halibut on board.

(ii) *Required information.* When submitting an IFQ Departure Report, the vessel operator must provide the following information:

(A) Intended date, time (A.l.t.), and location of landing;

(B) Vessel name and ADF&G vessel registration number;

(C) Vessel operator's name and Registered Buyer permit or Registered Crab Receiver permit number;

(D) Halibut IFQ, halibut CDQ, sablefish IFQ, and CR crab permit numbers of IFQ and CDQ cardholders on board;

(E) *Area of harvest.* (*1*) If IFQ or CDQ halibut, then halibut regulatory areas (see Figure 15 to this part).

(*2*) If IFQ sablefish, then sablefish regulatory areas (see Figure 14 to this part).

(*3*) If CR crab, then the crab rationalization fishery code (see Table 1 to part 680).

(F) Estimated total weight as appropriate of IFQ halibut , CDQ halibut, IFQ sablefish, or CR crab on board (lb/kg/mt).

(iii) *Revision to Departure Report.* A vessel operator who intends to make an IFQ landing at a location different from the location named on the IFQ Departure report must submit a revised report naming the new location at least 12 hours in advance of the offload. Revisions must be submitted by telephone, to OLE, Juneau, AK, at 800–304 4846 or 907 586 7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

* * * * *

7. In § 679.7, revise paragraph (a)(15) and (k)(1)(iii), remove and reserve paragraphs (k)(2)(ii), (k)(3)(iii), (k)(4)(ii), and remove paragraph (k)(8) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(15) *Federal processor permit.* Receive, purchase or arrange for purchase, discard, or process groundfish harvested in the GOA or BSAI by a shoreside processor or SFP that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

* * * * *

(k) * * *

(1) * * *

(iii) *Processing BSAI crab.* Use a listed AFA catcher/processor to process any crab species harvested in the BSAI.

* * * * *

8. In § 679.28, add a new paragraph (b)(1)(v) and revise paragraph (f)(4)(i) to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(b) * * *

(1) * * *

(v) *Exceptions.* A scale manufacturer or their representative may request that NMFS approve a custom built automatic hopper scale under the following conditions:

(A) The scale electronics are the same as those used in other scales on the Regional Administrator's list of scales eligible for approval;

(B) Load cells have received Certificates of Conformance from NTEP or OIML;

(C) The scale compensates for motion in the same manner as other scales made by that manufacturer which have been listed on the Regional Administrator's list of scales eligible for approval;

(D) The scale, when installed, meets all of the requirements set forth in paragraph 3 of Appendix A to this part, except those requirements set forth in paragraph 3.2.1.1.

* * * * *

(f) * * *

(4) * * *

(i) Contact the NMFS Enforcement Division by Facsimile at 907-586-7703 and provide: the VMS transmitter ID, the vessel name, the Federal Fisheries Permit number or Federal Crab Vessel Permit number.

* * * * *

9. In § 679.31, revise paragraph (d) to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(d) *Crab CDQ reserves.* Crab CDQ reserves for crab species governed by the Crab Rationalization Program are specified at § 680.40 (a)(1). For Norton Sound red king crab, 7.5 percent of the guideline harvest level specified by the State of Alaska is allocated to the crab CDQ reserve.

10. In § 679.43, revise paragraph (a) to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under part 300, part 679, and part 680. This section does not apply to initial administrative determinations made under § 679.30(d).

* * * * *

§ 679.65 [Reserved]

11. Remove and reserve § 679.65.

12. In part 679, Tables 14a, 14b, and 15 are revised; and Tables 13 and 14c are added to read as follows:

TABLE 13 TO PART 679—TRANSFER FORM SUMMARY

			Submit				Issue	Possess
If participant type is ...	And has ..... Fish product onboard	And is involved in this activity	VAR (§ 679.5(k))	PTR (§ 679.5(g))	Trans-ship (§ 679.5(l)(3))	Departure Report (§ 679.5(l)(4))	Dockside Sales Receipt (§ 679.5(g)(1)(v))	Landing Receipt (§ 679.5(g)(1)(vi))
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor	Only non-IFQ groundfish.	Vessel leaving or entering Alaska	X					
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor	Only IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab	Vessel leaving Alaska				X		
Catcher vessel greater than 60 ft LOA, mothership or catcher/processor	Combination of IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab and non-IFQ groundfish	Vessel leaving Alaska	X			X		
Mothership, catcher/processor, shoreside processor, or SFP	Non-IFQ groundfish	Transfer of product		X				
Registered Buyer	IFQ sablefish, IFQ halibut or CDQ halibut	Transfer of product		X				
Registered Crab Receiver	CR crab	Transfer of product		X				
A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit	IFQ sablefish, IFQ halibut or CDQ halibut	Transfer of product					XXX	
Registered Buyer	IFQ sablefish, IFQ halibut, or CDQ halibut	Transfer from landing site to Registered Buyer's processing facility						XX
Registered Crab Receiver	CR crab	Transfer from landing site to RCR's processing facility						XX
Vessel operator	Processed IFQ sablefish, IFQ halibut, CDQ halibut, or CR crab	Transshipment between vessels			XXXX			

"X" indicates under what circumstances each report is submitted.
"XX" indicates that the document must accompany the transfer of IFQ species from landing site to processor.
"XXX" indicates receipt must be issued to each receiver in a dockside sale.
"XXXX" indicates authorization must be obtained 24 hours in advance.

TABLE 14A TO PART 679--PORT OF LANDING CODES[1]: ALASKA

Port Name	NMFS Code	ADF&G Code
Adak	186	ADA
Akutan, Akutan Bay	101	AKU
Alitak	103	ALI
Anchorage	105	ANC
Angoon	106	ANG
Aniak	n/a	ANI
Anvik	n/a	ANV
Atka	107	ATK
Auke Bay	136	JNU
Beaver Inlet	119	DUT
Bethel	n/a	BET
Captains Bay	119	DUT
Chefornak	189	n/a
Chignik	113	CHG
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	136	JNU
Dutch Harbor/Unalaska	119	DUT
Egegik	122	EGE
Ekuk	n/a	EKU
Elfin Cove	123	ELF
Emmonak	n/a	EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks	n/a	FBK
Galena	n/a	GAL
Glacier Bay	n/a	GLB
Glennallen	n/a	GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	n/a
Homer	132	HOM
Hoonah	133	HNH
Hydaburg	n/a	HYD
Hyder	134	HDR

TABLE 14A TO PART 679--PORT OF LANDING CODES[1]: ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Juneau	136	JNU
Kake	137	KAK
Kaltag	n/a	KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	139	KEN
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	n/a
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue	n/a	KOT
La Conner	n/a	LAC
Mekoryuk	147	n/a
Metlakatla	148	MET
Moser Bay	n/a	MOS
Naknek	149	NAK
Nenana	n/a	NEN
Nikiski (or Nikishka)	150	NIK
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island	n/a	NUN
Old Harbor	153	OLD
Other Alaska[1]	499	UNK
Pelican	155	PEL
Petersburg	156	PBG
Port Alexander	158	PAL
Port Armstrong	n/a	PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions	n/a	LIO
Port Moller	n/a	MOL
Port Protection	161	n/a
Quinhagak	187	n/a

TABLE 14A TO PART 679--PORT OF LANDING CODES[1]: ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Sand Point	164	SPT
Savoonga	165	n/a
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna	n/a	SOL
St. George	170	STG
St. Mary	n/a	STM
St. Paul	172	STP
Tee Harbor	136	JNU
Tenakee Springs	174	TEN
Togiak	176	TOG
Toksook Bay	177	n/a
Tununak	178	n/a
Ugashik	n/a	UGA
Unalakleet	n/a	UNA
Valdez	181	VAL
Wasilla	n/a	WAS
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska which currently has no code assigned, use code "499" "Other AK."

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, OREGON, CANADA, WASHINGTON)

Port Name	NMFS Code	ADF&G Code
CALIFORNIA		
Eureka	500	EUR
Other California[1]	599	n/a
CANADA		

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, OREGON, CANADA, WASHINGTON)—Continued

Port Name	NMFS Code	ADF&G Code
Other Canada[1]	899	n/a
Port Edward	802	PRU
Prince Rupert	802	PRU
OREGON		
Astoria	600	AST
Newport	603	NPT
Other Oregon[1]	699	n/a
Portland	n/a	POR
Warrenton	604	n/a
WASHINGTON		
Anacortes	700	ANA

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, OREGON, CANADA, WASHINGTON)—Continued

Port Name	NMFS Code	ADF&G Code
Bellingham	702	n/a
Blaine	717	BLA
Everett	704	n/a
La Conner	708	LAC
Olympia	n/a	OLY
Other Washington[1]	799	n/a
Seattle	715	SEA
Tacoma	n/a	TAC

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Vancouver, which currently has no code assigned, use "899" "Other Canada."

TABLE 14C TO PART 679—AT-SEA OPERATION TYPE CODES TO BE USED AS PORT CODES FOR VESSELS MATCHING THIS TYPE OF OPERATION

Code	Description
FCP	Floating catcher processor
FLD	Floating domestic mothership
IFP	Inshore floating processor – processing in State of Alaska waters only

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)

Name of Gear	Use Alphabetic Code to Complete the Following:			Use Numeric Code to Complete the Following:				
	Alpha Gear Code	NMFS Logbooks & Paper Forms[1]	Electronic WPR & Check-in/ Check-out Code[1]	Numeric Gear Code	Shoreside Electronic Logbook (SPELR)	IFQ Internet & Forms	CR Crab	ADF&G
Diving	OTH	X	X	11	X			X
Dredge	OTH	X	X	22	X			X
Dredge, hydro/mechanical	OTH	X	X	23	X			X
Fish wheel	OTH	X	X	08	X			X
Gillnet, drift	OTH	X	X	03	X			X
Gillnet, herring	OTH	X	X	34	X			X
Gillnet, set	OTH	X	X	04	X			X
Gillnet, sunken	OTH	X	X	41	X			X
Hand line/jig/troll (IFQ name: hand troll)	n/a			05	X	X		X
Handpicked	OTH	X	X	12	X			X
Hatchery	n/a			77	X			X
Hook-and-line	HAL	X	X	61	X	X		X
Jig, mechanical (IFQ name: jigs)	JIG	X	X	26	X	X		X
Net, dip	OTH	X	X	13	X			X
Net, ring	OTH	X	X	10	X			X
Other/specify	OTH	X	X	99	X			X
Pair trawl	(1)			37				X

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)—Continued

Name of Gear	Use Alphabetic Code to Complete the Following:			Use Numeric Code to Complete the Following:				
	Alpha Gear Code	NMFS Logbooks & Paper Forms[1]	Electronic WPR & Check-in/ Check-out Code[1]	Numeric Gear Code	Shoreside Electronic Logbook (SPELR)	IFQ Internet & Forms	CR Crab	ADF&G
Pot	POT	X	X	91	X	X	X	X
Pound	OTH	X	X	21	X			X
Seine, purse	OTH	X	X	01	X			X
Seine, beach	OTH	X	X	02	X			X
Shovel	OTH	X	X	18	X			X
Trap	OTH	X	X	90	X			X
Trawl, beam	(1)			17	X			X
Trawl, double otter	(1)			27	X			X
Trawl, nonpelagic/bottom	NPT	X	X	07	X			X
Trawl, pelagic/midwater	PTR	X	X	47	X			X
Troll, dinglebar	TROLL	X	X	25	X	X		X
Troll, power gurdy	TROLL	X	X	15	X	X		X
Weir	OTH	X	X	14	X			X

[1]For groundfish logbooks, forms, electronic WPR, electronic check-in/out reports: all trawl gear must be reported as either nonpelagic trawl (NPT) or pelagic trawl (PTR).

13. Add part 680 to read as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

Subpart A—General

Sec.
680.1 Purpose and scope.
680.2 Definitions.
680.3 Relation to other laws.
680.4 Permits.
680.5 Recordkeeping and reporting (R&R).
680.6 Crab economic data report (EDR).
680.7 Prohibitions.
680.8 Facilitation of enforcement.
680.9 Penalties.

Subpart B—Management Measures

680.20 Arbitration System.
680.21 Crab fishery cooperatives.
680.22 Sideboard protections for GOA groundfish fisheries.
680.23 Equipment and operational requirements.
680.30 [Reserved]

Subpart C—Individual Fishing Quota Management Measures

680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.
680.41 Transfer of QS and IFQ.
680.42 Limitations on use of QS, PQS, IFQ, and IPQ.
680.43 Determinations and appeals.
680.44 Cost recovery.
Table 1 to Part 680—Crab Rationalized (CR) Fisheries
Table 2 to Part 680—Crab Species Codes
Table 3a to Part 680—Crab Delivery Condition Codes
Table 3b to Part 680—Crab Disposition or Product Codes
Table 4 to Part 680—Crab Process Codes
Table 5 to Part 680—Crab Size
Table 6 to Part 680—Crab Grade
Table 7 to Part 680—Eligibility for Initial Issuance of Crab QS by Crab QS Fishery
Table 8 to Part 680—Initial QS and PQS Pool for Each Crab QS Fishery
Table 9 to Part 680—Eligibility for Initial Issuance of Crab PQS by Crab QS Fishery

Authority: 16 U.S.C. 1862.

Subpart A—General

§ 680.1 Purpose and scope.

Regulations in this part implement policies developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. In addition to part 600 of this chapter, these regulations implement the following:

(a) *Fishery Management Plan (FMP) for Bering Sea and Aleutian Islands King and Tanner Crabs.* Regulations in this part govern commercial fishing for, and processing of, king and Tanner crabs in the Bering Sea and Aleutian Islands Area pursuant to section 313(j) of the Magnuson-Stevens Act, including regulations implementing the Crab Rationalization Program for crab fisheries in the Bering Sea and Aleutian Islands Area, and including regulations superseding State of Alaska regulations applicable to the commercial king and Tanner crab fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area that are determined to be inconsistent with the FMP.

(b) *License Limitation Program.* Commercial fishing for crab species not included in the Crab Rationalization Program for crab fisheries of the Bering Sea and Aleutian Islands Area remains subject to the License Limitation Program for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area under part 679 of this chapter.

§ 680.2 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, in 50 CFR part

600, and § 679.2 of this chapter, the terms used in this part have the following meanings:

Adak community entity means the non-profit entity incorporated under the laws of the state of Alaska that represents the community of Adak and has a board of directors elected by the residents of Adak.

Affiliation means a relationship between two or more entities in which one directly or indirectly owns or controls a 10-percent or greater interest in, or otherwise controls another, or a third entity directly or indirectly owns or controls a 10-percent or greater interest in, or otherwise controls both. For the purpose of this definition, the following terms are further defined:

(1) *Entity.* An entity may be an individual, corporation, association, partnership, joint-stock company, trust, or any other type of legal entity, any receiver, trustee in bankruptcy or similar official or liquidating agent, or any organized group of persons whether incorporated or not, that holds direct or indirect interest in:

(i) QS, PQS, IFQ, or IPQ; or,

(ii) For purposes of the EDR, a vessel or processing plant operating in CR fisheries.

(2) *Indirect interest.* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *Controls a 10-percent or greater interest.* An entity controls a 10-percent or greater interest in a second entity if the first entity:

(i) Controls a 10-percent ownership share of the second entity, or

(ii) Controls 10-percent or more of the voting stock of the second entity.

(4) *Otherwise controls.* An entity otherwise controls another when the first entity has the power through any other means whatsoever to exercise a controlling influence over the management or policies of the other entity, unless such power is solely the result of an official position with such entity.

Arbitration IFQ means:

(1) Class A CVO IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ,

(2) Prior to July 1, 2008, CVC IFQ held by a person who is not a holder of PQS or IPQ and who is not affiliated with any holder of PQS or IPQ that the holder has elected to submit to the Arbitration System, and

(3) After July 1, 2008, Class A CVC IFQ held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ.

(4) IFQ held by a crab harvesting cooperative so long as no member of that crab harvesting cooperative:

(i) Holds PQS or IPQ; or

(ii) Is affiliated with a person who holds PQS or IPQ.

Arbitration QS means:

(1) CVO QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ,

(2) Prior to July 1, 2008, CVC QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ and that the holder has elected to submit to the arbitration process,

(3) After July 1, 2008, CVC QS held by a person who is not a holder of PQS or IPQ and is not affiliated with any holder of PQS or IPQ .

Arbitration System means the system established by the contracts required by § 680.20 including the process by which the Market Report and Non-Binding Price Formula are produced and the Binding Arbitration process.

Assessed value means the most recent value for a vessel and gear provided in a marine survey.

Auditor means an examiner employed by, or under contract to, the data collection agent to verify data submitted in an economic data report.

Blind data means any data collected from the economic data report by the data collection agent that are subsequently amended by removing personal identifiers, including, but not limited to social security numbers, crew permit numbers, names and addresses, Federal fisheries permit numbers, Federal processor permit numbers, Federal tax identification numbers, State of Alaska vessel registration and permit numbers, and by adding in their place a nonspecific identifier.

Box size means the capacity of a crab-packing container in kilograms or pounds.

BSAI crab means those crab species governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

BSAI Crab Capacity Reduction Program means the program authorized by Public Law 106-554, as Amended by Public Law 107-20 and Public Law 107-117.

BSAI crab fisheries means those crab fisheries governed under the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs.

Captain means, for the purposes of the EDR, a vessel operator.

Catcher/Processor (CP) means a vessel that is used for catching crab and processing that crab.

Catcher vessel means a vessel that is used for catching crab and that does not process crab on board.

CDQ community means a community eligible to participate in the Western Alaska Community Development Program under subpart C of 50 CFR part 679.

CDQ group means a CDQ group as that term is defined at 50 CFR 679.2.

Committed IFQ means:

(1) Any Arbitration IFQ for which the holder of such IFQ has agreed or committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ and for which the holder of the IPQ has agreed to accept delivery of that crab, regardless of whether such agreement specifies the price or other terms for delivery or

(2) Any Arbitration IFQ for which, on or after the date which is 25 days prior to the opening of the first crab fishing season in the QS crab fishery for such IFQ, the holder of the IFQ has unilaterally committed to delivery of crab harvested with the IFQ to the holder of previously uncommitted IPQ, regardless of whether the IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

Committed IPQ means any IPQ for which the holder of such IPQ has received a commitment of delivery from a holder of Arbitration IFQ such that the Arbitration IFQ is committed IFQ, regardless of whether the Arbitration IFQ and IPQ holders have reached an agreement that specifies the price or other terms for delivery.

CP standard price means price, expressed in U.S. dollars per raw crab pound, for all CR crab landed by a CP as determined for each crab fishing year by the Regional Administrator and documented in a CP standard price list published by NMFS.

Crab cooperative IFQ means the annual catch limit of IFQ crab that may be harvested by a crab harvesting cooperative that is lawfully allocated a harvest privilege for a specific portion of the TAC of a CR fishery.

Crab cost recovery fee liability means that amount of money, in U.S. dollars, owed to NMFS by a CR allocation holder or RCR as determined by multiplying the appropriate ex-vessel value of the amount of CR crab debited from a CR allocation by the appropriate crab fee percentage.

Crab fee percentage means that positive number no greater than 3 percent determined for each crab fishing year by the Regional Administrator and

used to calculate the crab cost recovery fee liability for a CR allocation holder under the Crab Rationalization Program.

Crab fishing year means the period from July 1 of one calendar year through June 30 of the following calendar year.

Crab grade means a grading system to describe the quality of crab.

(1) Grade 1 means standard or premium quality crab, and

(2) Grade 2 means below standard quality crab.

Crab Individual Fishing Quota (Crab IFQ) means the annual catch limit of a CR fishery that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the TAC of a CR fishery with the following designations or with the designation as a crab IFQ hired master:

(1) *Catcher Vessel Crew IFQ (CVC)* means a permit to annually harvest, but not process, a CR crab on board a vessel.

(2) *Catcher Vessel Owner IFQ (CVO)* means a permit to annually harvest, but not process, a CR crab on board a vessel.

(i) *Class A IFQ* means IFQ that is required to be delivered to a processor holding unused IPQ.

(ii) *Class B IFQ* means IFQ that is not required to be delivered to a processor holding unused IPQ.

(3) *Catcher/Processor Owner IFQ (CPO)* means a permit to annually harvest and process a CR crab with that vessel.

(4) *Catcher/Processor Crew IFQ (CPC)* means a permit to annually harvest and process a CR crab with that vessel.

Crab IFQ hired master means a person who holds a crab IFQ hired master permit issued under § 680.4.

Crab IFQ permit holder means the person identified on an IFQ permit.

Crab LLP license history means for any particular crab LLP license: the total legal landings made on the vessel or vessels that gave rise to that license and any total legal landings made under the authority of that license.

Crab quota share (crab QS) means a permit the face amount of which is used as the basis for the annual calculation and allocation of a person's crab IFQ with the following designations:

(1) *Catcher vessel crew CVC QS* means a permit the face amount of which is used as the basis for the annual calculation and allocation of crab IFQ to qualified persons.

(2) *Catcher vessel owner (CVO) QS* means a permit the face amount of which is used as the basis for the annual calculation and allocation of crab IFQ to qualified persons.

(3) *Catcher/processor owner (CPO) QS* means a permit the face amount of which is used as the basis for the annual calculation and allocation of crab IFQ to qualified persons.

(4) *Catcher/processor crew (CPC) QS* means a permit the face amount of which is used as the basis for the annual calculation and allocation of crab IFQ to qualified persons.

Crab QS fishery means those CR fisheries under Table 1 to this part that require the use of QS and PQS and their resulting IFQ and IPQ to harvest and process IFQ crab.

Crab QS program means the individual fishing quota (IFQ) or individual processing quota (IPQ) programs for CR crab of the BSAI off Alaska and governed by regulations under this part.

Crab QS regional designation means the designation of QS or PQS and the associated IFQ and IPQ subject to regional delivery requirements in this part.

Crab Rationalization (CR) crab means those crab species subject to management under the Crab Rationalization Program described in Table 1 to this part.

Crab Rationalization (CR) Program means the individual fishing quota (IFQ), individual processing quota (IPQ), Community Development Quota (CDQ), and the Adak community allocation programs, including all management, monitoring, and enforcement components, for Bering Sea/Aleutian Islands King and Tanner Crabs in waters off Alaska governed by the regulations of this part.

Crab rationalized (CR) allocation means any allocation of CR crab authorized under the QS/IFQ, PQS/IPQ, CDQ, or the Adak community allocation programs.

Crab rationalized (CR) fisheries means those fisheries defined in Table 1 to part 680.

Crew means:

(1) Any individual, other than the captain or fisheries observers, working on a vessel that is engaged in fishing.

(2) For the purposes of the EDR, each employee on a vessel, excluding the captain, that participated in any CR fishery.

Custom processing means processing of crab undertaken on behalf of another person.

Data collection agent (DCA) means the entity selected by the Regional Administrator to distribute an economic data report (EDR) to a person required to complete it, to receive the completed EDR, to review and verify the accuracy of the data in the EDR, and to provide those data to authorized recipients.

Days at Sea means, for the purposes of the EDR, the number of days spent at sea while fishing for crab, including travel time to and from fishing grounds.

Economic data report (EDR) means the report of cost, labor, earnings, and revenue data for catcher vessels, catcher/processors, shoreside crab processors, and stationary floating crab processors participating in CR fisheries.

Eligible crab community (ECC) means a community in which at least 3 percent of the initial allocation of processor quota share of any crab fishery is allocated. The specific communities include:

(1) CDQ Communities.

(i) Akutan;

(ii) False Pass;

(iii) St. George; and

(iv) St. Paul.

(2) Non-CDQ Communities.

(i) Dutch Harbor;

(ii) Kodiak;

(iii) King Cove;

(iv) Port Moller; and

(v) Adak.

Eligible crab community (ECC) entity means a non-profit organization specified under § 680.41(j)(2) that is designated by an ECC other than Adak to represent it for the purposes of engaging in the right of first refusal of transfer of crab PQS or IPQ outside the ECC under contract provisions set forth under § 680.40(m). For those ECCs that also are CDQ communities, the ECC entity is the CDQ group to which the ECC is a member.

Eligible crab community organization (ECCO) means a non-profit organization that represents at least one ECC as defined in this part and that has been approved by the Regional Administrator to obtain by transfer and hold crab QS and to lease IFQ resulting from the crab QS on behalf of an ECC.

Eligible community resident means, for purposes of the Crab QS program, any individual who:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in the ECC from which the individual requests to lease crab IFQ for at least 12 consecutive months immediately preceding the time when the assertion of residence is made and who is not claiming residency in another community, state, territory, or country; and

(3) Is otherwise eligible to receive crab QS or IFQ by transfer.

Ex-vessel value means:

(1) *For the shoreside processing sector.* The total U.S. dollar amount of all compensation, monetary and non-monetary, including any retro-payments, received by a CR allocation holder for the purchase of any CR crab debited from the CR allocation described in terms of raw crab pounds.

(2) *For the catcher/processor sector.* The total U.S. dollar amount of CR crab

landings as calculated by multiplying the number of raw crab pounds debited from the CR allocation by the appropriate CP standard price determined by the Regional Administrator.

Finished pounds means the total weight of processed product, not including container, in pounds.

IFQ account means the amount of crab IFQ in round pounds that is held by a person at any particular time for a crab QS fishery, sector, region, and class.

IFQ crab means crab species listed in Table 1 to this part subject to management under the crab QS program.

Initial processor quota share pool means the total number of processor quota share units for each crab QS fishery which is the basis of initial processor quota share allocations.

Initial quota share pool means the total number of non-processor quota share units for each CR fishery which is the basis of initial QS allocations.

Individual processor quota (IPQ) means the annual amount of crab that may be processed by a person who is lawfully allocated a processing privilege for a specific portion of the TAC for a CR fishery.

IPQ account means the amount of crab IPQ in round pounds that is held by a person at any particular time for a CR fishery and region.

Landing means the transfer of raw crab harvested by a vessel prior to that crab being reported on a CR crab landing report.

(1) For catcher/processors, the amount of crab retained during a reporting period constitutes a landing.

(2) For catcher vessels, the amount of crab landed from the boat at a single location/time constitutes a landing.

Lease of QS/IFQ or PQS/IPQ means a temporary, annual transfer of crab IFQ or IPQ without the underlying QS or PQS.

Leaseholder means, for purposes of the EDR, a person who:

(1) Is identified as the leaseholder in a written lease of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(2) Pays the expenses of a catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor, or

(3) Claims expenses for the catcher vessel, catcher/processor, shoreside crab processor, or stationary floating crab processor as a business expense on schedule C of his/her Federal income tax return or on a state income tax return.

Mutual Agreement for purposes of the Arbitration System means the consent and agreement of Arbitration Organizations that represent an amount of Arbitration QS equal to more than 50 percent of all the Arbitration QS in a fishery, and an amount of PQS equal to more than 50 percent of all the PQS in a fishery based upon the Annual Arbitration Organization Reports.

Newly constructed vessel means, for the purposes of initial QS issuance, a vessel on which the keel was laid by June 10, 2002.

Official crab rationalization record means the information prepared by the Regional Administrator about the legal landings and legal processing by vessels and persons in the BSAI crab fisheries during the qualifying periods specified at § 680.40.

Processing, or to process means the preparation of, or to prepare, crab to render it suitable for human consumption or storage. This includes, but is not limited to, cooking, canning, butchering, sectioning, freezing or icing.

Processor quota share (PQS) means a permit the face amount of which is used as the basis for the annual calculation and allocation of an IPQ.

Raw crab pounds means the recorded weight of crab in pounds at landing or prior to processing.

Registered crab receiver (RCR) means a person holding an RCR Permit issued by the Regional Administrator.

Right of First Refusal (ROFR) means the contractual provisions set forth under § 680.40(m) between the holders of PQS and ECC entities for the opportunity of ECCs to exercise the right to purchase PQS proposed to be transferred by a holder of PQS in an ECC.

Seafood Marketing Association Assessment (SMAA) means the seafood processing assessment collected by processing firms and buyers from fishery harvesters for the State of Alaska.

Share payment means an amount of monetary compensation (not salary or wages) based on gross or net earnings of a BSAI crab fishing vessel.

Shoreside crab processor means any person or vessel that receives, purchases, or arranges to purchase unprocessed crab, except a catcher/processor or a stationary floating crab processor.

Stationary floating crab processor (SFCP) means a vessel of the United States that remains anchored or otherwise remains stationary while receiving or processing in the waters of the State of Alaska.

Uncommitted IFQ means any Arbitration IFQ that is not Committed IFQ.

Uncommitted IPQ means any IPQ that is not Committed IPQ.

U.S. Citizen means:

(1) Any individual who is a citizen of the United States; or

(2) Any corporation, partnership, association, or other entity that is organized under Federal, state, or local laws of the United States or that may legally operate in the United States.

§ 680.3 Relation to other laws.

(a) *King and Tanner crab.* (1) Additional laws and regulations governing the conservation and management of king crab and Tanner crab in the BSAI area are contained in 50 CFR part 679, Alaska Statutes at A.S. 16, and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39.

(2) The Alaska Administrative Code (at 5 AAC 39.130) governs reporting and permitting requirements using the ADF&G ''Intent to Operate'' registration form and ''Fish Tickets.''

(b) *Sport, personal use, and subsistence.* (1) For State of Alaska statutes and regulations governing sport and personal use crab fishing other than subsistence fishing, see Alaska Statutes, Title 16—Fish and Game; 5 AAC Chapters 47 through 77.

(2) For State of Alaska statutes and regulations governing subsistence fishing for crab, see Alaska Statutes, Title 16—Fish and Game; 5 AAC 02.001 through 02.625.

§ 680.4 Permits.

Persons participating in the CR crab fisheries are required to possess the permits described in this section. Approval of applications under this part may be conditioned on the payment of fees under § 680.44 or the submission of an EDR as described under § 680.6.

(a) *Crab QS Permit.* Crab QS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or to receive QS by transfer under § 680.41. Once issued, a QS permit is valid until modified by transfer under § 680.41; or the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(b) *Crab PQS Permit.* Crab PQS is issued by the Regional Administrator to persons who successfully apply for an initial allocation under § 680.40 or receive PQS by transfer under § 680.41. Once issued, a PQS permit is valid until modified by transfer under § 680.41 or until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(c) *Crab IFQ Permit.* (1) A Crab IFQ Permit authorizes the person identified on the permit to harvest crab in the fishery identified on the permit at any time the fishery is open during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IFQ permit is valid in the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount harvested is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of any Crab IFQ Permit must be carried on board the vessel used by the permitted person at all times that such crab are retained on board.

(3) A Crab IFQ Permit is issued on an annual basis by the Regional Administrator to persons who hold crab QS of the type specified by the QS and who have submitted a complete Annual Application for Crab IFQ/IPQ Permit that is subsequently approved by the Regional Administrator.

(d) *Crab IPQ Permit.* (1) A Crab IPQ Permit authorizes the person identified on the permit to process the IFQ crab identified on the permit, subject to conditions of the permit, until the amount processed is equal to the amount specified on the permit or until the permit is revoked, suspended, or modified under 15 CFR part 904. An IPQ permit is valid in the following circumstances:

(i) Until the end of the crab fishing year for which the permit is issued;

(ii) Until the amount harvested is equal to the amount specified on the permit;

(iii) Until the permit is modified by transfers under § 680.41; or

(iv) Until the permit is revoked, suspended, or modified pursuant to § 679.43 or under 15 CFR part 904.

(2) A legible copy of a Crab IPQ Permit authorizing processing of IFQ crab must be retained on the premises or vessel used by the permitted person to process the IFQ crab at all times that such crab are retained on the premises or vessel.

(3) A Crab IPQ Permit is issued on an annual basis by the Regional Administrator to persons who hold crab processor QS of the type specified by the QS and who have submitted a complete Annual Application for Crab IFQ/IPQ Permit that is subsequently approved by the Regional Administrator. A complete application must be submitted no later than August 1 of the crab fishing year for which a person is applying to receive IFQ or IPQ. If a complete application is not submitted by this date, that person will not receive IFQ or IPQ for that crab fishing year.

(e) *Contents of Annual Application for Crab IFQ/IPQ permit.* A person applying for an Annual Crab IFQ or IPQ permit must include the following information:

(1) *Applicant information.* (i) Applicant's name and NMFS Person ID;

(ii) Applicant's date of birth or, if a non-individual, date of incorporation;

(iii) Applicant's social security number (optional) or tax identification number;

(iv) Applicant's permanent business mailing address and any temporary mailing address the applicant wishes to use;

(v) Applicant's telephone number, facsimile number, and e-mail address;

(2) *Crab IFQ or IPQ Permit identification.* (i) Indicate Crab QS fishery(ies) for which applicant is applying to receive IFQ or IPQ by type;

(ii) Indicate (YES or NO) whether applicant has joined a crab cooperative; if YES, indicate cooperative's name;

(3) *Affidavit of affiliation.* A completed affidavit of affiliation declaring any and all affiliations, as the term ''affiliation'' is defined at § 680.2, with any PQS permit holders. An affidavit of affiliation will include affirmations by the applicant pertaining to relationships that may involve direct or indirect ownership or control of the delivery of IFQ and any supplemental documentation deemed necessary by NMFS to determine whether an affiliation exists;

(i) Whether any entity holding PQS or IPQ owns, directly or indirectly, 10 percent or more of the applicant for IFQ or IPQ;

(ii) Whether any entity that holds PQS or IPQ is affiliated with the applicant, as affiliation is defined in § 680.2;

(iii) If the answer is YES to either paragraph (e)(3)(i) or (e)(3)(ii) of this section, provide a list of all PQS or IPQ holders with which you are affiliated, including: full name, business mailing address, and business telephone number.

(4) *Identification of ownership interests.* If the applicant is not an individual, the names of all persons, to the individual level, holding an ownership interest in the entity and the percentage ownership each person and individual holds in the applicant;

(5) *Certification of applicant.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. Print the name of the applicant. If the application is completed by an authorized representative, proof of authorization must accompany the application.

(6) *EDR submission.* Verification that a current EDR was submitted to the DCA for this applicant, if required under § 680.6.

(f) *Crab IFQ Hired Master Permit.* (1) A Crab IFQ Hired Master Permit authorizes the individual identified on the permit to harvest and land IFQ crab for debit against the specified Crab IFQ Permit until the Crab IFQ Hired Master Permit expires or is revoked, suspended, or modified under 15 CFR part 904 or on request of the Crab IFQ Permit holder.

(2) A legible copy of an IFQ Hired Master Permit must be on board a vessel used to harvest IFQ crab at all times such crab are retained on board. Except as specified in § 680.42, an individual who is issued a Crab IFQ Hired Master Permit must remain aboard the vessel used to harvest IFQ crab with that permit during the crab QS fishing trip and at the landing site until all crab harvested under that permit are offloaded and the landing report for such crab is completed.

(3) *Contents of Application for Crab IFQ Hired Master Permit.* A complete application for a Crab IFQ Hired Master Permit must include the following:

(i) *Purpose of application.* Whether the application is to add or to delete a hired master and identification of crab permit(s) for which this application is submitted;

(ii) *Permit holder information.* (A) Name and NMFS Person ID;

(B) Social security number (optional) or tax ID number;

(C) Permanent business mailing address, and any temporary mailing address the applicant wishes to use, business telephone number, facsimile number, and e-mail address (if available);

(iii) *Identification of vessel upon which crab IFQ will be harvested.* (A) Vessel Name, ADF&G vessel registration number, USCG documentation number;

(B) Indicate whether (YES or NO) the applicant owns at least a 10 percent ownership interest in the vessel the Crab IFQ hired master will use to fish permit holder's IFQ. If YES, provide documentation of applicant's 10-percent ownership interest.

(iv) *Crab IFQ hired master permit holder information.* Complete a separate section for each crab IFQ hired master.

(A) Name and NMFS Person ID;

(B) Social security number (optional);

(C) Date of birth of hired master;

(D) Permanent business mailing address, and any temporary mailing address the applicant wishes to use, business telephone number, facsimile number, and e-mail address (if available).

(v) *Applicant certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then a proof of authorization must accompany the application.

(g) *RCR permit.* (1) An RCR permit is issued on an annual basis. An RCR permit is valid during the crab fishing year for which it is issued until the RCR permit expires or is revoked, suspended, or modified under 15 CFR part 904.

(2) An RCR permit is required for:

(i) Any person who receives unprocessed CR crab from the person(s) who harvested the crab;

(ii) The owner or operator of a vessel that processes CR crab at sea; and

(iii) Any person required to submit a Departure Report under 50 CFR 679.5(l)(4).

(3) *Contents of Application for RCR permit.* A complete application for an RCR permit must include verification that any and all fees owed by the applicant are paid and that a current EDR was submitted to the DCA for this applicant, if required under § 680.6. In addition, the applicant must include the following information:

(i) Indicate whether the application is a renewal of an existing RCR permit, an amendment to an existing RCR permit, or a request for a new RCR permit. If a renewal of or amendment to an existing RCR permit, include the applicant's RCR permit number;

(ii) *Applicant identification.* (A) Name and NMFS Person ID of the applicant;

(B) Applicant's social security number or tax ID number;

(C) Name of contact person for the applicant, if applicant is not an individual;

(D) Permanent business mailing address;

(E) Physical land-based location of facility including street, city, and state, at which the RCR operates. A separate RCR permit is required for each facility;

(F) Physical location of vessel including port name and position coordinates in latitude and longitude to the nearest minute; and

(G) Business telephone number, facsimile number, and e-mail address (if available).

(iii) *Type of activity.* Type of receiving or processing activity whether catcher/processor or shoreside processor;

(iv) *Individual responsible for the submission of the EDR.* (A) Name of the designated representative submitting the EDR required at § 680.6 on behalf of the RCR;

(B) Business mailing address, telephone number, facsimile number, and e-mail address, if different from the RCR's contact information;

(v) *Application certification.* The applicant must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, then a proof of authorization must accompany the application.

(vi) Verification that a current EDR was submitted to the DCA for this applicant, if required under § 680.6.

(h) *Federal Crab Vessel Permit.* The owner of a vessel must have a Federal Crab Vessel Permit on board that vessel when used to fish for CR crab.

(1) A Federal Crab Vessel Permit is issued on an annual basis and is in effect from the date of issuance through the end of the current crab fishing year, unless it is revoked, suspended, or modified under § 600.735 or § 600.740.

(2) A Federal Crab Vessel Permit may not be surrendered at any time during the crab fishing year for which it is issued.

(3) *Contents of Application for Federal Crab Vessel Permit.* A complete application for a Federal Crab Vessel Permit must include verification that a current EDR was submitted to the DCA for this applicant, if required under § 680.6, and the following information:

(i) Indicate whether (YES or NO) the application amends an existing Federal Crab Vessel permit; if YES, indicate permit number of the existing permit;

(ii) *Owner information.* The name(s), permanent business mailing address, social security number (voluntary) or tax ID, business telephone number, business facsimile number, business e-mail address (if available) of all vessel owners, and the name of any person or company (other than the owner) that manages the operation of the vessel;

(iii) *Vessel information.* The vessel's name and home port (city and state), ADF&G processor code, whether a vessel of the United States, USCG documentation number, and ADF&G vessel registration number, vessel's LOA (in feet), registered length (in feet), gross tonnage, net tonnage, and shaft horsepower.

(iv) *Type of vessel operation.* Indicate the type of operations the vessel may conduct during a crab fishing year.

(v) *Designated representative for EDR.* The name, permanent business mailing address, business telephone number, business facsimile number, and business e-mail address of the designated representative.

(vi) *Applicant certification.* The owner(s) of the vessel must sign and date the application certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. Print the applicant name. If the application is completed by an authorized representative, then a proof of authorization must accompany the application.

(4) *Transfer.* A Federal Crab Vessel Permit issued under this paragraph is not transferable or assignable and is valid only for the vessel for which it is issued.

(5) *Amended Application.* The holder of a Federal Crab Vessel Permit must submit an amended application for a Federal Crab Vessel Permit within 60 days of the date of change in:

(i) The ownership of the vessel. A copy of the current USCG documentation for the vessel showing the change in ownership must accompany the amended application.

(ii) The individual responsible for submission of the EDR on behalf of the vessel's owner(s).

(i) *Annual Crab Harvesting Cooperative IFQ Permit.* See § 680.21.

(j) *Issuance.* The Regional Administrator may issue or amend a Crab QS, PQS, IFQ, and IPQ Permit or a Crab IFQ Hired Master Permit annually or at other times as needed under this part.

(k) *Transfer.* Crab QS, PQS, IFQ and IPQ permits and Federal Crab Vessel Permits issued under § 680.4 are not transferable, except as provided under § 680.41. Crab IFQ Hired Master Permits, RCR permits, and crab cooperative permits issued under this section are not transferable.

(l) *Inspection.* The holder of a Crab IFQ Permit, Crab IPQ Permit, or Crab IFQ Hired Master Permit must present a legible copy of the permit on request of any authorized officer or RCR receiving a crab IFQ landing. The operator of a vessel used to fish for BSAI crab must present the original Federal Crab Vessel Permit on request of any authorized officer or RCR receiving a crab IFQ landing. A legible copy of the RCR permit must be present at the location of a crab IFQ landing and must be made available by an individual representing

the RCR for inspection on request of any authorized officer.

§ 680.5 Recordkeeping and reporting (R&R).

(a) *General requirements*—(1) *Recording and reporting crab.* Any CR crab harvested that is retained, landed, received or processed, and crab that cannot be processed, must be recorded and reported.

(2) *Responsibility.* The following participants in the CR crab fisheries are responsible for complying with the applicable R&R requirements provided in paragraph (a)(2)(v) of this section:

(i) The owner and operator of any vessel used to harvest or process CR crab;

(ii) A crab IFQ permit holder or crab IFQ hired master;

(iii) A crab IPQ permit holder or the manager of a crab IPQ permit holder;

(iv) An RCR, including an RCR that receives CR crab for custom processing, and an RCR that is the operator of a catcher vessel;

(v) The persons that are responsible for specific reports, forms, and records are specified in the following table:

Recordkeeping and Reporting Report	Person Responsible	Reference
(A) Product Transfer Report (PTR)	Owner and operator of catcher/processor; Owner and manager of shoreside processor or SFCP; RCR	§ 679.5(g)
(B) U.S. Vessel Activity Report (VAR)	Owner and operator of vessel	§ 679.5(k)
(C) Transhipment Authorization	Owner or operator of catcher/processor; RCR	§ 679.5(l)(3)
(D) IFQ Departure Report	Owner and operator of vessel	§ 679.5(l)(4)
(E) CR crab Landing Report	RCR	§ 680.5(b)
(F) Catcher/processor offload report	RCR	§ 680.5(c)
(G) Eligible Crab Community Organization (ECCO) Annual Report for an Eligible Crab Community (ECC)	ECCO	§ 680.5(d)
(H) RCR Fee Submission Form	RCR	§ 680.5(e)
(I) Crab Economic Data Report (EDR)	Owners or leaseholders of a catcher vessel, catcher/processor, shoreside processor, or SFCP	§ 680.6

(3) *Representative.* Designation of a representative to complete R&R requirements does not relieve the person(s) responsible for compliance or ensuring compliance with this section.

(4) *Submittal of information.* A person must submit to NMFS all information, records, and reports required in this section in English and in a legible, timely, and accurate manner, based on A.l.t.; if handwritten or typed, in indelible ink.

(5) *Alteration of records.* A person may not alter or change any entry or record submitted to NMFS, except that an inaccurate, incomplete, or incorrect entry or record may be corrected after notifying the Regional Administrator at the address and fax number listed on each form.

(6) *Inspection of records.* A person responsible for R&R under paragraph (a)(2)(i) of this section must make available for inspection all reports, forms, scale receipts, and CR crab landing report receipts upon the request of an authorized officer for the time periods indicated in paragraph (a)(7) of this section.

(7) *Retention of records.* A person responsible for R&R under paragraph (a)(2)(i) of this section must retain all reports and receipts as follows:

(i) *On site.* Until the end of the crab fishing year during which the records were made and for as long thereafter as crab or crab products recorded in the records are retained onboard the vessel or onsite at the facility; and

(ii) *For 3 years.* For 3 years after the end of the crab fishing year during which the records were made.

(8) *Landing verification and inspection.* Each CR crab landing and all crab retained on board the vessel making a CR crab landing are subject to verification and inspection by authorized officers.

(9) *Sampling.* Each CR crab landing and all crab retained onboard a vessel making a CR crab landing are subject to sampling by authorized officers and observers.

(b) *Interagency electronic reporting system (IERS).* The RCR must obtain at his or her own expense, hardware, software, and Internet connectivity to support Internet submissions of the CR crab landing report on the IERS.

(1) *IERS application for user ID.* Each RCR and permit holder must submit a data-entry application to the Regional Administrator to provide information needed to process account access into the IERS. The IERS will provide a web page where the applicant will enter information. The IERS will validate that all required information is submitted, that the information entered is in correct format, and also that the requested user ID is not already in use. The IERS will generate a PDF document from the information entered by the applicant. The user will sign and submit the form. An agency user will review the form, confirm that the user should be authorized for the system, and will activate the user on the IERS. The IERS will then send the user an email telling them they can now use their new user ID.

(2) *Contents of the IERS.* The IERS application for user ID must contain the following information:

(i) Date of application;

(ii) Name of applicant (user);

(iii) Processor name and location (city and state);

(iv) Business telephone number, facsimile number, and e-mail address;

(v) Requested user ID;

(vi) Initial password;

(vii) Security question;

(viii) Security answer;
(ix) Processor code(s);
(x) Federal processor permit number(s);
(xi) RCR permit number(s);
(xii) Registered buyer permit number(s);
(xiii) Signature of applicant and date signed. Signature of applicant on form means that RCR or permit holder, as appropriate, agrees to use access privileges to the IERS for purposes of submitting legitimate fishery landing reports and to safeguard the user ID and password to prevent their use by unauthorized persons.
(xiv) Signature of plant manager and date signed. Signature of plant manager ensures that the applicant is authorized to submit landing reports for the processor identification number(s) listed.

(c) *CR crab landings*—(1) *Joint and several liability.* The CR crab permit holder and crab IFQ hired master are required to provide accurate information to the RCR to complete the CR crab landing report.

(2) *Reporting.* Any CR crab not previously reported must be reported by the RCR on any day when CR crab is landed.

(3) *Submission requirement.* An RCR is required to submit a CR crab landing report to the Regional Administrator for each catcher vessel landing.

(4) *Properly debited landing.* All retained crab catch must be weighed, reported and debited from the appropriate IFQ or IPQ account under which the catch was harvested, as appropriate. A properly debited Internet receipt from the IERS or a manual landing report receipt constitutes confirmation that NMFS received the CR crab landing report and that the permit holder's account is properly debited. The receipt must be signed and dated by both the RCR and permit holder.

(5) *Remain at landing site.* Except for landings of CR crab processed at sea, once the landing has commenced, the CR crab permit holder or crab IFQ hired master and the harvesting vessel may not leave the landing facility until the CR crab account is properly debited (as defined in paragraph (c)(4) of this section).

(6) *No movement of CR crab.* The landed crab may not be moved from the facility where it is landed until the CR crab landing report is received by the Regional Administrator, and the IFQ permit holder's or IPQ permit holder's account is properly debited (as defined in paragraph (c)(4) of this section. A properly printed Internet submission receipt, or a receipt from another NMFS-approved reporting method, must be signed by both the RCR and permit holder. This receipt constitutes confirmation that NMFS received the CR crab landing report and that the permit holder's account is properly debited.

(7) *Time limits.* (i) A landing of CR crab may commence at any time.
(ii) For CR crab harvested under a CPO or CPC permit, an RCR must submit a completed CR crab landing report to NMFS within 6 hours of the end of each calendar day (A.l.t.) in which the CR crab was harvested.
(iii) For CR crab harvested on a catcher/processor, the owner or operator is required to submit a daily CR crab landing report to NMFS within 6 hours of the end of each calendar day (A.l.t.) in which CR crab was harvested.

(8) *IERS CR landing report procedure.* (i) An RCR must enter his or her authorized user ID and password to access the IERS. An RCR obtains a user ID by submitting to NMFS an IERS application for user ID (see paragraph (b)(1) of this section).
(ii) The CR crab permit holder must provide his or her name, NMFS person ID number, crab permit holder permit number, and his or her own password or personal identification number (PIN), if required, to enter a CR crab landing report.
(iii) A person who for any reason is unable to properly submit an electronic CR crab landing report or debit a landing as required under paragraph (c) of this section must telephone NMFS at 800-304-4846;
(iv) The address of the NMFS Alaska Region Internet site will be provided to all RCRs receiving crab;

(9) *Contents of CR landing report.* The RCR must accurately enter the following information in a CR crab landing report:
(i) RCR permit number;
(ii) ADF&G processor code of first purchaser;
(iii) CFEC permit number;
(iv) Vessel name;
(v) Valid year of CFEC license;
(vi) Valid year of processor permit;
(vii) CR fishery code from Table 1 to this part;
(viii) Indicate (YES or NO) if a portion of the harvested CR crab was delivered to another processor; if YES, indicate the other processor's name and associated crab fish ticket number;
(ix) Indicate (YES or NO) whether all CR crab are removed from the vessel;
(x) Management program: IFQ, CDQ, or Adak. If CDQ enter CDQ group number;
(xi) ADF&G vessel registration number of the delivering vessel;
(xii) Date fishing began;
(xiii) Date of the CR crab landing;
(xiv) Number of pot lifts in each ADF&G statistical area;
(xv) Number of crew. Enter crew including operator and excluding observer(s);
(xvi) Number of observers;
(xvii) ADF&G fish ticket number;
(xviii) Type of processing operation. If shoreside processor, enter port code from Tables 14a or 14b to part 679. If catcher/processor, enter operation type from Table 14c to part 679.
(xix) ADF&G statistical area of harvest reported by the IFQ permit holder;
(xx) Species code of catch from Table 2 to this part;
(xxi) Delivery-condition code of catch from Table 3 to this part.
(xxii) Number of crabs retained (optional);
(xxiii) Price per pound;
(xxiv) Total value for each species of CR crab reported;
(xxv) Scale weight of live crab in pounds;
(xxvi) Scale weight of deadloss in pounds;
(xxvii) Scale weight of crab retained for personal use in pounds; and
(xxviii) Gear code to describe gear used to harvest CR crab (see Table 15 to 50 CFR part 679).

(10) *Custom processing.* In addition to the information required in paragraph (b)(6) of this section, if custom processing CR crab, enter the name and ADF&G processor code of that other person;

(11) *CDQ and Adak landings.* Instead of the information described in paragraph (b)(6) of this section, an RCR who receives a landing of CR crab harvested under the CDQ or Adak community allocation programs must submit for each landing the following information for each CR fishery and species:
(i) RCR permit number;
(ii) CR fishery code from Table 1 to this part;
(iii) Crab species code from Table 2 to this part;
(iv) Type of crab, either CDQ or Adak community allocation;
(v) If CDQ, enter CDQ group number;
(vi) Crab species amount. Enter the initial accurate scale weight(s) in raw crab pounds landed or processed at sea;
(vii) Price per pound; and
(viii) Total value for each species of CR crab reported (optional).

(12) *Required signature.* After the RCR enters the landing and/or processing data in the Internet submission form(s) or other electronic method approved by NMFS, the RCR and the IFQ permit holder must sign the printed receipts to acknowledge the accuracy of the CR crab landing report.

(d) *Catcher/processor offload report.* The owner or operator of a catcher/processor that harvested CR crab must complete a catcher/processor offload report at the time of offload of CR crab and attach a scale printout showing gross product offload weight.

(1) *Contents of catcher/processor offload report.* The catcher/processor offload report must include the following:

(i) Name, ADF&G processor code, and Federal crab vessel permit number of the catcher/processor;

(ii) Fishing start date and time;

(iii) Fishing stop date and time;

(iv) Product code from Table 3 to this part

(v) Total gross weight of product offload, including glaze and packaging;

(vi) Estimated glaze percentage;

(vii) Case count and average box weight (lb or kg);

(viii) Net weight of crab product (lb or kg);

(ix) Completion date and time of catcher/processor offload;

(x) Location (port) of catcher/processor offload (see Tables 14a and 14b to part 679);

(xi) ADF&G fish ticket number.

(2) The RCR must submit electronically or by fax the catcher/processor offload report and a copy of the scale printout within 2 hours of completion of offload to the Regional Administrator at Facsimile No. (907-586-7465).

(e) *ECCO Annual Report for an ECC.* (1) Annually by June 30, each ECCO must submit a complete annual report on its CR crab activity for the prior crab fishing year for each ECC represented by the ECCO. The ECCO must submit a copy of the annual report to the governing body of each community represented by the ECCO and to the Regional Administrator, NMFS, Alaska Region; P.O. Box 21668; Juneau, AK 99802.

(2) *Contents of ECCO Annual Report.* A complete annual report must include the following information for the IFQ derived from the QS held by the ECCO:

(i) Name, ADF&G vessel registration number, USCG documentation number, length overall (LOA), and home port of each vessel from which the IFQ was harvested;

(ii) Name and business addresses of individuals employed as crew members when fishing the IFQ;

(iii) Criteria used by the ECCO to distribute IFQ leases among eligible community residents;

(iv) Description of efforts made to ensure that IFQ lessees employ crew members who are eligible community residents of the ECC aboard vessels on which IFQ derived from QS held by a ECCO is being fished;

(v) Description of the process used to solicit lease applications from eligible community residents of the ECC on whose behalf the ECCO is holding QS;

(vi) Names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the ECCO;

(vii) Any changes in the bylaws of the ECCO, board of directors, or other key management personnel;

(viii) Copies of minutes, bylaw changes, motions, and other relevant decision making documents from ECCO board meetings.

(f) *RCR fee submission form.* (See § 680.44.)

(1) *Applicability.* An RCR who receives any CR crab per § 680.44 or the RCR's authorized representative must submit a complete RCR Fee Submission Form electronically, by mail, or by facsimile to the Regional Administrator. Mail to: Regional Administrator, NMFS, Alaska Region; Attn: Operations, Management, & Information Division (OMI); P.O. Box 21668; Juneau, AK 99802-1668; Facsimile No. (907-586-7354). RCRs may also submit an RCR Fee Submission Form electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at *http://www.fakr.noaa.gov/ram.*

(2) *Due date and submittal.* The reporting period of the RCR Fee Submission Form shall be the crab fishing year. An RCR must submit any crab cost recovery fee liability payment(s) and the RCR Fee Submission Form to NMFS electronically or to the address provided at paragraph (e)(1) of this section not later than July 31 following the crab fishing year in which the payment for CR crab landings were made.

(3) *Required information.* An RCR must accurately record on the RCR Fee Submission Form the following information:

(i) *Identification of the RCR.* (A) Printed full name and NMFS person ID of RCR;

(B) Social security number or Federal tax identification number;

(C) Permanent or temporary business mailing address;

(D) Business telephone number, business facsimile number, and business e-mail address (if available).

(E) *Certification of applicant.* Printed name and signature of applicant and date signed. If authorized representative, attach authorization to application.

(ii) *Method of Payment (see § 680.44 (a)(4)).* The RCR must indicate the form of payment for fees including personal check, bank certified check (cashier's check), money order, or credit card. If credit card, the RCR must submit the card number, expiration date, amount of payment, name as printed on the card, signature of the card holder, and date of signature.

(g) *Product transfer report.* (See § 679.5(g).)

(h) *U.S. Vessel activity report (VAR).* (See § 679.5(k).)

(i) *Transshipment authorization.* (See § 679.5(l)(3).)

(j) *IFQ departure report.* (See § 679.5(l)(4).)

(k) Catcher vessel longline and pot daily fishing logbook (DFL) and catcher/processor daily cumulative production logbook (DCPL). (See § 679.5 (c)).

§ 680.6 Crab economic data report (EDR).

(a) *Catcher vessel historical EDR.* (1) NMFS will select catcher vessels from a list of known catcher vessels that made at least one landing from fisheries listed in Table 1 to this part between January 1, 1998, through December 31, 2004, and will publish a **Federal Register** notice identifying vessels whose existing or former owners and leaseholders are required to submit an EDR, as follows:

(i) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004 and have qualified for or hold QS, PQS, IFQ, or IPQ under this Program.

(ii) Owners or leaseholders of catcher vessels that participated in the BSAI crab fisheries between January 1, 1998, through December 31, 2004, that did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* The owner or leaseholder of the identified vessels must submit the historical EDR to the DCA 60 days after the **Federal Register** notice notifying owners or leaseholders to the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher vessel historical EDR and certification page are specified in the following table:

If you were ...	And ...	You must complete and submit ...
(i) The catcher vessel owner as described in paragraph (a)(1) of this section	(A) You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.
	(B) No one harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	EDR certification pages.
	(C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	(*1*) EDR certification pages. (*2*) Provide the name, address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.
	(D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section and were notified by NMFS to submit an EDR for selected years.	(*1*) Entire EDR for each year that BSAI crab was harvested. (*2*) Provide the name, address, and telephone number of the person to whom you leased the vessel during the NMFS-selected years.
(ii) The leaseholder as described in paragraph (a)(1) of this section	You harvested BSAI crab in the vessel described at paragraph (a)(4)(ii)(B) of this section vessel and were notified by NMFS to submit an EDR for selected years.	Entire EDR for each year that BSAI crab was harvested.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (a)(3) of this section).

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for which the vessel is selected;

(B) *Catcher vessel information:* Vessel name, company name, USCG documentation number, ADF&G vessel registration number, Federal crab vessel permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information:* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner or leaseholder;

(*2*) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR:

(i) *Crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code (see Table 1 to this part), ADF&G Fish ticket number(s), number of days at sea, average crew size, and number of pots lost (if applicable).

(ii) *Crab sales gross revenue.* CR fishery code, pounds sold, and gross revenue.

(iii) *CDQ crab lease costs.* CR fishery code, pounds leased, and total cost of lease.

(iv) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(v) *BSAI crab crew residence information.* For each employee in the calendar year being reported, record location of residence and number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* For the fishing year being reported, record insurance premiums (for hull, property and indemnity, and pollution), insurance deductible fees, quantity and cost of pots purchased, line, and other crab fishing gear purchases, pounds and cost of bait by species, gallons and cost of fuel, cost of lubrication and hydraulic fluids, cost of food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, and other crab-specific costs.

(vii) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an ''X'' in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: improvements for vessel, gear and equipment; repair and maintenance (R&M) expenses for vessel, gear and equipment; other vessel overhead expenses; and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate whether the following expenses were deducted (by circling 1) or not deducted (by circling 2) from the total revenue before calculating the crew share: Fuel and lubrication, food and

provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and crew share (including captain).

(ix) *Prorating information.* Enter the totals for the vessel for the calendar year in all fisheries for each of the following categories: days at sea, revenue, pounds retained, and labor costs.

(b) *Catcher vessel annual EDR*—(1) *Requirement.* On or before May 1 of each year, beginning with Year 2005, any owner or leaseholder of a catcher vessel that landed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year.

(2) *Instructions.* Instructions for submitting a catcher vessel annual EDR and certification page are specified in the following table:

If you are ...	And ...	You must complete and submit ...
(i) The catcher vessel owner	(A) You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	Entire EDR
	(B) No one harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this year.	EDR certification pages
	(C) You leased the vessel to another party, and harvested no BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	(*1*) EDR certification pages (*2*) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.
	(D) You leased the vessel for a portion of the year to another party, but harvested some BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section during this calendar year.	(*1*) Entire EDR (*2*) Provide the name, address, and telephone number of the person to whom you leased the vessel during this calendar year.
(ii) The leaseholder	You harvested BSAI crab in the vessel described at paragraph (b)(3)(ii)(B) of this section vessel during this calendar year.	Entire EDR

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of reporting year;

(B) *Catcher vessel information.* Catcher vessel name, company name, USCG documentation number, ADF&G vessel registration number, Federal Crab Vessel Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment;

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner or leaseholder;

(*2*) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(*4*) EDR. The owner or leaseholder must record the following information on an EDR.

(i) *Season interval chart.* Complete a season interval chart by entering the following information: calendar year, season interval number, CR fishery code(s) (see Table 1 to this part), ADF&G fish ticket number, number of days at sea, average crew size, and number of pots lost (if applicable).

(ii) *Crab sales gross revenue.* Season interval number, species code, pounds sold, and gross revenue;

(iii) *CDQ and IFQ crab leases.* Season interval number, species code, pounds leased, and total cost of leasing the quota;

(iv) *Crab harvesting labor costs*—(A) *Standard crew payment (shares) for non-IFQ crew and/or captains.* Season interval number, number of crew earning shares, crew share payment, and captain's share payment;

(B) *Payments to IFQ-holding crew and/or captains.* Season interval number, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares (for all fish caught, and residual profit on their IFQ), pounds of IFQ contributed by captain, and payment to captain for IFQ and shares (for all fish caught, and residual profit on their IFQ);

(v) *BSAI crab crew identification*—(A) *Employees with crew license.* Alaska Commercial Crew license number or the State of Alaska Commercial Fisheries Entry Commission (CFEC) gear operator permit number, and location of crew residence (city and state);

(B) *Employees without crew license.* Location of residence and the number of employees that reside in each location as follows:

(*1*) If Alaska, enter primary city of residence;

(*2*) If state other than Alaska, enter primary state of residence; or

(*3*) If country other than United States, enter primary country of residence.

(vi) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution), insurance deductible fees, pots purchased, line and other gear purchases, pounds and cost of bait by species, gallons and cost of fuel, lubrication and hydraulic fluids, food and provisions for crew, other crew costs, freight costs of supplies shipped to you for the vessel, freight costs for landed crab, storage, observer costs, fish taxes, other crab-specific costs (specify), and fishing cooperative costs.

(vii) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an ''X'' in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: improvements in vessel, gear, and equipment (city and state where purchased); R&M for vessel gear, and equipment (city and state where repairs were made); other vessel overhead expenses; and other vessel-specific costs (specify).

(viii) *Labor payment details.* (A) Indicate whether the following expenses were deducted from the total revenue before calculating the crew share: Fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify);

(B) Indicate percentage of the net share that is applied to boat share and crew share (including captain).

(ix) *Prorating information.* Enter the totals for the vessel, for the calendar year in all fisheries for each of the following categories: days at sea, revenue, pounds retained, and labor costs.

(c) *Catcher/processor historical EDR*—(1) *Requirement.* Any owner or leaseholder of a catcher/processor that harvested or processed BSAI crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Qualified for or hold QS, PQS, IFQ, or IPQ under this program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the catcher/processor described in paragraph (c)(4)(ii)(B) of this section must submit the historical EDR to the DCA by [DATE 60 DAYS AFTER THE DATE OF EFFECTIVENESS OF THE FINAL RULE] at the address provided on the form.

(3) *Instructions.* Instructions for submitting a catcher/processor historical EDR and certification page are specified in the following table:

If you were ...	And ...	You must complete and submit ...
(i) The catcher/processor owner described in paragraph (c)(1) of this section	(A) You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.
	(B) No one processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your catcher/processor to another party, and processed no BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) EDR certification pages. (*2*) Provide the name, address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.
	(D) You leased your catcher/processor for a portion of the year to another party, but processed some BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during1998, 2001, or 2004.	(*1*) Entire EDR for each year that BSAI crab was processed. (*2*) Provide the name, address, and telephone number of the person to whom you leased the catcher/processor during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (c)(1) of this section	You processed BSAI crab in the vessel described at paragraph (c)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification page either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages;

(A) *Calendar year of EDR.* Calendar year corresponding to 1998, 2001, or 2004;

(B) *Catcher/processor information.* Catcher/processor name, company name, USCG documentation number, ADF&G processor code, Crab Processor Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner or leaseholder;

(*2*) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab activity chart.* Complete a crab activity chart by entering the following information: CR fishery code (see Table 1 to this part); dates covered (beginning and ending day, month and year); number of days at sea; number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* CR fishery code, raw crab pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (yes or no).

(iii) *Crab harvesting labor costs.* CR fishery code, number of crew earning shares, total crew share payment, and captain's share payment.

(iv) *Crab processing labor costs.* CR fishery code, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew residence identification.* For each employee in the calendar year being reported, record location of residence and number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence;

(B) If state other than Alaska, enter primary state of residence;

(C) If country other than United States, enter primary country of residence;

(vi) *BSAI crab custom processing done for you.* CR fishery code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw pounds purchased, and gross payment.

(viii) *CDQ Crab Costs (leases).* CR fishery code, pounds leased, and total cost.

(ix) *Annual BSAI crab sales.* Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnify, and pollution); insurance deductible fees; total of fisheries taxes which includes the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased (quantity and cost); line and other crab fishing gear purchases; bait (by each CR fishery code, species, pounds and cost); fuel (by CR fishery code, gallons and cost); lubrication and hydraulic fluids; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies; re-packing costs, broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; waste disposal; and other crab-specific costs (specify).

(xi) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an ''X'' in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: improvements in vessel, gear, and equipment; R&M for vessel gear, and equipment; number of employees and salaries for foremen, managers, and other employees not included in direct labor costs; other vessel overhead expenses; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* CR Fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(xiii) *Prorating information.* Enter the totals for the year for the vessel in all fisheries for each of the following categories: processing days, days at sea, revenue, pounds processed, pounds retained, and labor costs.

(xiv) *Labor payment details.* (A) Indicate whether the following expenses were deducted (by circling 1) or not deducted (by circling 2) from the total revenue before calculating the crew share: Fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that was applied to boat share and harvesting crew share (including captain).

(C) If processing workers were paid on a share system, indicate percentage of the net share (if applicable) that was applied to processing workers based on product value or net share.

(d) *Catcher/processor annual EDR*—(1) *Requirement.* On or before May 1 of each year, beginning with Year 2005, any owner or leaseholder of a catcher/processor that landed or processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year.

(2) *Instructions.* Instructions for submitting a catcher/processor annual EDR and certification page are specified in the following table:

If you are ...	And ...	You must complete and submit ...
(i) The catcher/processor owner	(A) You processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	Entire EDR
	(B) No one processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	EDR certification pages
	(C) You leased all of your IPQ to another party, and processed no BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	(*1*) EDR certification pages (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.

If you are ...	And ...	You must complete and submit ...
	(D) You leased portions of your IPQ to another party, but processed some BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	(*1*) Entire EDR (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (d)(1) of this section	You processed BSAI crab in the vessel described at paragraph (d)(3)(ii)(B) of this section during this calendar year.	Entire EDR

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Catcher/processor information.* Catcher/processor name, company name, USCG documentation number, ADF&G processor code, Crab Processor Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Owner name, title, business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner or leaseholder;

(*2*) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(*4*) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *Season interval chart.* Complete a season interval chart by entering the following information: Calendar year, season interval number, CR fishery code (see Table 1 to this part), dates covered, number of days at sea, number of crab processing days, and number of pots lost (if applicable).

(ii) *BSAI crab production.* Season interval number, species code, raw pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(iii) *Harvesting labor costs.* Record the following information for crew if they harvest crab only, or harvest and process crab.

(A) *Standard crew payment (shares) for non-IFQ contributing crew and/or captains.* Season interval number, number of crew earning shares, crew share payment, and captain's share payment.

(B) *Payments to IFQ-holding crew and/or captains.* Season interval number, number of crew contributing IFQ shares, pounds of IFQ contributed by crew, total payment to crew for IFQ and shares, pounds of IFQ contributed by captain, and payment to captain for IFQ and shares.

(iv) *Crab processing labor costs.* Season interval number, number of crew with pay determined by processing work, average number of crab processing positions, and total processing labor payment.

(v) *BSAI crab crew identification*—(A) *Employees with crew license.* Alaska Commercial Crew license number or the CFEC gear operator permit number, and location of crew residence (city and state).

(B) *Employees without crew license.* Location of residence and the number of employees that reside in each location as follows:

(*1*) If Alaska, enter primary city of residence.

(*2*) If state other than Alaska, enter primary state of residence, or

(*3*) If country other than United States, enter primary country of residence.

(vi) *BSAI crab custom processing done for you.* Season interval number, species code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(vii) *Raw crab purchases from delivering vessels.* Season interval number, species code, crab size, crab grade, raw pounds purchased, and gross payment.

(viii) *CDQ and IFQ crab costs (leases).* For CDQ and IFQ leases enter season interval number, species code, pounds leased, and total cost.

(ix) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(x) *BSAI crab-specific vessel costs.* Insurance premiums (hull, property and indemnity, and pollution); insurance deductible fees; total of fisheries taxes which include the Alaska fisheries business tax, Alaska fisheries resource landing tax, SMAA taxes, and other local sales tax on raw fish; pots purchased by city and state (quantity and cost); line and other crab fishing gear purchases by city, state, and cost; bait (by each season interval number by city and state, species, pounds, and cost); fuel in gallons and cost by season interval number, city and state; lubrication and hydraulic fluids by city and state; food and provisions for crew; other crew costs; processing and packaging materials, equipment and supplies by city and state; re-packing costs; broker fees and promotions for BSAI crab sales (by season interval number); observer costs (by season interval number); freight costs for products to the vessel; freight and handling costs for processed crab products from the vessel; product storage; waste disposal; other crab-specific costs (specify), and fishing cooperative costs.

(xi) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an ''X'' in the PRORATE OVER

ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: improvements for vessel, gear, and equipment (by city and state); R&M for vessel, gear, and equipment (by city and state); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other vessel overhead expenses; and other vessel-specific costs (specify).

(xii) *BSAI crab custom processing performed for others.* Season interval number, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(xiii) *Prorating information.* Enter the totals for the year for the vessel in all fisheries for each of the following categories: processing days, days at sea, revenue, pounds processed, pounds retained, and labor costs.

(xiv) *Labor payment details.* (A) Indicate whether the following expenses were deducted (by circling 1) or not deducted (by circling 2) from the total revenue before calculating the crew share: Fuel and lubrication, food and provisions, bait, fish tax, observer costs, CDQ fish, IFQ leases, freight, gear loss, and other (specify).

(B) Indicate percentage of the net share that is applied to boat share and harvesting crew share (including captain).

(C) If processing workers are paid on a share system, indicate percentage of the net share (if applicable) that is applied to processing workers based on product value or net share.

(e) *Stationary floating crab processor (SFCP) historical EDR*—(1) *Requirement.* Any owner or leaseholder of an SFCP that processed CR fisheries crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Qualified for or hold QS, PQS, IFQ, or IPQ under this program;

(ii) Did not qualify for and receive QS, PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the SFCP described in paragraph (e)(4)(ii)(B) of this section must submit the historical EDR to the DCA by [DATE 60 DAYS AFTER THE DATE OF EFFECTIVENESS OF THE FINAL RULE] at the address provided on the form.

(3) *Instructions.* Instructions for submitting an SFCP historical EDR and certification page are specified in the following table:

If you were ...	And ...	You must complete and submit ...
(i) The SFCP owner described in paragraph (e)(1) of this section	(A) You processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.
	(B) No one processed BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your SFCP to another party, and processed no BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) EDR certification pages (*2*) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.
	(D) You leased your SFCP a portion of the time to another party, but processed some BSAI crab in the SFCP described at paragraph (e)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) Entire EDR for each year that BSAI crab was processed. (*2*) Provide the name, address, and telephone number of the person to whom you leased the SFCP during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (e)(1) of this section	You operated the SFCP described at paragraph (e)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed.

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages, for each year of 1998, 2001, or 2004 that this applies.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *SFCP information.* SFCP name, company name, USCG documentation number, ADF&G processor code, Crab Processor Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative, who is an individual for responding to questions on the EDR, and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing this report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct

box. The information provided above does not need to be repeated here; and

(*3*) Name of person, title, business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab production.* CR fishery code (see Table 1 to this part); number of crab processing days, dates covered (beginning and ending day, month, and year); raw pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab positions, total man-hours, and total labor payment.

(iii) *BSAI Crab crew residence identification.* Location of residence and the number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* Record the following information on crab sales to affiliated entities and to unaffiliated entities: species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(vii) *BSAI crab-specific vessel data.* Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment, and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by CR fishery code); observer costs (by CR fishery code); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; waste disposal; and other crab-specific costs (specify).

(viii) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an ''X'' in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication and hydraulic fluids; improvements for vessel and equipment; R&M for vessel and equipment; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other vessel overhead expenses; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* CR fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Prorating information.* Enter the totals for the calendar year for the vessel in all fisheries for each of the following categories: processing days, revenue, pounds processed, and processing labor costs.

(f) *Stationary floating crab processor (SFCP) annual EDR*—(1) *Requirement.* On or before May 1 of each year, beginning with Year 2005, any owner or leaseholder of an SFCP that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year.

(2) *Instructions.* Instructions for submitting an SFCP annual EDR and certification page are specified in the following table:

If you are ...	And ...	You must complete and submit ...
(i) The SFCP owner	(A) You processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	Entire EDR
	(B) No one processed BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	EDR certification pages
	(C) You leased all of your IPQ to another party and processed no BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	(*1*) EDR certification pages (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
	(D) You leased a portion of your IPQ to another party, but processed some BSAI crab in the SFCP described at paragraph (f)(3)(ii)(B) of this section during this calendar year.	(*1*) Entire EDR (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (f)(1) of this section	You operated the SFCP described at paragraph (f)(3)(ii)(B) of this section and processed some BSAI crab during this calendar year.	Entire EDR

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages (see paragraph (e)(2) of this section).

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year of the reporting year;

(B) *SFCP information.* SFCP name, company name, USCG documentation number, ADF&G processor code, Crab Processor Permit number, crab LLP license number(s), estimated market value of vessel and equipment, and replacement value of vessel and equipment.

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available).

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here; and

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(*4*) EDR. The owner or leaseholder must record the following information on an EDR.

(i) *Season interval chart.* Complete a season interval chart by entering the following information: season interval number, number of crab processing days, dates covered (beginning and ending day, month, and year), species code, raw pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* Season interval number, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence identification.* Location of residence and the number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* Season interval number, species code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* Season interval number, species code, crab size, crab grade, raw pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(vii) *BSAI crab-specific vessel costs.* Total of fisheries taxes which includes the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales (by season interval number); observer costs (by season interval number); freight costs for supplies to the vessel; freight and handling costs for processed crab products from the vessel; product storage; waste disposal; and other crab-specific costs (specify).

(viii) *Vessel-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an ''X'' in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication and hydraulic fluids; improvements in vessel, gear and equipment (by city and state); R&M for vessel, gear and equipment (by city and state); number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other vessel overhead expenses; and other vessel-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* Season interval number, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Prorating information.* Enter the totals for the year for the vessel in all fisheries for each of the following categories: processing days, revenue, pounds processed, and processing labor costs.

(g) *Shoreside processor historical EDR*—(1) *Requirement.* Any owner or leaseholder of a shoreside processor who processed CR fisheries crab in the calendar years 1998, 2001, or 2004 must submit to the DCA, at the address provided on the form, an EDR for historical data for each of the specified calendar years, if they:

(i) Qualified for or hold QS, PQS, IFQ, or IPQ under this Program;

(ii) Did not qualify for and receive QS,PQS, IFQ, or IPQ, but are participants at any time since January 23, 2004, in the BSAI crab fisheries.

(2) *Time limit.* Any owner or leaseholder of the shoreside processor described in paragraph (g)(4)(ii)(B) of this section must submit the historical EDR to the DCA by [DATE 60 DAYS AFTER THE DATE OF EFFECTIVENESS OF THE FINAL RULE] at the address provided on the form.

(3) *Instructions.* Instructions for submitting a shoreside processor historical EDR and certification page are specified in the following table:

If you were ...	And ...	You must complete and submit ...
(i) The shoreside processor owner described in paragraph (g)(1) of this section	(A) You processed BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed
	(B) No one processed BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	EDR certification pages for each year that no one processed BSAI crab.
	(C) You leased your shoreside processor to another party, and processed no BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) EDR certification pages (*2*) Provide the name, address, and telephone number of the person to whom you leased the shoreside processor during 1998, 2001, or 2004.

If you were ...	And ...	You must complete and submit ...
	(D) You leased your shoreside processor for a portion of the time to another party, but processed some BSAI crab in the plant described at paragraph (g)(4)(ii)(B) of this section during 1998, 2001, or 2004.	(*1*) Entire EDR for each year that BSAI crab was processed. (*2*) Provide the name, address, and telephone number of the person to whom you leased the shoreside processor during 1998, 2001, or 2004.
(ii) The leaseholder described in paragraph (g)(1) of this section	You operated the plant described at paragraph (g)(4)(ii)(B) of this section and processed some BSAI crab during 1998, 2001, or 2004.	Entire EDR for each year that BSAI crab was processed

(4) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* If the owner or leaseholder did not process BSAI crab in 1998, 2001, or 2004, he or she must submit the completed EDR certification pages only, and must attest that he or she meets the conditions exempting him or her from submitting the EDR, by signing and dating the certification pages for each year of 1998, 2001, or 2004 that this applies;

(ii) *Required information.* The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar years corresponding to 1998, 2001, or 2004;

(B) *Shoreside processor information.* Shoreside processor name, company name, crab processor permit number, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code), borough assessed value of plant and equipment, year assessed, and estimated value of plant and equipment;

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing the report, check the correct box. The information provided above does not need to be repeated here.

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(5) *EDR.* The owner or leaseholder must record the following information on an EDR.

(i) *BSAI crab production.* CR fishery code (see Table 1 to this part); number of crab processing days, dates covered (beginning and ending day, month, and year); raw pounds purchased, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* CR fishery code, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence identification.* Location of residence and the number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* CR fishery code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* CR fishery code, crab size, crab grade, raw pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(vii) *BSAI crab-specific plant costs.* Total fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs, broker fees and promotions for BSAI crab sales by CR fishery code; observer costs by CR fishery code; freight costs for supplies to the plant; freight and handling costs for processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an ''X'' in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities.: fuel, electricity, lubrication, and hydraulic fluids; improvements in plant, and equipment; R&M for existing plant and equipment; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other plant overhead expenses; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing done for others.* CR fishery code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Prorating information.* Enter the totals for this plant, for the year in all fisheries for each of the following categories: processing days, revenue, pounds processed, and processing labor costs.

(h) *Shoreside processor annual EDR*—(1) *Requirement.* On or before May 1 of each year, beginning with Year 2005, any owner or leaseholder of a shoreside processor that processed crab from a CR fishery must submit to the DCA, at the address provided on the form, an EDR for annual data for the previous year.

(2) *Instructions.* Instructions for submitting a shoreside processor annual EDR and certification page are specified in the following table:

If you are ...	And ...	You must complete and submit ...
(i) The shoreside processor owner	(A) You processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	Entire EDR
	(B) No one processed BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	EDR certification pages
	(C) You leased all of your IPQ to another party, and processed no BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	(*1*) EDR certification pages (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
	(D) You leased portions of your IPQ to another party, but processed some BSAI crab in the plant described at paragraph (h)(3)(ii)(B) of this section during this calendar year.	(*1*) Entire EDR (*2*) Provide the name, address, and telephone number of the person to whom you leased the IPQ during this calendar year.
(ii) The leaseholder described in paragraph (h)(1) of this section	You operated the plant described at paragraph (h)(3)(ii)(B) of this section and processed some BSAI crab during this calendar year.	Entire EDR

(3) *EDR certification pages.* (i) The owner or leaseholder must submit the EDR certification pages either:

(A) *As part of the entire EDR.* The owner or leaseholder must submit the completed EDR certification pages as part of the entire EDR and must attest to the accuracy and completion of the EDR by signing and dating the certification pages; or

(B) *As a separate document.* The owner or leaseholder must submit the completed EDR certification pages only, and must attest that they meet the conditions exempting them from submitting the EDR, by signing and dating the certification pages.

(ii) The owner or leaseholder must submit the following information on the certification pages:

(A) *Calendar year of EDR.* Calendar year for the reporting year;

(B) *Shoreside processor information.* Shoreside processor name, company name, crab processor permit number, ADF&G processor code, physical location of land-based plant (street address, city, state, zip code), borough assessed value of plant and equipment, estimated value of plant and equipment, and year assessed.

(C) *Owner information.* Owner name, title, and business telephone number, facsimile number, and e-mail address (if available);

(D) *Designated representative.* Any owner or leaseholder may appoint a designated representative who is an individual for responding to questions on the EDR and must ensure that the designated representative complies with the regulations in this part. The designated representative is the primary contact person for the DCA on issues relating to data required in the EDR.

(E) *Person completing the report.* (*1*) Indicate whether the person completing this report is the owner, leaseholder, or designated representative;

(*2*) If the owner is the person completing this report, check the correct box. The information provided above does not need to be repeated here.

(*3*) Name of person, title, and business telephone number, facsimile number, and e-mail address (if available).

(*4*) EDR. The owner or leaseholder must record the following information on an EDR.

(i) *Season interval chart.* Complete a season interval chart by entering the following information: season interval number, number of crab processing days, dates covered (beginning and ending day, month, and year), species code, raw pounds, product code, process code, crab size, crab grade, box size, finished pounds, and whether custom processed (Yes or No).

(ii) *Crab processing labor costs.* Season interval number, average number of crab processing positions, total man-hours, and total processing labor payment.

(iii) *BSAI Crab crew residence identification.* Location of residence and the number of employees that reside in each location as follows:

(A) If Alaska, enter primary city of residence.

(B) If state other than Alaska, enter primary state of residence.

(C) If country other than United States, enter primary country of residence.

(iv) *BSAI crab custom processing done for you.* Season interval number, species code, raw pounds supplied to custom processors, raw pounds purchased from custom processors, product code, process code, crab size, crab grade, box size, finished pounds, and processing fee.

(v) *Raw crab purchases from delivering vessels.* Season interval number, species code, crab size, crab grade, raw pounds purchased, and gross payment.

(vi) *Annual BSAI crab sales.* For affiliated entities and unaffiliated entities enter species code, product code, process code, crab size, crab grade, box size, finished pounds, and gross revenue.

(vii) *BSAI crab-specific plant costs.* Total of fisheries taxes which include the Alaska fisheries business tax, SMAA taxes, and other local sales tax on raw fish; processing and packaging materials, equipment and supplies by city and state; food and provisions; other costs for direct crab labor; insurance deductible fees; re-packing costs; broker fees and promotions for BSAI crab sales by season interval number; observer costs by season interval number; freight costs for supplies to the plant; freight and handling costs for processed crab products from the plant; product storage; water, sewer, and waste disposal; and other crab specific costs (specify).

(viii) *Plant-specific costs.* Record the total for each category. If the reported total expense should not be attributed solely to BSAI crab operations, please place an ''X'' in the PRORATE OVER ALL ACTIVITIES column. The analyst will prorate this amount over all vessel activities: fuel, electricity, lubrication,

and hydraulic fluids; improvements in plant, and equipment by city and state; R&M for existing plant and equipment by city and state; number of employees and salaries for foremen, managers and other employees not included in direct labor costs; other plant overhead expenses; and other plant-specific costs (specify).

(ix) *BSAI crab custom processing performed for others.* Season interval number, species code, product code, process code, whether OUR CRAB or THEIR CRAB, and processing revenue.

(x) *Prorating information.* Enter the totals for the year for this plant in all fisheries for each of the following categories: processing days, revenue, pounds processed, and processing labor costs.

(i) *Verification of data.* (1) The DCA shall conduct verification of information with the owner or leaseholder.

(2) The owner or leaseholder must respond to inquiries by the DCA within 15 days of the date of issuance of the inquiry.

(3) The owner or leaseholder must provide copies of additional data to facilitate verification by the DCA. The DCA auditor may review and request copies of additional data provided by the owner or leaseholder, including but not limited to: previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the data.

(j) The DCA is authorized to request voluntary submission of economic data specified herein from persons who are not required to submit an EDR under this paragraph (j).

§ 680.7 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) *Receiving and processing CR crab.* (1) Process any CR crab that has not been weighed by an RCR on a scale approved by the State in which the RCR is located and that meets the requirements described in § 680.23(f); or onboard a catcher/processor on a scale approved by NMFS as described in § 680.23(e).

(2) Receive CR crab harvested under an IFQ permit in any region other than the region for which the IFQ permit is designated.

(3) Use IPQ on board a vessel outside of the territorial sea or internal waters of the State of Alaska.

(4) Use IPQ in any region other than the region for which the IPQ is designated.

(5) Receive any crab harvested under a Class A IFQ permit in excess of the total amount of unused IPQ held by the RCR.

(6) Receive crab harvested under a Class B IFQ permit on a vessel if that vessel was used to harvest and process any crab in that crab QS fishery during the same crab fishing year.

(7) Receive PQS or IPQ by transfer if you hold Class B IFQ.

(b) *Landing CR crab.* (1) Remove retained and unprocessed CR crab from a vessel at any location other than to an RCR operating under an approved catch monitoring plan as described in § 680.23(g).

(2) Remove any CR crab processed at sea from any vessel before completing a landing report, as defined at § 680.5(f), for all such CR crab onboard.

(3) Resume fishing for CR crab or take CR crab on board a vessel once a landing has commenced and until all CR crab are landed.

(4) Fail to remove all processed crab harvested under a CPO or a CPC IFQ permit to an onshore location within the United States, accessible by road or regularly scheduled air service, and to weigh that crab product on a scale approved by the State in which the crab is weighed.

(5) Fail to remain at a landing site when IFQ crab is being landed and until such time as the landing report for that landing is complete.

(6) Make an IFQ crab landing except by an individual who holds either an IFQ crab permit or a Crab IFQ Hired Master Permit issued under § 680.4 in his or her name.

(7) Fish for or land BSAI crab without the original Federal Crab Vessel Permit issued to a vessel on board that vessel.

(8) Make an IFQ crab landing without the following on board: a copy of the IFQ crab permit to be debited for the landing; and, if applicable, a copy of the Crab IFQ Hired Master Permit issued under § 680.4 in the name of the person making the landing.

(9) For a Crab IFQ Hired Master to make an IFQ crab landing on any vessel other than the vessel named on the Crab IFQ Hired Master Permit.

(c) *Harvest crab.* (1) Harvest any BSAI crab with any vessel not named on a valid Federal Crab Vessel Permit.

(2) Harvest IFQ crab with any vessel that does not use functioning VMS equipment as required by § 680.23.

(3) Harvest on any vessel more IFQ crab than are authorized under § 680.42.

(4) Harvest crab under a CVC or a CPC IFQ permit unless the person named on the IFQ permit is on board that vessel.

(5) Harvest crab under a CPO or CPC permit unless all scales used to weigh crab, or used by an observer for sampling crab, have passed an inseason scale test according to § 680.23(e)(1).

(d) *Recordkeeping and reporting.* (1) Fail to submit information on any report, application, or statement required under this part.

(2) Submit false information on any report, application, or statement required under this part.

(e) *Permits.* (1) Retain IFQ crab without a valid crab IFQ permit for that fishery on board the vessel.

(2) Retain IFQ crab on a vessel in excess of the total amount of unharvested crab IFQ, for a crab QS fishery that is currently held by all crab IFQ permit holders or Crab IFQ Hired Masters aboard the vessel.

(3) Receive Class B IFQ by transfer if a person holds PQS or IPQ.

(4) Receive Class B IFQ by transfer if you are affiliated with a person who holds PQS or IPQ.

(f) Use IPQ as collateral or otherwise leverage IPQ to acquire an ownership interest in Class B IFQ.

(g) Possess, buy, sell, or transport any crab harvested or landed in violation of any provision of this part.

(h) Violate any other provision under this part.

(i) Conduct any fishing contrary to notification of inseason action closure, or adjustment issued under § 680.22.

§ 680.8 Facilitation of enforcement.

See § 600.730 of this chapter.

§ 680.9 Penalties.

(a) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Act, or any regulation issued under the Magnuson-Stevens Act, is subject to the civil and criminal penalty provisions, permit sanctions, and civil forfeiture provisions of the Magnuson-Stevens Act, to part 600 of this chapter, to 15 CFR part 904 (Civil Procedures), and to other applicable law. Penalties include but are not limited to permanent or temporary sanctions to PQS, QS, IPQ, IFQ, or RCR permits.

(b) In the event a holder of any IPQ is found by a court of competent jurisdiction, either in an original action in that court or in a proceeding to enforce or review the findings or orders of any Government agency having jurisdiction under the antitrust laws, to have violated any of the provisions of antitrust laws in the conduct of the licensed activity, the Secretary of Commerce may revoke all or a portion of such IPQ. The antitrust laws of the United States include, but are not limited to, the following Acts:

(1) The Sherman Act, 15 U.S.C. 1-7;

(2) The Wilson Tariff Act, 15 U.S.C. 8-11;

(3) The Clayton Act, 15 U.S.C. 12-27; and

(4) The Federal Trade Commission Act, 15 U.S.C. 12 and 45(a).

Subpart B—Management Measures

§ 680.20 Arbitration System.

(a) *Applicability*—(1) *Arbitration System.* All CVO and CVC QS, PQS, Arbitration IFQ, Class A IFQ holders, and IPQ holders must enter the contracts as prescribed in this section that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties, as specified in this section. All contract provisions will be enforced by parties to those contracts.

(2) *Open negotiation.* At any time prior to the first crab fishing season for that crab fishing year for that crab QS fishery, any holder of uncommitted IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season or for future seasons for any uncommitted IFQ and IPQ. QS holders, uncommitted IFQ holders and PQS or IPQ holders may freely contact each other and initiate open negotiations.

(b) *Eligibility for Arbitration System*—(1) *Arbitration Organization.* The following persons are the only persons eligible to join an Arbitration Organization:

(i) Holders of CVO and CVC QS,

(ii) Holders of PQS,

(iii) Holders of Arbitration IFQ,

(iv) Holders of Class A IFQ affiliated with a PQS or IPQ holder, and

(v) Holders of IPQ.

(2) *Persons Eligible to Use Negotiation and Binding Arbitration Procedures.* The following persons are the only persons eligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches:

(i) Holders of Arbitration IFQ; and

(ii) Holders of IPQ.

(3) *Persons Ineligible to Use Negotiation and Binding Arbitration Procedures.* Holders of IFQ or QS that are affiliated with holders of PQS or IPQ are ineligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches.

(c) *Preseason requirements for joining an Arbitration Organization.* All holders of CVO and CVC QS, PQS, Arbitration IFQ, Class A IFQ, and IPQ must join and maintain a membership in an Arbitration Organization as specified in paragraph (d) of this section. All holders of QS, PQS, CVO or CVC IFQ, or IPQ must join an Arbitration Organization at the following times:

(1) For QS holders and PQS holders except as provided for in paragraph (c)(3) of this section, not later than May 1 of each year for the crab fishing year that begins on July 1 of that year.

(2) For IFQ holders and IPQ holders, not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

(3) During 2005, QS and PQS holders must join an Arbitration Organization as described in paragraph (d) of this section not later than July 1, 2005.

(d) *Formation process for an Arbitration Organization.* (1) Arbitration Organizations must be formed to select and contract a Market Analyst, Formula Arbitrator, Contract Arbitrator(s), and establish the Arbitration System, including the payment of costs of arbitration, described in this section for each crab QS fishery. All persons defined in paragraph (b)(1) of this section must join an Arbitration Organization.

(i) *Arbitration QS/IFQ Arbitration Organization.* Holders of Arbitration QS and Arbitration IFQ must join an Arbitration QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of Arbitration QS or Arbitration IFQ. Arbitration QS holders and Arbitration IFQ holders may join separate Arbitration QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(ii) *PQS/IPQ Arbitration Organization.* Holders of PQS or IPQ must join a PQS/IPQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of PQS or IPQ. PQS holders and IPQ holders may join separate PQS/IPQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iii) *Affiliated QS/IFQ Arbitration Organization.* Holders of CVO QS or Class A IFQ affiliated with a PQS or IPQ holder must join an Affiliated QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of QS or IFQ affiliated with a PQS or IPQ holder. CVO QS holders and Class A IFQ holders may join separate Affiliated QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iv) No person may be a member of more than one Arbitration Organization for a crab QS fishery during a crab fishing year.

(2) Each Arbitration Organization must submit a complete Annual Arbitration Organization report to NMFS. A complete report must include:

(i) A copy of the business license of the Arbitration Organization;

(ii) A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;

(iii) QS, PQS, IFQ, and IPQ ownership information on the members of the organization;

(iv) Management organization information, including:

(A) The bylaws of the Arbitration Organization;

(B) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(v) The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and

(vi) A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.

(3) An Arbitration Organization, with members who are QS or PQS holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802 by:

(i) June 15, 2005 for the crab fishing year beginning on July 1, 2005.

(ii) May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.

(4) An Arbitration Organization, with members who are IFQ or IPQ holders, must submit a complete Annual Arbitration Organization Report to NMFS by electronic mail to the Regional Administrator, National Marine

Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802 by not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

(e) *Role of Arbitration Organization(s) and annual requirements.* (1) The members of each Arbitration Organization must enter into a contract that specifies the terms and conditions of participation in the organization.

(i) The contract with members of an Arbitration QS/IFQ Arbitration Organization, or a PQS/IPQ Arbitration Organization shall include the terms, conditions, and provisions specified in paragraph (e)(2) of this section.

(ii) The contract with members of an Affiliated QS/IFQ Arbitration Organization shall include the terms, conditions, and provisions in paragraph (e)(3) of this section.

(2) *Provisions for Arbitration QS/IFQ Arbitration Organizations, and PQS/IPQ Arbitration Organizations*—(i) *Selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* A provision authorizing the Arbitration Organization to act on behalf of its members in the selection of and contracting with the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) under paragraph (e)(4) of this section.

(ii) *Agreement to participate in the arbitration process.* A provision authorizing the Arbitration Organization to require its members to use the Lengthy Season Approach, Share Matching Approach, and Binding Arbitration defined under paragraph (h) of this section.

(iii) *Confidentiality of information.* A provision that a member that is a party to a Binding Arbitration proceeding shall sign a confidentiality agreement with the party with whom it is arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or any other party in the course of the arbitration. That confidentiality agreement shall specify the potential sanctions for violating the agreement.

(iv) *Provision of information to members.* A provision requiring the Arbitration Organization to provide to its members:

(A) A copy of the contracts for the Market Analyst, Formula Arbitrator, and Contract Arbitrator for each fishery in which the member participates;

(B) A provision that requires the Arbitration Organization to deliver the Market Report and the Non-Binding Price Formula for each fishery in which the member participates within 5 days of its release.

(v) *Information release.* (A) A provision requiring that the Arbitration Organization deliver to NMFS any data, information, and documents generated pursuant to this section.

(B) In the case of a PQS/IPQ Arbitration Organization(s),

(*1*) A provision that requires the Arbitration Organization to provide for the delivery of the names of and contact information for its members who hold uncommitted IPQ, and to identify the regional designations and amounts of such uncommitted IPQ, to any persons that hold uncommitted Arbitration IFQ and prohibits the disclosure of any information received under this provision to any person except those holders of uncommitted Arbitration IFQ. The provision will require that information concerning uncommitted IPQ be updated within 24 hours of a change of any such information, including any commitment of IPQ, and that information be provided to those persons that hold uncommitted Arbitration IFQ. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means;

(*2*) A provision that requires the Arbitration Organization to arrange for the delivery to all holders of uncommitted Arbitration IFQ the terms of a decision of a Contract Arbitrator in a Binding Arbitration proceeding involving a member that holds uncommitted IPQ within 24 hours of notice of that decision. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means; and

(*3*) A provision that requires the holders of uncommitted IPQ to provide information concerning such uncommitted IPQ as necessary for the Arbitration Organization to comply with this paragraph and prohibits the disclosure of any such information by a member to any person, except as directed therein.

(vi) *Costs.* A provision that authorizes the Arbitration Organization to enter into a contract with all other arbitration organizations for the payment of the costs of arbitration as specified under this section.

(A) *Payment of costs for arbitration.* (*1*) The arbitration organizations must establish a contract that requires the payment of all costs of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s), dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such persons associated with lengthy season approach, share matching approach, Binding Arbitration, quality and performance disputes, to be shared equally by all IPQ holders and Arbitration IFQ holders and Class A IFQ holders.

(*2*) These costs shall be shared based on the amount of IPQ or IFQ held by each person.

(*3*) These costs shall be divided so that the IPQ holders pay 50 percent of the costs and the Arbitration IFQ and Class A IFQ holders pay 50 percent of the costs.

(*4*) PQS holders shall advance all costs and shall collect the contribution of Class A IFQ holders at landing subject to terms mutually agreed by the arbitration organizations.

(vii) *Negotiation methods.* A provision that prohibits the Arbitration Organization from engaging in any contract negotiations on behalf of its members, except for those necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

(viii) *Transfer of QS, PQS, IFQ, or IPQ.* A provision under which members of the Arbitration Organization agree that any transfer of QS, PQS, IFQ or IPQ shall be conditioned on the purchaser of such Arbitration QS, PQS, Arbitration IFQ, or Non-Arbitration Class A IFQ, or IPQ being a member of an Arbitration Organization that satisfies all of the applicable requirements of this section and such purchase being subject to all of provisions of the Arbitration System that apply to the holder of the transferred QS, PQS, IFQ, or IPQ.

(ix) *Enforcement of the contract.* Violations of the contract shall be enforced under civil law.

(3) *Provisions applying to Affiliated QS/IFQ Arbitration Organizations.* The provisions that allow for the provision of information to members, payment of costs, limits on the transfer of QS, PQS, IFQ, and IPQ, and enforcement of the contract as described under paragraphs (e)(iv), (vi),(viii), and (ix) will apply to the contract among members of an Affiliated QS/IFQ Arbitration Organization(s).

(4) *Process for selecting of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).* (i) For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those arbitration organizations. The

selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraph (e)(4)(ii).

(ii) The arbitration organizations representing Arbitration QS holders or PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery, which shall provide that the Market Report and Non-Binding Price Formula are produced not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year except as provided in paragraph (e)(6) of this section. The contractual obligations of the Market Analyst, the Formula Arbitrator and Contract Arbitrators will be enforced by the parties to the contract.

(iii) The same person may be chosen for the positions of Market Analyst and Formula Arbitrator for a fishery.

(iv) A person selected to be a Contract Arbitrator may not be the Market Analyst or Formula Arbitrator, and shall not be in the employ or otherwise associated with the Market Analyst or Formula Arbitrator, for that fishery.

(5) *Notification to NMFS.* Not later than June 1 for that crab fishing year, except as provided in paragraph (e)(6) of this section, the arbitration organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery by electronic mail addressed to the Regional Administrator, National Marine Fisheries Service, or by mail addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802. The arbitration organizations shall include a list of arbitration organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) and signatures of representatives of those arbitration organizations and a copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator. The notification must include a curriculum vitae and other relevant biographical material for each of these individuals.

(6) *First-year implementation.* During 2005:

(i) Selection of and establishment of the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) as required under this section shall occur not later than July 30, 2005; and

(ii) The Market Report and Non-Binding Price Formula shall be produced not later than 25 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year as required under this section.

(f) *Roles and standards for the Market Analyst and process for producing the Market Report.* (1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for the fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

(2) The contract with the Market Analyst must specify that:

(i) The Market Analyst shall base the Market Report:

(A) On a survey of the market for crab products produced by the fishery.

(B) Information provided by the IPQ and IFQ holders regarding market conditions and expectations.

(iii) To the extent IPQ and IFQ holders provide information requested by the Market Analyst, they must provide such information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders that are members of any single crab harvesting cooperative may share such information with other members of the same crab harvesting cooperative who are authorized to participate in the arbitration system.

(iv) The Market Analyst:

(A) May meet with IFQ holders who are members of any single crab harvesting cooperative collectively;

(B) Shall meet with IPQ holders individually

(C) Shall meet with distinct crab harvesting cooperatives individually;

(D) Shall meet with IFQ holders who are not members of the same crab harvesting cooperatives individually.

(v) The information provided to the Market Analyst by IPQ and IFQ holders must be historical information based on activities occurring more than three months prior to the generation of the Market Report.

(vi) The Market Analyst shall keep confidential the identity of the source of any particular information contained in the report. The Market Analyst may note generally the sources from which it gathered information. The report shall:

(A) Include only data that is based on information regarding activities occurring more than three months prior to the generation of the Market Report;

(B) Include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and

(C) Sufficiently aggregate any information disseminated in the report such that it would not identify specific price information by an individual provider of information.

(vii) The Market Report shall consider the following factors:

(A) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(B) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(C) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(D) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(E) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(F) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(G) Safety and expenditures for ensuring adequate safety;

(H) Timing and location of deliveries; and

(I) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(viii) There shall only be one annual Market Report for each fishery.

(ix) The Market Analyst shall not issue interim or supplemental reports for each fishery;

(3) The Market Analyst shall not disclose any information to any person not required under this section.

(4) The contract with the Market Analyst must specify that the Market Analyst will provide the Market Report not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to:

(i) Each Arbitration Organization in that fishery;

(ii) NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802.

(iii) The Formula Arbitrator and any Contract Arbitrator(s) for the fishery.

(g) *Roles and standards for the Formula Arbitrator.* (1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to develop a Non-Binding Price Formula.

(2) The contract with the Formula Arbitrator must specify that:

(i) The Formula Arbitrator will conduct a single annual fleet-wide analysis of arbitrations to establish a Non-Binding Price Formula under which a fraction of the weighted average first wholesale prices for crab products from the fishery may be used to set an ex vessel price.

(ii) The Non-Binding Price Formula shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(*1*) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(*2*) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);

(*3*) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);

(*4*) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(*5*) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(*6*) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(*7*) Safety and expenditures for ensuring adequate safety;

(*8*) Timing and location of deliveries; and

(*9*) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Include identification of various relevant factors such as product form, delivery time, and delivery location.

(D) Consider the ''highest arbitrated price'' for the fishery from the previous crab fishing season, where the ''highest arbitrated price≥means the highest arbitrated price for arbitrations of IPQ and Arbitration IFQ which represent a minimum of at least 7 percent of the IPQ resulting from the PQS in that fishery. For purposes of this process, the Formula Arbitrator may aggregate up to three arbitration findings to collectively equal a minimum of 7 percent of the IPQ. When arbitration findings are aggregated with 2 or more entities, the lesser of the arbitrated prices of the arbitrated entities included to attain the 7 percent minimum be considered for the highest arbitrated price.

(iii) The Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to,

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery; and

(B) The Market Report for the fishery.

(iv) The Formula Arbitrator:

(A) May meet with IFQ holders who are members of any single crab harvesting cooperative collectively;

(B) Shall meet with IPQ holders individually

(C) Shall meet with distinct crab harvesting cooperatives individually;

(D) Shall meet with IFQ holders who are not members of the same crab harvesting cooperatives individually.

(v) The Formula Arbitrator may request any relevant information from QS, PQS, IPQ, and IFQ holders in the fishery, but the Formula Arbitrator shall not have subpoena power.

(vi) May obtain information from persons other than QS, PQS, IPQ, and IFQ holders in the fishery, if those persons agree to provide such data. Any information that is provided must be based on activities occurring more than three months prior to the date of submission to the Formula Arbitrator;

(vii) Shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information; and

(viii) The contract with the Formula Arbitrator must specify that the Formula Arbitrator will provide the non-binding price formula not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year to:

(A) Each Arbitration Organization in that fishery;

(B) NMFS by electronic mail to the Regional Administrator, National Marine Fisheries Service, or addressed to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802.

(C) The Market Analyst and all Contract Arbitrators in the fishery.

(ix) The Formula Arbitrator shall not disclose any information to any person not required under this section, except as permitted by paragraph (j) of this section.

(h) *Roles and standards for the Contract Arbitrator(s).* (1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and PQS/IPQ Arbitration Organizations shall establish a contract with all Contract Arbitrators in that fishery that specifies that each Contract Arbitrator may be selected to resolve a dispute concerning the terms of delivery, price, or other factors in the fishery.

(2) *Selection of Contract Arbitrators.* The contract with the Contract Arbitrator shall specify the means by which the Contract Arbitrator will be selected to resolve specific disputes. This contract must specify that for any dispute for which the Contract Arbitrator is selected, that the Contract Arbitrator will comply with the last best offer arbitration method as set forth in this section.

(3) *Negotiation and Binding Arbitration Procedure.* The contract with the Contract Arbitrator(s) shall specify the following approaches for negotiation and Binding Arbitration among members of the Arbitration Organizations:

(i) *Restrictions on collective negotiation.* An IFQ and IPQ holder may negotiate individually. Groups of IFQ holders may negotiate collectively with an IPQ holder only under the following provisions:

(A) Members of a crab harvesting cooperative may participate collectively with other members of the same crab harvesting cooperative in Binding Arbitration except as otherwise provided under this section.

(B) Members of different crab harvesting cooperatives shall not participate collectively.

(C) IPQ holders shall not participate collectively. Only one IPQ holder can enter into Binding Arbitration with any IFQ holder or IFQ holder(s).

(D) An Arbitration Organization cannot negotiate on behalf of a member. This shall not prohibit the members of an Arbitration IFQ Arbitration Organization from negotiation as a crab harvesting cooperative under the FCMA.

(ii) *Open negotiations.* At any time prior to the date of the first crab fishing seas on a crab fishing year for that crab QS fishery, any holder of Arbitration QS or uncommitted IFQ may negotiate with any holder of PQS or uncommitted IPQ,

the price and delivery terms for that season for any uncommitted IFQ and IPQ.

(A) Arbitration QS or Arbitration IFQ holders and PQS or IPQ holders may freely contact each other and initiate open negotiations;

(B) If Arbitration QS or Arbitration IFQ holders and PQS or IPQ holders do not reach an agreement on price, delivery terms, or other terms, a party to the contract may initiate Binding Arbitration in accordance with the procedures specified in this section in order to resolve disputes in those price, delivery terms, or other terms.

(iii) *Lengthy season approach.* (A) Prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year an IPQ holder and one or more holders of Arbitration IFQ may choose to adopt a Lengthy Season approach.

(B) A Lengthy Season approach allows an IPQ holder and an Arbitration IFQ holder to agree to postpone negotiation of specific contract terms until a time during the crab fishing year as agreed upon by the Arbitration IFQ holder and IPQ holder participating in the negotiation. The Lengthy Season approach allows the Arbitration IFQ holders and IPQ holder involved in the negotiation to postpone Binding Arbitration, if necessary, until a time during the crab fishing year. If the parties ready a final agreement on the contract terms, Binding Arbitration is not necessary.

(C) If an IPQ holder and one or more Arbitration IFQ holder(s) are unable to reach an agreement on whether to adopt a Lengthy Season approach, they may agree to request a Binding Arbitration or mediation to assist the parties in determining whether to adopt a Lengthy Season approach. The parties may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful, the parties enter Binding Arbitration to determine whether to adopt a lengthy season approach.

(*1*) Binding Arbitration may begin immediately with the same Contract Arbitrator.

(*2*) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

(iv) *Share Matching.* (A) At any time after the issuance of IFQ and IPQ for a crab QS fishery but not earlier than 25 days prior to the first crab fishing season for a crab QS fishery in the crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to a holder of uncommitted IPQ.

(B) To commit Arbitration IFQ, the holder of uncommitted IFQ must offer an amount of Arbitration IFQ not less than 50 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ.

(C) Any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ. The commitment of IPQ will take place on receipt of notice from the holder of uncommitted Arbitration IFQ of the intention to commit that IFQ.

(D) After matching, an Arbitration IFQ holder and an IPQ holder may either decide to enter Binding Arbitration or, with the consent of both the Arbitration IFQ holder and IPQ holder, enter mediation to reach agreement on contract terms. The Arbitration IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator to facilitate an agreement.

(*1*) If the mediation proves unsuccessful, Binding Arbitration may begin immediately with the same Contract Arbitrator.

(*2*) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

(v) *Initiation of Binding Arbitration.* Except for the Lengthy Season approach, at any point more than 15 days prior to the date of the first crab fishing season for a crab QS fishery an Arbitration IFQ holder or IPQ holder may initiate a Binding Arbitration. Binding Arbitration is initiated after the Arbitration IFQ holder notifies an IPQ holder and the Contract Arbitrator(s), or the IPQ holder has notified the Arbitration IFQ holder and the Contract Arbitrator(s). Binding Arbitration may be initiated to resolve price, terms of delivery, and other disputes arising from:

(A) Open Negotiation among Arbitration IFQ holders and IPQ holders;

(B) Lengthy Season Approach;

(C) Share Matching; or

(D) Performance Disputes.

(vi) *Joining a Binding Arbitration Proceeding.* Any Arbitration IFQ holder may join a Binding Arbitration proceeding as a party by providing notice to the IPQ holder and the Contract Arbitrator(s).

(vii) *Arbitration Schedule Meeting.* The Contract Arbitrator shall meet with all parties to a Binding Arbitration proceeding as soon as possible once a Binding Arbitration proceeding has been initiated for the sole purpose of establishing a schedule for the Binding Arbitration. This schedule shall include the date by which the IPQ holder and Arbitration IFQ holder(s) must submit their last best offer and any supporting materials, and any additional meetings or mediation if agreed to by all parties. This meeting will discuss the schedule of the Binding Arbitration proceedings and not address terms of last best offers.

(viii) *Terms of Last Best Offers.* The Contract Arbitrator will meet with the parties to the Binding Arbitration proceeding to determine the matters that must be included in the last best offer, which may include a fixed price or a price over a time period specified by the parties, a method for adjusting prices over a crab fishing year, or an advance price paid at the time of delivery.

(ix) *Submission of Last Best Offers.* The parties to a Binding Arbitration proceeding shall each submit to the Contract Arbitrator(s) a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is a crab harvesting cooperative may submit a last best offer that defines terms for the delivery of crab harvested by members of that crab harvesting cooperative with IFQ held by the cooperative. An Arbitration IFQ holder that is not a crab harvesting cooperative may submit a last best offer that defines the term of delivery of crab harvested with IFQ held by that person. The IPQ holder that is a party to the proceeding shall submit a single offer that defines terms for delivery of crab harvested with all IFQ that are subject to the proceedings.

(x) *Arbitration Decisions.* The Contract Arbitrator(s) shall decide among each offer received from an Arbitration IFQ holder and the offer received from the IPQ holder. Each arbitration decision shall result in a binding contract between the IPQ holder and theArbitration IFQ holder defined by the terms of the offer selected by Contract Arbitrator(s).

(xi) *Announcement of Decisions.* (A) If last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, arbitration decisions shall be issued no later than 10 days before the first crab fishing season for that crab fishing year for that crab QS fishery. Otherwise, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

(B) The Contract Arbitrator will notify the parties by providing each Arbitration IFQ holder and IPQ holder that is a party to the Binding Arbitration proceeding, a copy of any decision. The

decision is binding on the parties to the Binding Arbitration proceeding.

(4) *Basis for the Arbitration Decision.* The contract with the Contract Arbitrator shall specify that the Contract Arbitrator will be subject to the following provisions when deciding which last best offer to select:

(i) The Contract Arbitrator's decision shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(*1*) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(*2*) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(*3*) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(*4*) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(*5*) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(*6*) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(*7*) Safety and expenditures for ensuring adequate safety;

(*8*) Timing and location of deliveries; and

(*9*) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Consider the Non-Binding Price Formula established in the fishery by the Formula Arbitrator.

(ii) The Contract Arbitrator's decision may rely on any relevant information available to the Contract Arbitrator, including, but not limited to:

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery regarding the factors identified in paragraph (h)(4)(i) of this section; and

(B) The Market Report for the fishery.

(iii) Each of the Arbitration IFQ holder and the IPQ holder that are party to the proceeding may provide the Contract Arbitrator with additional information to support its last best offer. The Contract Arbitrator must receive and consider all data submitted by the parties.

(iv) The Contract Arbitrator may request specific information from the Arbitration IFQ holder(s) and IPQ holder that would be useful in reaching a final decision. The Contract Arbitrator will not have subpoena power and it is in the sole discretion of the person from whom information is requested as to whether to provide the requested information.

(5) *Limits on the Release of Data.* The parties to a Binding Arbitration proceeding shall be precluded from full access to the information provided to the Contract Arbitrator.

(i) Arbitration IFQ holders that are party to an arbitration proceeding shall have access only to information provided directly by the IPQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(ii) IPQ holders that are party to an arbitration proceeding shall have access only to information provided directly by an Arbitration IFQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(iii) The Contract Arbitrator shall keep confidential the information provided by any QS, PQS, IFQ, or IPQ holders in the fishery and not disclose the identity of the persons providing specific information except as provided in paragraph (h)(6) of this section.

(6) *Information Provided to NMFS.* The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

(i) A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section.

(ii) Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the bid was accepted by the Contract Arbitrator; and

(iii) A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which those information, data, or documents apply, and the person to whom those information, data, or documents were provided.

(iv) The Contract Arbitrator must provide any information, documents, or data required under this paragraph to NMFS via mail to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, or electronically not later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied.

(7) *Enforcement of Binding Arbitration decisions.* The decision of the Contract Arbitrator for Binding Arbitration shall be enforced among the parties to that arbitration.

(8) *Failure of Contract Arbitrator(s).* Except as provided for in paragraph (h)(6)(v) of this section, the failure of a Contract Arbitrator to perform shall be enforced by the Arbitration Organizations.

(9) *Availability of Terms and Conditions of an Arbitration Decision.* Each party to an Arbitration must make the terms and conditions of an arbitration decision available to that party's Arbitration Organization in order for the Arbitration Organization to make such information available to uncommitted Arbitration IFQ holders that may wish to opt-in to those terms as described in paragraph (h)(10) of this section within 5 days of receiving the request for that information.

(10) *Post Binding Arbitration opt-in.* (i) An Arbitration IFQ holder with uncommitted IFQ, may opt-in to any contract that results from a completed a Binding Arbitration procedure with any IPQ holder that has uncommitted IPQ.

(A) All the terms from the arbitrated contract will apply.

(B) Once exercised, the opt-in results in a contract that is binding on both the Arbitration IFQ and IPQ holder.

(ii) To initiate the opt-in process, the holder of uncommitted Arbitration IFQ will notify the holder of uncommitted IPQ in writing of its intent to opt-in.

(iii) Holders of uncommitted Arbitration IFQ may opt-in to a contract resulting from a completed Binding Arbitration procedure with a person that holds uncommitted IPQ for that fishery.

(iv) If the IPQ holder and the Arbitration IFQ holder are unable to resolve a dispute regarding whether the opt-in offer is consistent with the original contract from the completed Binding Arbitration procedure, the dispute may be decided by the Contract Arbitrator to the original arbitration that resulted in the contract to which the Arbitration IFQ holder is seeking to opt-in. The Contract Arbitrator will decide only whether the proposed opt-in terms are consistent with the original contract.

(11) *Performance disputes.* If an IPQ holder and an Arbitration IFQ holder are unable to resolve disputes regarding the obligations to perform specific

contract provisions after substantial negotiations or when time is of the essence, the issues of that dispute shall be submitted for Binding Arbitration before a Contract Arbitrator for that fishery.

(i) Binding Arbitration resulting from a performance dispute can occur at any point during or after the crab fishing year. The dispute must be raised by the IPQ holder or the Arbitration IFQ holder. Arbitration of that performance dispute must be initiated prior to the date of the first crab fishing season for the following crab fishing year in that crab QS fishery.

(ii) Performance dispute arbitration shall follow the same procedures described for a Binding Arbitration in paragraph (h) of this section.

(iii) If the arbitration proves unsuccessful or a party fails to abide by the arbitration decision, a party may pursue available contract remedies.

(iv) The costs of arbitrating performance disputes shall be provided from the general fees collected by the arbitration organizations pursuant to paragraph (h) of this section.

(v) The Contract Arbitrator may assign fees to any party bringing frivolous complaints. Any such fees shall be paid by the party and not from the fees collected under paragraph (e)(2)(vi) of this section.

(12) *Quality disputes.* When disputes regarding the quality of the harvested crab arise within the context of an existing contract, the parties may settle the disputes within the context of the arbitration system according to the following:

(i) In cases where the IPQ holder and Arbitration IFQ holder(s) have agreed to a formula-based price for crab but where they cannot reach an agreement on the quality and price of the crab, the IPQ holder and Arbitration IFQ holder(s) will receive their share of the value of the amount of crab delivered based on the provisions of the contract.

(ii) In quality disputes where the Arbitration IFQ holders prefer to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm. This independent quality specialist firm will determine the price to be paid to the IPQ holder and IFQ holder(s). The IPQ holder and Arbitration IFQ holder(s) with this quality dispute shall share the cost of hiring the specialist firm and agree to abide by its findings according to the terms of their agreement.

§ 680.21 Crab fishery cooperatives.

This section governs the formation and operation of crab harvesting cooperatives. A crab harvesting cooperative is a group of crab QS holders who have chosen to form a cooperative under the 1934 Fisherman's Collective Marketing Act (15 U.S.C. 521) in order to combine and collectively manage their crab IFQ through a crab cooperative IFQ permit issued by NMFS.

(a) *Types of cooperatives governed under this section.* The regulations in this section apply only to crab harvesting cooperatives that have formed for the purpose of applying for and of fishing under a crab cooperative IFQ fishing permit issued by NMFS.

(b) *Membership requirements.* A crab harvesting cooperative is limited to QS holders who hold any amount of CPO, CVO, CPC, or CVC and who, NMFS has determined, are eligible to receive IFQ.

(1) *Minimum number of members.* Each crab harvesting cooperative must include at least four unique QS holding entities. A unique QS holding entity is a QS holder or group of affiliated QS holders that are not affiliated with any other QS holders or QS holding entities in the cooperative. For the purpose of this paragraph, the term ''affiliation'' is defined at § 680.2.

(2) *Voluntary nature of membership.* Membership in a crab harvesting cooperative is voluntary. No person may be required to join a crab harvesting cooperative, and no crab harvesting cooperative may be required to accept a member who the cooperative chooses not to accept.

(3) *Limitations on membership in a crab harvesting cooperative.* A QS holder who also holds PQS or IPQ, is affiliated with a person who holds PQS or IPQ, processes Class B IFQ, or is affiliated with a person that processes Class B IFQ is prohibited from joining a crab harvesting cooperative.

(4) *Membership is all or nothing.* Upon joining a cooperative, each QS holder must allow all of his or her QS holdings to be used by the cooperative for conversion to cooperative IFQ.

(5) *Membership in more than one cooperative prohibited.* A QS holder may not hold simultaneous memberships in more than one crab harvesting cooperative.

(c) *Legal and organizational requirements for crab harvesting cooperatives.* A crab harvesting cooperative must meet the following legal and organization requirements before it is eligible to apply for a cooperative IFQ permit:

(1) *Registered business entity.* Each crab harvesting cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 states or the District of Columbia.

(2) *Fisherman's Collective Marketing Act of 1934.* Each crab harvesting cooperative must be formed in accordance with the requirements of the Fisherman's Collective Marketing Act of 1934 (15 U.S.C. 521).

(3) *Appointment of a designated representative.* Each crab harvesting cooperative must appoint a designated representative to act on the cooperative's behalf and serve as contact point for NMFS for questions regarding the operation of the cooperative. The designated representative may be a member of the cooperative or some other individual authorized by the cooperative to act on its behalf.

(d) *Application for annual crab harvesting cooperative IFQ permits.* A crab harvesting cooperative IFQ permit is an annual permit issued to a cooperative that establishes an annual catch limit of crab that is based on the collective QS holdings of the members of the cooperative. A crab harvesting cooperative IFQ permit will list the IFQ amount held by the cooperative and identify the members of the cooperative. Each cooperative will be issued a separate IFQ permit for each type of QS held by a member (or members) of the cooperative.

(1) *June 30 application deadline.* Each crab harvesting cooperative annually must submit to and be received by NMFS by June 30, a completed application for annual crab harvesting cooperative IFQ permit, together with the signed annual application for crab IFQ/IPQ permit forms of all the members of the cooperative.

(2) Contents of application for annual crab harvesting cooperative IFQ permit. A completed application must contain the following information:

(i) *Cooperative identification.* (A) The cooperative's legal name;

(B) Type of business entity under which the cooperative is organized;

(C) State in which the cooperative is legally registered as a business entity;

(D) Name of the cooperative's designated representative;

(E) Permanent business address, telephone number, facsimile number, and e-mail address (if available) for the cooperative or its designated representative;

(F) Signature of the cooperative's designated representative and the date signed.

(ii) *Members of the cooperative.* Full name and NMFS Person ID number of each member of the cooperative. Attach the completed and signed Annual

Application for Crab IFQ/IPQ Permit for all members of the cooperative;

(iii) *Affiliation declaration.* Indicate (YES or NO) whether any member of the cooperative is affiliated with an entity that holds IPQ or PQS, or that processes IFQ crab (other than a catcher/processor that processes only its own catch). If YES, your cooperative is not eligible to receive a cooperative IFQ permit.

(iv) *Additional documentation.* In order to file a complete application, attach the following documents to this application:

(A) A copy of the business license issued by the state in which the cooperative is registered as a business entity;

(B) A copy of the articles of incorporation or partnership agreement of the cooperative; and

(C) A copy of the cooperative agreement signed by the members of the cooperative (if different from paragraph (d)(3)(iii)(B) of this section).

(4) *Issuance of cooperative IFQ permits.* Upon receipt of a completed Application for an Annual Crab Harvesting Cooperative IFQ Permit that is subsequently approved, NMFS will issue one-year crab harvesting cooperative IFQ permits to the cooperative. The crab harvesting cooperative IFQ permits will list the crab IFQ amounts that are generated by the aggregate QS holdings of all members of the cooperative for each fishery, region, sector, and A/B share categories except that all CVC and CPC QS held by the members of a cooperative will be converted to CVO and CPO IFQ, respectively.

(5) *Appeals.* A cooperative or person who is adversely affected by an initial administrative determination (IAD) that is associated with the issuance of a crab cooperative IFQ permit may appeal the IAD using the appeals procedures described in § 679.43.

(e) *Restrictions on fishing under a crab cooperative IFQ permit.* The following restrictions govern the fishing for IFQ crab under a crab cooperative IFQ permit:

(1) *Maintenance of permit on board.* A copy of a crab cooperative IFQ permit must be maintained on board any vessel that is being used to harvest crab under the permit.

(2) *Persons eligible to harvest crab under a cooperative IFQ permit.* Only the following persons are eligible to harvest crab under a cooperative IFQ permit:

(i) *Cooperative members.* Members of the cooperative to whom the IFQ permit is issued.

(ii) *Hired masters.* Hired masters operating a vessel in which at least a 10 percent ownership share is held by a member of the cooperative to whom the IFQ permit is issued. Cooperatives wishing to employ a hired master must apply for and receive a Crab IFQ Hired Master Permit using the procedures described in § 680.4(f).

(3) *Liability.* Each member of a cooperative is responsible for ensuring that members of the cooperative and Crab IFQ hired masters of the cooperative comply with all regulations applicable to fishing for CR crab.

(f) *Transfers by members of a cooperative.* The following requirements address transfers of QS, IFQ, PQS, and IPQ by members of a cooperative.

(1) *Transfer of QS by members of a cooperative.* A member of a cooperative may buy or sell QS at any time using the transfer procedures described in § 680.41. However, transfers of QS that occur after the June 30 deadline for cooperative IFQ permit applications will not be reflected in the type or amount of IFQ permit issued to the cooperative for the subsequent fishing season.

(2) *Transfer of individually held IFQ by members of a cooperative.* A member of a cooperative may buy or sell individually held IFQ using the transfer procedures described in § 680.41. However a member of a cooperative who holds any amount of IFQ loses the vessel use cap exemption for any vessel used to fish any amount of individually held IFQ.

(3) *Transfer of cooperative IFQ by members of a cooperative.* A member of a cooperative may not buy or sell cooperative IFQ. Cooperative IFQ may only be transferred between two cooperatives.

(4) *Acquisition of PQS and IPQ by members of a cooperative.* A member of a cooperative is prohibited from acquiring any amount of PQS or IPQ during the valid duration of the cooperative IFQ permit.

(g) *Transfers by crab harvesting cooperatives.* The following requirements address transfers of QS, IFQ, PQS, and IPQ by crab harvesting cooperatives that have been issued cooperative IFQ permits.

(1) *Acquisition of QS, PQS, and IPQ prohibited.* A crab harvesting cooperative that has been issued a cooperative IFQ permit is prohibited from acquiring any amount of QS, PQS, or IPQ for the valid duration of the cooperative IFQ permit. A crab harvesting cooperative that acquires any amount of QS, PQS, or IPQ becomes ineligible to receive a crab cooperative IFQ permit.

(2) *Transfer of individually held IFQ.* A crab harvesting cooperative may acquire individually held IFQ using the transfer procedures described in § 680.41. Any individually held IFQ acquired by a crab harvesting cooperative will be converted to cooperative IFQ when the transfer is processed by NMFS.

(3) *Transfer of cooperative IFQ.* Cooperative IFQ may be transferred only between two crab harvesting cooperatives that have been issued cooperative IFQ permits using the transfer procedures described in § 680.41. A crab harvesting cooperative is prohibited from transferring any amount of cooperative IFQ to any entity that is not a crab harvesting cooperative operating under a cooperative IFQ permit.

(h) *Inseason changes to cooperative membership.* The following requirements address inseason changes to cooperative membership.

(1) *Eligible membership changes.* A crab harvesting cooperative may add a new member if that person becomes eligible to join the cooperative through the acquisition of any amount of the QS upon which the cooperative's annual IFQ permit was based provided that the person acquiring the QS in question has been determined by NMFS to be eligible to hold IFQ. Likewise, a crab harvesting cooperative may remove a member if that person no longer holds any of the QS upon which the cooperative's annual IFQ permit was based.

(2) *Inseason membership changes are voluntary.* A crab harvesting cooperative is not required to add or remove members during the fishing season to reflect inseason transfers of QS. Each cooperative is free to establish its own process for deciding whether or not to admit new members or to remove existing members during the fishing season to reflect changes in the ownership of QS. No cooperative is required to admit a new QS holder that the cooperative chooses not to admit, regardless of whether the person in question has acquired any amount of QS upon which the cooperative's annual IFQ is based. If a cooperative chooses to make inseason membership changes, then it must comply with § 680.21(h)(3).

(3) *Application for an inseason change in cooperative membership.* A crab harvesting cooperative must notify NMFS of any inseason changes to cooperative membership by submitting a revised Application for an Annual Crab Harvesting Cooperative IFQ Permit together with any revised supporting documents that are required to be submitted with the application. The revised Application for an Annual Crab Harvesting Cooperative IFQ Permit must be accompanied by a cover letter that

indicates the revisions that have been made. Upon approval of the membership change, NMFS will issue a revised annual cooperative IFQ permit that reflects the change in membership. A new member may not fish on behalf of a cooperative except as a crab IFQ hired master until NMFS issues a revised annual cooperative IFQ permit that reflects the change in membership.

(4) *Successors-in-interest.* If a member of a cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the QS held by that person will be transferred to the legal successor-in-interest. However, the cooperative IFQs generated by that person's QS holdings remain under the control of the cooperative for the valid duration of the cooperative IFQ permit. Each cooperative is free to establish its own internal procedures for admitting a successor-in-interest during the fishing season to reflect the transfer of QS due to the death of or dissolution of a QS holder. These regulations do not require any cooperative to admit a successor-in-interest that the cooperative chooses not to admit. If a cooperative chooses to admit the successor-in-interest for membership, then the cooperative must comply with § 680.21(h)(3).

§ 680.22 Sideboard protections for GOA groundfish fisheries.

The regulations in this section restrict the owners of vessels with a history of participation in the Bering Sea snow crab (*C. opilio*) fishery from using the increased flexibility provided by the CR Program to expand their level of participation in GOA groundfish fisheries. These restrictions, commonly known as ''sideboards,'' limit directed fishing for GOA Pacific cod by such vessels to their aggregate historical levels and prohibit directed fishing in the GOA for all other groundfish species except sablefish.

(a) *Vessels and LLP licenses subject to sideboard restrictions.* The sideboard fishing restrictions described in this section are based on a vessel's fishing history and apply both to the fishing vessel itself and to any LLP license generated by that vessel's fishing history. The criteria used to determine which vessels and LLP licenses are subject to GOA groundfish sideboard fishing restrictions are as follows:

(1) *Vessels subject to GOA groundfish sideboard directed fishing closures.* Any vessel that NMFS has determined meets one or both of the following criteria is subject to GOA groundfish sideboard directed fishing closures issued under paragraph (e) of this section.

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab (*C. opilio*) between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab (*C. opilio*) fishery QS, and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(1)(i) of this section.

(2) *Vessels prohibited from directed fishing for Pacific cod in the GOA.* Any vessel that NMFS has determined meets either of the following two criteria is prohibited from directed fishing for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish sideboard closures under paragraph (a)(1)(i) of this section that landed less than 50 mt (110,231 lb) of groundfish harvested from the GOA between January 1, 1996, and December 31, 2000, and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(2)(i) of this section.

(3) *Vessels exempt from Pacific cod sideboard closures in the GOA.* Any vessel that NMFS has determined meets one or both of the following criteria is exempt from sideboard directed fishing closures for Pacific cod in the GOA:

(i) Any vessel subject to GOA groundfish closures under paragraph (a)(1)(i) of this section that landed less than 100,000 lb (45,359 kg) of Bering Sea snow crab (*C. opilio*) and more than 500 mt (1,102,311 lb) of Pacific cod from the GOA between January 1, 1996, and December 31, 2000; and

(ii) Any vessel named on an LLP license that was generated in whole or in part by the fishing history of a vessel meeting the criteria in paragraph (a)(3)(i) of this section.

(b) *Notification of affected vessel owners and LLP licence holders.* After NMFS determines which vessels and LLP licenses meet the criteria described in paragraph (a) of this section, NMFS will inform each vessel owner and LLP license holder in writing of the type of sideboard restriction and issue a revised Federal fisheries permit and/or LLP license that displays the restriction on the face of the permit or license.

(c) *Appeals.* A vessel owner or LLP license holder who believes that NMFS has incorrectly identified his or her vessel or LLP license as meeting the criteria for a GOA groundfish sideboard restriction may request reconsideration. All requests for reconsideration must be submitted in writing to the RAM Division, Alaska Region, NMFS, together with any documentation or evidence supporting the request. If the request for reconsideration is denied, affected persons may appeal using the procedures described at § 680.43.

(d) *Determination of GOA groundfish sideboard ratios.* Sideboard ratios for each GOA groundfish species other than sablefish, species group, season, and area for which annual specifications are made, are established according to the following formulas:

(1) *Pacific cod.* The sideboard ratios for Pacific cod are calculated by dividing the aggregate retained catch of Pacific cod by vessels that are subject to sideboard directed fishing closures under paragraph (a)(1) of this section and that do not meet the criteria in paragraphs (a)(2) or (a)(3) of this section and by the total retained catch of Pacific cod from the GOA by all groundfish vessels between 1996 and 2000.

(2) *Groundfish other than Pacific cod.* The sideboard ratios for groundfish species and species groups other than Pacific cod are calculated by dividing the aggregate landed catch by vessels subject to sideboard directed fishing closures under paragraph (a)(1) of this section by the total landed catch of that species by all groundfish vessels between 1996 and 2000.

(e) *Conversion of sideboard ratios into annual harvest limits.* NMFS will convert sideboard ratios into annual harvest limits according to the following procedures.

(1) *Annual harvest limits.* Annual harvest limits for each groundfish species will be established by multiplying the sideboard ratios calculated under paragraph (d) of this section by the interim and final TACs in each area for which a TAC is specified. If a TAC is further apportioned by season, the sideboard harvest limit also will be apportioned by season in the same ratio as the overall TAC. The resulting harvest limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

(2) *Sideboard directed fishing allowance.* If the Regional Administrator determines that a harvest limit for a species or species group has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the group of crab vessels to which the sideboard limit applies.

(3) If the Regional Administrator determines that a harvest limit is insufficient to support a directed fishery for that species or species group, then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

(4) *Directed fishing closures.* Upon attainment of a sideboard directed fishing allowance, the Regional Administrator will publish notification in the **Federal Register** prohibiting directed fishing for the species or species group in the specified subarea, regulatory area, or district. A directed fishing closure effective for the duration of the fishing year or season.

§ 680.23 Equipment and operational requirements.

(a) *Catcher Vessel requirements.* A catcher vessel used to harvest CR crab must:

(1) Carry and use a VMS as described in paragraph (d) of this section.

(2) Land all retained crab to an RCR operating under an approved catch monitoring plan as described in paragraph (g) of this section.

(b) *Catcher/Processor requirements.* A catcher/processor used to harvest CR crab must:

(1) Carry and use a VMS as described in paragraph (d) of this section.

(2) Weigh all retained crab to be processed on board, in its raw form, on a scale approved by NMFS as described in paragraph (e) of this section.

(3) Land all retained crab not processed on board at an RCR.

(4) Land all product processed on board at a shoreside location in the United States accessible by road or regularly scheduled air service and weigh that product on a scale approved by the State where the product is landed.

(5) Provide an approved observer work area that meets the requirements in paragraph (h) of this section.

(c) *RCR requirements.* An RCR must:

(1) Ensure that all CR crab landings are weighed on a scale approved by the State where the landing takes place.

(2) Ensure that all crab landing and weighing be conducted as specified in an approved crab monitoring plan as described in paragraph (g) of this section, and that a copy of the crab monitoring plan is made available to NMFS personnel or authorized officer upon demand.

(d) Vessel Monitoring System (VMS) requirements—(1) *General requirements.* General VMS requirements concerning the approval and installation of VMS components and the responsibilities of vessel owners and operators are detailed at § 679.28(f)(1) through (5).

(2) *VMS Transmission Requirements.* A vessel's transmitter must be transmitting if:

(i) The vessel is operating in any reporting area (see definitions at § 679.2) off Alaska; and

(ii) The vessel has crab pots or crab pot hauling equipment, or a crab pot launcher onboard; and

(iii) The vessel has received a Federal Crab Vessel Permit at any time during the crab fishing year.

(e) *Scales approved by NMFS.* To be approved by NMFS, a scale used to weigh crab at sea must meet the type evaluation and initial inspection requirements set forth in § 679.28(b)(1) and (2). Once a scale is installed on a vessel and approved by NMFS for use, it must be reinspected annually as described in § 679.28(b)(2) and must be tested daily and meet the maximum permissible error (MPE) requirements described in paragraph (e)(1) of this section.

(1) *At-sea scale tests.* To verify that the scale meets the MPEs specified in this paragraph, the vessel operator must test each scale or scale system used to weigh CR crab one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) *Belt scales.* The MPE for the daily at-sea scale tests is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of crab or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the test material must be determined by weighing it on a platform scale approved for use under § 679.28 (b)(7).

(ii) *Automatic hopper scales.* An automatic hopper scale must be tested at its minimum and maximum capacity with approved test weights. Test weights must be placed in the bottom of the hopper unless an alternative testing method is approved by NMFS. The MPE for the daily at-sea scale tests is plus or minus 2 percent of the weight of the approved test weights.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent if the scale is used to determine the known weight of test material for the purpose of testing a belt scale. If the scale is not used for that purpose, the MPE for the daily at-sea scale test is plus or minus 1 percent.

(iv) *Approved test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(v) *Requirements for all scale tests.* (A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

(*1*) Vessel name;

(*2*) Month, day, and year of test;

(*3*) Time test started to the nearest minute;

(*4*) Known weight of test weights;

(*5*) Weight of test weights recorded by scale;

(*6*) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and

(*7*) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the crab fishing year during which the tests were conducted, and make the report forms available to observers, NMFS personnel, or an authorized officer. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the crab fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(2) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(3) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to NMFS or NMFS authorized personnel. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours prior to submitting a CR crab landing report as described in § 680.5. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale

weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The weight of each load in the weighing cycle (hopper scales only);

(C) The date and time the information was printed;

(D) The total amount weighed since the last printout was made; and

(E) The total cumulative weight of all crab or other material weighed on the scale.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other NMFS-authorized personnel.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record unless that scale is also used to obtain raw weight for a CR crab landing report.

(4) *Scale installation requirements.* Unless otherwise approved by NMFS, a scale used to obtain raw weight for a CR crab landing report must be installed such that:

(i) From the location where the observer samples unsorted crab, the observer can ensure that all crab are being weighed;

(ii) The scale may not be installed in a manner that facilitates bypassing. It must not be possible for the scale inspector and an assistant to bypass the scale with 100 kg (220 lb) of test material in less than 20 seconds.

(f) *Scales approved by the state.* Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is approved, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh CR crab that are also required to be approved by the State must meet the following requirements:

(1) *Verification of approval.* The scale must display a valid State sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility.* An RCR must ensure that the scale and scale display are visible simultaneously. NMFS personnel or NMFS authorized personnel, including observers, must be allowed to observe the weighing of crab on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An RCR must ensure that printouts of the scale weight of each delivery or offload are made available to NMFS personnel or to NMFS authorized personnel, including observers, at the time printouts are generated. An RCR must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by an authorized officer for 3 years after the end of the fishing year during which the printout was made.

(ii) A scale used to weigh any portion of a landing of CR crab or an offload of CR crab product must produce a printed record for each landing, or portion of each landing, weighed on that scale. The printed record must include:

(A) The RCR's name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of crab in each landing, or portion of the landing that was weighed on that scale.

(D) The date and time the information is printed; and

(E) The name and ADF&G vessel registration number of the vessel making the delivery. The scale operator may write this information on the scale printout in pen at the time of landing.

(4) *Inseason scale testing.* Scales used to weigh CR crab must be tested by RCR personnel when testing is requested by NMFS-staff or by NMFS-authorized personnel.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, that weight values are visible on the display until the value is printed, and that the scale does not exceed the maximum permissible errors specified in the following table:

Test Load in Scale Divisions	Maximum Error in Scale Divisions
(A) 0-500	1
(B) 501-2,000	2
(C) 2,001-4,000	3
(D) >4,000	4

(ii) *Test weight requirements.* Scales must be tested with the amount and type of weight specified for each scale type in the following tables under paragraphs (f)(4)(ii)(A) through (f)(4)(ii)(D) of this section:

(A) Automatic hopper 0 to 150 kg (0 to 300 lb) capacity.

Certified Test Weights	Other Test Material
(*1*) Minimum weighment or 10 kg (20 lb), whichever is greater	Minimum
(*2*) Maximum	Maximum

(B) Automatic hopper > 150 kg (300 lb) capacity.

Certified Test Weights	Other Test Material
(*1*) Minimum weighment or 10 kg (20 lb), whichever is greater	Minimum
(*2*) 25 percent of maximum of 150 kg (300 lb), whichever is greater	Maximum

(C) Platform, flatbed or hanging scales less than 150 kg (300 lb) capacity.

Certified Test Weights	Other Test Material
(*1*) 10 kg (20 lb)	Not Acceptable
(*2*) Midpoint	Not Acceptable
(*3*) Maximum	Not Acceptable

(D) Platform, flatbed or hanging scales > 150 kg (300 lb) capacity.

Certified Test Weights	Other Test Material
(*1*) 10 kg (20 lb)	Not Acceptable
(*2*) 12.5 percent of maximum or 75 kg (150 lb), whichever is greater	50 percent of maximum or 75 kg (150 lb), whichever is greater
(*3*) 25 percent of maximum or 150 kg (300 lb), whichever is greater	75 percent of maximum or 150 kg (300 lb), whichever is greater

(iii) *Certified test weights.* An RCR must ensure that there are sufficient test weights on-site to test each scale used to weigh CR crab. Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years.

(iv) *Other test material.* When permitted in paragraph (f)(4)(ii) of this section, a scale may be tested with test material other than certified test weights.

(g) *Crab Monitoring Plans (CMP).* A CMP is a plan submitted by an RCR for

each location or processing vessel where the RCR wishes to take deliveries of CR crab. The CMP must detail how the RCR will meet the catch monitoring standards detailed in paragraph (g)(5) of this section. An RCR that processes only CR crab harvested under a CPO or CPC IFQ permit is not required to prepare a CMP.

(1) *CMP Approval.* NMFS will approve a CMP if it meets all the performance standards specified in paragraph (g)(5) of this section. The location or vessel identified in the CMP may be inspected by NMFS prior to approval of the CMP to ensure that the location conforms to the elements addressed in the CMP. If NMFS disapproves a CMP, the plant owner or manager may resubmit a revised CMP or file an administrative appeal as set forth under the administrative appeals procedures described in § 679.43.

(2) *Inspection scheduling.* The time and place of a CMP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. An inspection must be requested no less than 10 working days before the requested inspection date. NMFS staff will conduct CMP inspections in any port located in the United States that can be reached by regularly scheduled commercial air service. The inspection request must include:

(i) Name and signature of the person submitting the application and the date of the application;

(ii) Address, telephone number, facsimile number, and e-mail address (if available) of the person submitting the application; and

(iii) A proposed CMP detailing how the RCR will meet each of the standards in paragraph (g)(5) of this section.

(3) *Approval period.* NMFS will approve a CMP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMP.

(4) *Changing an approved CMP.* An RCR may change an approved CMP by submitting a CMP addendum to NMFS. Depending on the nature and magnitude of the change requested, NMFS may require a CMP inspection as described in paragraph (g)(2) of this section. A CMP addendum must contain:

(i) Name and signature of the person submitting the addendum;

(ii) Address, telephone number, facsimile number and e-mail address (if available) of the person submitting the addendum; and

(iii) A complete description of the proposed CMP change.

(5) *CMP standards*—(i) *Crab sorting and weighing requirements.* All crab, including crab parts and crab that are dead or otherwise unmarketable, delivered to the RCR must be sorted and weighed by species. The CMP must detail how and where crab are sorted and weighed.

(ii) *Scales used for weighing crab.* The CMP must identify by serial number each scale used to weigh crab and describe the rationale for its use.

(iii) *Scale testing procedures.* Scales identified in the CMP must be accurate within the limits specified in paragraph (f)(4)(i) of this section. For each scale identified in the CMP a testing plan must be developed that:

(A) Describes the procedure the plant will use to test the scale;

(B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored; and

(D) Lists the names of the personnel responsible for conducting the scale testing.

(iv) *Printed record.* An RCR must ensure that the scale produces a complete and accurate printed record of the weight of each species in a landing. All of the crab in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (e)(3) of this section. A printed record of each landing must be printed before the RCR submits a CR crab landing report.

(v) *Observation area.* Each CMP must designate an observation area. The observation area is a location designated on the CMP where an individual may monitor the offloading and weighing of crab. The observation area must meet the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to observer, NMFS staff or enforcement aides at any time during the effective period of the CMP.

(B) *Monitoring the offloading and weighing of crab.* From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire offload of crab between the first location where crab are removed from the boat and a location where all sorting has taken place and each species has been weighed.

(C) *Other Requirements.* The observation area must be sheltered from the weather and not exposed to unreasonable safety hazards.

(vi) *Plant liaison.* The CMP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers, NMFS staff and enforcement aides to the plant;

(B) Assisting in the resolution of observer concerns; and

(C) Informing NMFS if changes must be made to the CMP.

(vii) *Drawing to scale of delivery location.* The CMP must be accompanied by a drawing to scale of the delivery location or vessel showing:

(A) Where and how crab are removed from the delivering vessel;

(B) The observation area;

(C) The location of each scale used to weigh crab; and

(D) Each location where crab is sorted.

(viii) *Single geographic location.* All offload and weighing locations detailed in a CMP must be located on the same vessel or in the same geographic location. If a CMP describes facilities for the offloading of vessels at more than one location, it must be possible to see both locations simultaneously.

(h) *Catcher/processor Observer Work Areas.* A crab catcher/processor must provide 2 observer work areas at any time when the vessel is catching or processing CR crab. All of the space and equipment required for the work station must be available to the observer at all times while an observer work area is required. A vessel required to provide observer work areas must:

(1) Provide an observer work area for sampling unsorted crab. The work area must be no less than 6 square meters and not less than 1 meter on each side. The work area must be located within 3 meters of where the vessel crew sort crab and must provide unobstructed access to that crab.

(2) Provide an observer work area for sampling retained crab. The work area must be no less than 1 meter on each side. The work area must be located downstream from the scale used to weigh total catch and upstream from the area where crab are butchered.

(3) The observer work area for sampling retained crab must be provided with a NMFS-approved platform scale located within 5 meters of the work area. Clear and unobstructed passage must be provided between the scale and the observer work area. The scale must be accompanied by approved test weights sufficient to test the scale at 10, 25, and 50 kg (or 25, 50, and 100 lb if scale is denominated in lb). The scale may be used by vessel crew but must be available to the observer at all times.

(4) Both observer work areas must be protected from extreme weather and unreasonable safety hazards.

(5) Vessel crew may use the observer work areas, but the entire area must be

available to the observer whenever the observer is working in the area.

(6) The vessel owner must prepare a diagram, drawn to scale, showing the location of both observer work areas. The diagram must be retained on board the vessel whenever the vessel is harvesting or processing crab quota.

§ 680.30 [Reserved]

Subpart C—Individual Fishing Quota Management Measures

§ 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.

(a) *Crab QS and Crab QS Fisheries.* (1) With the exception of the WAI golden king crab fishery, the Regional Administrator shall annually apportion 10 percent of the TAC specified by the State of Alaska for each of the fisheries described in Table 1 to this part to the Western Alaska CDQ program. Ten percent of the TAC in the Western Aleutian Islands golden king crab fishery will be allocated to the Adak community entity. The remaining TACs for the crab QS fisheries will be apportioned for use by qualified QS holders in each fishery.

(2) Crab harvested and retained in each crab QS fishery may be harvested and retained only by persons holding the appropriate crab IFQ for that crab QS fishery.

(3) *Official Crab Rationalization Record.* The official crab rationalization record will be used to determine the amount of QS that is to be allocated for each crab QS fishery. The official crab rationalization record is presumed to be correct. An applicant for QS has the burden to prove otherwise. For the purposes of creating the official crab rationalization record the Regional Administrator will presume the following:

(i) An LLP license is presumed to have been used onboard the same vessel from which that LLP is derived, unless documentation is provided establishing otherwise.

(ii) If more than one person is claiming legal landings or legal processing activities during the same time at the same processing facility or onboard the same vessel, then each person eligible to receive QS or PQS based on those legal landings or legal processing activities will receive any QS or PQS issued divided in equal proportion among all eligible recipients for that time period unless the applicants can provide written documentation establishing an alternative means for distributing the QS or PQS resulting from the activities during that time period.

(b) *QS Sectors and Regional Designations*—(1) *General.* The Regional Administrator shall initially assign to qualified persons, crab QS that are specific to the crab QS fisheries defined in paragraph (a)(1) of this section. The crab QS amount issued will be based on legal landings made on vessels authorized to participate in those fisheries in four QS sectors:

(i) Catcher Vessel Owner (CVO) QS shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab. CVO QS shall yield annual IFQ designated as defined under paragraph (h)(2) of this section.

(ii) Catcher Vessel Crew (CVC) QS shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of unprocessed crab. CVC QS shall yield annual IFQ designated as CVC as defined under paragraph (h)(3) of this section. After July 1, 2008, CVC QS shall yield an annual IFQ of CVC Class A or CVC Class B as defined under paragraph (h)(2) of this section.

(iii) Catcher/Processor Owner (CPO) QS shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel. CPO QS shall yield annual IFQ designated as CPO as defined under paragraph (h)(4) of this section.

(iv) Catcher/Processor Crew (CPC) QS shall be initially issued to qualified persons defined in paragraph (b)(3) of this section based on legal landings of crab that were harvested and processed on the same vessel. CPC QS shall yield annual IFQ designated as CPC as defined under paragraph (h)(5) of this section.

(2) *Regional Designations.* (i) Regional designations apply to:

(A) *North QS* if the legal landings that gave rise to the QS for a crab QS fishery were landed in the Bering Sea subarea north of 56°20′ N. lat.; or

(B) *South QS* if the legal landings that gave rise to the QS for a crab QS fishery were not landed in the North Region;

(*1*) CVO QS allocated to the WAI crab QS fishery; and

(*2*) CVC QS for the WAI crab QS fishery prior to July 1, 2008.

(C) *West QS* for a portion of the QS allocated to the WAG crab QS fishery subject to the provisions under § 680.40(c)(4);

(ii) Regional designations do not apply (Undesignated QS) to:

(A) Crab QS for the BST crab QS fishery;

(B) Crab QS for that portion of the WAG QS fishery not regionally designated for the West region;

(C) CVC QS prior to July 1, 2008;

(D) CPO QS unless that QS is transferred to the CVO QS sector, in which case the regional designation is made by the recipient of the resulting CVO QS at the time of transfer; and

(E) CPC QS.

(iii) The specific regional designations that apply to each of the crab QS fisheries are specified in the following table:

Crab QS Fishery	North Region	South Region	West Region	Undesignated Region
(A) EAG	X	X		
(B) WAG			X	X
(C) BST				X
(D) BSS	X	X		
(E) BBR	X	X		
(F) PIK	X	X		
(G) SMB	X	X		
(H) WAI		X		

(3) *Qualified person* means, for the purposes of QS issuance, a person, as defined in § 679.2, who at the time of application for QS meets the following criteria for each of the QS sectors:

(i) *CVO QS.* Holds one or more permanent, fully transferable crab LLP licenses and is a citizen of the United States;

(ii) *CPO QS.* (A) Holds one or more permanent, fully transferable crab LLP licenses with a Catcher/Processor designation and is a citizen of the United States;

(B) Harvested and processed at sea any crab species in any BSAI crab fishery during the years 1998 or 1999.

(iii) *CVC QS and CPC QS.* (A) Is an individual who is a citizen of the United States, or his or her successor-in-interest if that individual is deceased;

(B) Has historical participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit who made at least one legal landing per year for any 3 qualifying years under that permit based on data from fish tickets maintained by the State of Alaska. The qualifying years are described in Column C of Table 7 to this part.

(C) Has recent participation in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit who made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska. Those seasons are defined in Column D of Table 7 to this part; except that the requirement for recent participation does not apply to be a qualified individual to receive QS if:

(*1*) The legal landings that qualify the individual for QS in the PIK crab QS fishery were made from a vessel that is less than 60 feet length overall; or

(*2*) If the individual who is otherwise eligible to receive an initial issuance of QS died while working as part of a harvesting crew in any U.S. commercial fishery.

(4) *Qualification for Initial Allocation of QS*—(i) *Qualifying Year.* The qualifying years for each crab QS fishery are described in Column B of Table 7 to this part.

(ii) *Legal landing of crab* means, for the purpose of initial allocation of QS, crab harvested during the qualifying years specified in Column B of Table 7 to this part and landed in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing.

(A) Legal landings exclude any deadloss, fishing conducted under a scientific activity permit, or the fishery conducted under the Western Alaska CDQ program.

(B) Landings made onboard a vessel that gave rise to a crab LLP licence or made under the authority of an LLP license are non-severable from the crab LLP license until QS has been issued for those legal landings.

(C) Landings may only be used once for each QS sector for the purposes of allocating QS.

(D) Landings made from vessels which are used for purposes of receiving compensation through the BSAI Crab Capacity Reduction Program may not be used for the allocation of CVO QS or CPO QS.

(E) Legal landings for purposes of allocating QS for a crab QS fishery only include those landings that resulted in the issuance of an LLP license endorsed for that crab QS fishery, or landings that were made in that crab QS fishery under the authority of an LLP license endorsed for that crab QS fishery.

(iii) *Documentation.* Evidence of legal landings shall be limited to State of Alaska fish tickets.

(c) *Calculation of QS allocation*—(1) *General.* (i) For each permanent, fully transferable crab LLP license under which an applicant applies, CVO and CPO QS will be based on legal landings that resulted in the issuance of that license or from legal landings that were made under the authority of that license.

(ii) For each State of Alaska Interim Use Permit under which an applicant applies for CVC QS or CPC QS, the initial allocation of QS will be based on the legal landings that were made under the authority of that permit.

(2) *Computation for Initial Issuance of QS.* (i) Based on the official crab rationalization record the Regional Administrator shall derive the annual harvest denominator (AHD) that represents the amount of legally landed crab in each crab QS fishery in each qualifying year as established in column B of Table 7 to this part.

(ii) The initial QS pool is described in Table 8 to this part.

(iii) A person's initial allocation of QS shall be based on a percentage of the legal landings for the applicable sector in each crab QS fishery:

(A) Associated with crab LLP licenses held by the applicant for CVO or CPO QS; or

(B) Authorized under a State of Alaska Interim Use Permit held by the applicant for CVC or CPC QS.

(iv) As shown in the formulas under this paragraph (c)(2)(iv), the allocation of CVO and CPO QS for each crab QS fishery ''f'' based on each fully transferable LLP license ''l'' held by a qualified person shall be calculated by the Regional Administrator as follows:

(A) Sum legal landings for each qualifying year, as described in Column B of Table 7 to this part, and divide that amount by the AHD for that year as follows:

$$(\Sigma \text{ legal landings}_{lf} / \text{AHD}_f) \times 100 = \text{Percentage of the AHD}_{lf}$$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of each AHD as calculated in paragraph (c)(2)(iv)(A) of this section.

(C) Sum the highest percentages of the AHD's for that license as calculated under paragraph (c)(2)(iv)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$$\Sigma \text{ Percentages of the AHD}_{lf} / \text{Subset of Qualifying Years}_f = \text{Average Percentage}_{lf}$$

(D) Divide the Average percentage in paragraph (c)(2)(iv)(C) of this section for a license and fishery by the Sum of all Average Percentages for all licenses for that fishery as presented in the following equation:

$$\text{Average Percentage}_{lf} / \Sigma \text{ Average Percentages}_f = \text{Percentage of the Total Percentages}_{lf}$$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(iv)(E) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a license for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(iv)(E) of this section by 97 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license with a catcher/processor designation that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CPO QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a LLP license that were not processed on that vessel and multiply the amount calculated in paragraph (c)(2)(iv)(F) of this section by this percentage. This yields the amount of CVO QS to be allocated.

(I) Determine the percentage of legal landings associated with an LLP license in the subset of qualifying years that were delivered in each region as defined in § 680.40(b)(2). The amount calculated in paragraph (c)(2)(iv)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(iv)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section.

(v) As shown in the formulas under this paragraph (c)(2)(v), the allocation of CVC and CPC QS for each crab QS fishery ''f'' based on each State of Alaska Interim Use Permit ''i'' held by each qualified person shall be calculated by the Regional Administrator as follows:

(A) Sum legal landings for each qualifying year as described in Column C of Table 7 to this part and divide that amount by the AHD for that year using the following equation:

$(\Sigma \text{ legal landings}_{if} / \text{AHD}_f) \times 100 = \text{Percentage of the AHD}_{if}$

(B) In those fisheries where only a subset of the qualifying years are applied, the Regional Administrator will use the years that yield the highest percentages of the AHD as calculated in paragraph (c)(2)(v)(A) of this section.

(C) Sum the highest percentages of the AHDs for that license calculated under paragraph (c)(2)(v)(B) of this section and divide by the number in Column E of Table 7 to this part (Subset of Qualifying Years). This yields the Average Percentage as presented in the following equation:

$\Sigma \text{ Percentages of the THD}_{lf} / \text{Subset of Qualifying Years}_f = \text{Average Percentage}_{if}$

(D) Divide the Average Percentage in paragraph (c)(2)(v)(C) of this section for a permit and fishery by the Sum of all Average Percentages for all permits for that fishery as presented in the following equation:

$\text{Average Percentage}_{if} / \Sigma \text{ Average Percentages}_f = \text{Percentage of the Total Percentages}_{if}$

(E) Multiply the Percentage of the Total Percentages in paragraph (c)(2)(v)(E) of this section by the Initial QS Pool as described in Table 8 to this part. This yields the unadjusted number of QS units derived from a permit for a fishery.

(F) Multiply the unadjusted number of QS units in paragraph (c)(2)(v)(E) of this section by 3 percent. This yields the number of QS units to be allocated.

(G) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CPC QS to be allocated.

(H) Determine the percentage of legal landings in the subset of qualifying years associated with a permit that were not processed on that vessel and multiply the amount calculated in paragraph (c)(2)(v)(F) of this section by this percentage. This yields the amount of CVC QS to be allocated.

(I) Determine the percentage of legal landings associated with a permit in the subset of qualifying years that were delivered in each region as defined in paragraph (b)(2) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region.

(J) The percentage calculated in paragraph (c)(2)(v)(I) of this section may be adjusted according to the provisions at paragraphs (c)(3) and (c)(4) of this section. The amount calculated in paragraph (c)(2)(v)(H) of this section is multiplied by the percentage for each region. These regional QS designations do not apply in the CVC QS sector until July 1, 2008.

(vi) *Sunken vessel provisions.* (A) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank, the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel under § 679.40(k)(5)(v). These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings;

(B) If a person applies for CVO QS or CPO QS based, in whole or in part, on the activities of a vessel that sank and:

(*1*) The person who owned the vessel that sank would have been denied eligibility to replace a sunken vessel under the provisions of Public Law 106-554; and

(*2*) The vessel that sank was replaced with a newly constructed vessel, with that vessel under construction no later than June 10, 2002. For purposes of this section a vessel is considered under construction once the keel for that vessel has been laid; and

(*3*) The newly constructed vessel participated in any Bering Sea crab fishery no later than October 31, 2002;

(*4*) Then the Regional Administrator shall presume landings for that vessel for the crab fishing years between the time of vessel loss and the replacement of the vessel. These presumed landings shall be equivalent to 50 percent of the average legal landings for the qualifying years established in Column B of Table 7 to this part unaffected by the sinking. If the vessel sank during a qualifying year, the legal landings for that year will not be used as the basis for presumed landings.

(vii) *Interim LLP license history exemption.* An applicant for CVO or CPO QS who:

(A) Deployed a vessel in a crab QS fishery under the authority of an interim LLP license;

(B) Transferred a permanent fully transferable LLP license for use in that crab QS fishery to insure that the vessel would remain authorized to participate in the fishery following the invalidation of the interim LLP license; and

(C) Received that permanent fully transferable LLP license by transfer before January 1, 2002, may choose to use as the legal landings which are the basis for QS allocation on his or her Application for Crab QS or PQS either:

(D) The legal landings made on that vessel that gave rise to the interim crab LLP license for that crab QS fishery prior to the transfer of the permanent fully transferable LLP license for use on that vessel; or

(E) The legal landings made on the vessel that gave rise to the permanent fully transferable LLP license and the legal landings made under the authority of that same LLP license in that crab QS fishery prior to January 1, 2002.

(3) *Adjustment of CVO and CVC QS allocation for North and South regional designation.* The Regional Administrator may adjust the regional designation of QS to ensure that it is initially allocated in the same proportion as the regional designation of PQS for that crab QS fishery. A person (p) who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) Determine the ratio of the Initial PQS pool in the North and South regions.

(ii) Multiply the Initial QS pool by the ratio of North and South PQS. This will yield the target North QS pool and the target South QS pool.

(iii) Sum the QS for all persons who are eligible to receive North QS. This is the unadjusted North QS pool.

(iv) Repeat the procedure in paragraph (c)(3)(iii) of this section for the South Region. This is the unadjusted South QS pool.

(v) To calculate the amount of North QS available to all persons holding both North and South region QS, subtract the amount of QS for persons receiving North QS only from the unadjusted North QS pool as presented in the following equation:

Unadj. North QS - North QS only = North QS for [North & South] QS holders.

(vi) To calculate the amount of South QS available to all persons holding both North and South region QS, subtract the amount of QS for persons receiving South QS only from the unadjusted South QS pool as presented in the following equation:

Unadj. South QS - South QS only = South QS for [North & South] QS holders.

(vii) Subtract the Unadjusted North QS pool from the Target North QS pool to calculate the number of QS units that will be applied to the North QS pool to adjust the regional designations. This amount is the Adjustment Amount as presented in the following equation:

Unadj. North QS - Target North QS pool = Adjustment Amount

(viii) Divide the Adjustment Amount by the unadjusted North QS pool for North and South QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Amount / unadjusted North QS pool for [North & South] QS holders = RAF

(ix) For each person who holds both North and South Region QS, the QS adjustment (QS Adj. (p) to that person's Unadjusted North QS is expressed in the following equation as:

QS adj. p = Unadjusted North QS p × RAF

(x) If the QS adjustment for person (p) is negative, the QS adjustment for that person is subtracted from that person's unadjusted North QS amount and added to that person's unadjusted South QS. If the QS adjustment for person (p) is positive, the QS adjustment for that person is added to that person's unadjusted North QS amount and subtracted from that person's unadjusted South QS. These adjustments will yield the regional adjustment QS amounts for that person.

(4) *Regional designation of Western Aleutian Islands golden king crab.* Fifty percent of the CVO and CVC QS that is issued in the WAG crab QS fishery will be initially issued with a West regional designation. The West regional designation applies to QS for delivery West of 174° N. longitude. The remaining 50 percent of the CVO and CVC QS initially issued for this fishery is not subject to regional designation (Undesignated QS). A person (p) who would receive QS based on the legal landings in only one region, will receive QS with only that regional designation. A person who would receive QS with more than one regional designation for that crab QS fishery would have his or her QS holdings regionally adjusted on a pro rata basis as follows:

(i) The West QS pool is equal to 50 percent of the initial QS pool.

(ii) The Undesignated QS pool is equal to 50 percent of the initial QS pool.

(iii) Sum the QS for all persons who are eligible to receive West QS. This is the unadjusted West QS pool.

(iv) Repeat the procedure in paragraph (c)(4)(iii) of this section for the Undesignated Region. This is the unadjusted Undesignated QS pool.

(v) To calculate the amount of West QS available to all persons holding both West and Undesignated region QS, subtract the amount of QS for persons receiving West QS only from the unadjusted West QS pool as presented in the following equation:

Unadj. West QS - West QS only = West QS for [West & Undesignated] QS holders

(vi) To calculate the amount of Undesignated QS available to all persons holding both West and Undesignated region QS, subtract the amount of QS for persons receiving Undesignated QS only from the unadjusted Undesignated QS pool as presented in the following equation:

Unadj. Undesignated QS - Undesignated QS only = Undesignated QS for [West &Undesignated] QS holders

(vii) Subtract the Unadjusted West QS pool from the Target West QS pool to calculate the number of QS units that will be applied to the West QS pool to adjust the regional designations. This amount is the Adjustment Amount as presented in the following equation:

Unadj. West QS - Target West QS pool = Adjustment Amount

(viii) Divide the Adjustment Amount by the unadjusted West QS pool for West and Undesignated QS holders. This yields the regional adjustment factor (RAF) for each person as presented in the following equation:

Adj. Factor / unadjusted West QS pool for West & Undesignated QS holders = RAF

(ix) For each person who holds both unadjusted West and Undesignated Region QS, the QS adjustment (QS Adj. p) to that person's Unadjusted West QS is expressed in the following equation as:

QS adj. p = Unadjusted West QS p × RAF

(x) If the QS adjustment for person (p) is negative, the QS adjustment for that person is added to that person's unadjusted West QS amount and subtracted from that person's unadjusted Undesignated QS. If the QS adjustment for person (p) is negative, the QS adjustment for that person is subtracted from that person's unadjusted West QS amount and added to that person's unadjusted Undesignated QS. These adjustments will yield the regional adjustment QS amounts for that person.

(d) *Crab PQS and Crab PQS Fisheries*—(1) *General.* The Regional Administrator shall initially assign to qualified persons defined in paragraph (d)(3) of this section crab PQS specific to crab QS fisheries defined in paragraph (a)(1) of this section. The crab PQS amount issued will be based on total legal processing of crab made in those crab QS fisheries. PQS shall yield annual IPQ as defined under paragraph (j) of this section.

(2) *Regional Designations.* For each crab QS fishery, PQS shall be initially regionally designated based on the legal processing that gave rise to the PQS as follows:

(i) *North PQS* if the processing that gave rise to the PQS for a crab QS fishery occurred in the Bering Sea subarea north of 56°20′ N. lat.; or

(ii) *South PQS* if the processing that gave rise the PQS for a crab QS fishery did not occur in the North Region, and PQS allocated to the WAI crab QS fishery; or

(iii) *West PQS* for a portion of the PQS allocated to the WAG crab QS fishery subject to the provisions under paragraph (e)(2) of this section; or

(iv) Regional designations do not apply (Undesignated) to:

(A) That portion of the WAG crab QS fishery that is not regionally designated as West Region PQS; and

(B) The BST crab QS fishery.

(v) The specific regional designations that apply to PQS in each of the crab QS fisheries are described in paragraph (b)(2)(iii) of this section.

(3) *Qualified person,* for the purposes of PQS issuance, means a person, as defined at § 679.2, who at the time of application for PQS is a U.S. citizen, or a U.S. corporation, partnership, association, or other entity, and who:

(i) Legally processed any crab QS species established in paragraph (a)(1) of this section during 1998 or 1999 as demonstrated on the official crab rationalization record; or

(ii) Did not legally process any crab QS species during 1998 or 1999 according to the official crab rationalization record, but who:

(A) Processed BSS crab QS species in each crab season for that fishery during the period from 1988 through 1997; and

(B) From January 1, 1996, through June 10, 2002, invested in a processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing facilities with a total expenditure in excess of $1,000,000; or

(C) Is the person to whom the history of legal processing of crab has been transferred by the express terms of a written contract that clearly and unambiguously provides that such legal processing of crab has been transferred.

This provision would apply only if that applicant for PQS:

(*1*) Legally processed any crab QS species established in § 680.40(a)(1) during 1998 or 1999, as demonstrated on the official crab rationalization record; or

(*2*) Received history of crab processing that was legally processed during 1998 or 1999, as demonstrated on the official crab rationalization record.

(iii) Qualified persons, or their successors-in-interest, must exist at the time of application for PQS;

(iv) A former partner of a dissolved partnership or a former shareholder of a dissolved corporation who would otherwise qualify as a person may apply for PQS in proportion to his or her ownership interest in the dissolved partnership or corporation;

(v) Evidence of ownership interest in a dissolved partnership or corporation, association, or other entity shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest; and

(vi) A person who has acquired a processing corporation, partnership, or other entity that has a history of legal processing of crab is presumed to have received by transfer all of that history of legal processing of crab unless a clear and unambiguous contract establishes otherwise.

(4) *Qualification for Initial Allocation of PQS*—(i) *Year.* The qualifying years for each crab QS fishery are designated in Table 9 to this part.

(ii) *Ownership interest.* Evidence of ownership interest in a dissolved partnership or corporation, association, or other entity shall be limited to corporate documents (e.g., articles of incorporation) or notarized statements signed by each former partner, shareholder or director, and specifying their proportions of interest.

(iii) *Legal Processing of crab* means, for the purpose of initial allocation of PQS, raw crab pounds processed in the crab QS fisheries designated under paragraph (a)(1) of this section in compliance with state and Federal permitting, landing, and reporting regulations in effect at the time of the landing. Legal processing excludes any deadloss, fishing conducted under a scientific activity permit, or fishing conducted under the Western Alaska CDQ program.

(iv) *Documentation.* Evidence of legal processing shall be limited to State of Alaska fish tickets, except that:

(A) NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or evidence of direct payment from a receiver of crab to a harvester if that information indicates that the receiver of crab differs from the receiver indicated on State of Alaska fish ticket records; however:

(B) Information on State of Alaska fish tickets shall be presumed to be correct for the purpose of determining evidence of legal processing of crab. An applicant will have the burden of proving the validity of information submitted in an application that is inconsistent with the information on the State of Alaska fish ticket. Except that NMFS may use information from a State of Alaska Commercial Operators Annual Report, State of Alaska fishery tax records, or documentation of direct payment from a receive of crab to a harvester if that information indicated that the receiver of crab differs from the receiver indicated on State of Alaska fish ticket records.

(e) *Calculation of PQS allocation*—(1) *Computation for Initial Issuance of PQS.* (i) The Regional Administrator shall establish the Total Processing Denominator (TPD) which represents the amount of legally processed raw crab pounds in each crab QS fishery in each qualifying year.

(ii) For each crab QS fishery, the percentage of the initial PQS pool that will be distributed to each qualified person shall be based on their percentage of the TPD according to the following procedure.

(A) Sum the raw crab pounds processed for each person.

(B) Divide the sum calculated in paragraph (e)(1)(ii)(A) of this section by the TPD. Multiply by 100. This yields a person's percentage of the TPD.

(C) Sum the TPD percentages of all persons.

(D) Divide the percentage for a person calculated in paragraph (e)(1)(ii)(B) of this section by the sum calculated in paragraph (e)(1)(ii)(C) of this section for all persons. This yields the average percentage of the TPD for a person.

(E) Multiply the amount calculated in paragraph (e)(1)(ii)(D) of this section by the PQS pool for that crab QS fishery as that amount is defined in Table 8 to this part.

(F) Determine the percentages of legally processed crab that were processed in each region. The percentages calculated in paragraph (e)(1)(ii)(E) of this section are multiplied by the amount determined within each regional designation. Regional designations will apply to that PQS according to the provisions established in paragraphs (d)(2) and (e)(2) of this section.

(2) *Regional designation of Western Aleutian Islands golden king crab.* (i) Fifty percent of the PQS that is issued in the WAG crab QS fishery will be issued with a West regional designation. The West regional designation applies to PQS for processing west of 174° N. long. The remaining 50 percent of the PQS issued for this fishery is undesignated region PQS.

(ii) If a person owns a crab processing facility that is located in the West region at the time of application, that person will receive West PQS only. If a person applies to receive PQS and does not own a crab processing facility located in the West region at the time of application, then that person will receive West region and Undesignated Region PQS. Expressed algebraically, for any person (p) allocated both West region PQS and undesignated region PQS the formula is as follows:

(A) $PQS_{West} = PQS \times 0.50$

(B) $PQS_{Und.} = PQS \times 0.50$

(C) PQS_{West} for $PQS_{West\ \&\ Und.}$ holders = $PQS_{West} - PQS_{West\ only}$

(D) PQS_{West} for $Person_p = PQS_p \times PQS_{West}$ for $PQS_{West\ \&\ Und.}$ holders/(PQS_{West} for $PQS_{West\ \&\ Und.}$ holders + PQS_{Und})

(E) $PQS_{Und.}$ for $Person_p = PQS_p \times PQS_{Und.}$/($PQS_{Und.}$ for $PQS_{West\ \&\ Und.}$ holders + $PQS_{Und.}$)

(iii) For purposes of the allocation of PQS in the WAG crab fishery:

(A) Ownership of a processing facility is defined as:

(*1*) A sole proprietor; or

(*2*) A relationship between two or more entities in which a person directly or indirectly owns a 10 percent or greater interest in another, or a third entity directly or indirectly owns a 10 percent or greater interest in both.

(B) A processing facility is a shoreside crab processor or a stationary floating crab processor.

(f) *Application process*—(1) *General.* The Regional Administrator will issue QS and/or PQS to an applicant if an Application for Crab QS or PQS is completed and is submitted by or on behalf of the applicant during the specified application period, and if the applicant meets all criteria for eligibility and allocation as specified at paragraphs (b)(3) and (d)(3) of this section.

(i) The Regional Administrator will send application materials to the person identified by NMFS as an eligible applicant based on the official crab rationalization record. An application form may also be obtained from the Internet or requested from the Regional Administrator.

(ii) An Application for Crab QS or PQS may be submitted by mail, P.O. Box 21668, Juneau, AK 99802, facsimile, 907-586-7557, or hand delivery to the

National Marine Fisheries Service, 709 West 9th Street, Room 420A, Juneau, AK.

(iii) An application that is postmarked, faxed, or hand delivered after the ending date for the application period for the Crab QS Program specified in the **Federal Register** will be denied.

(2) *Contents of application.* A complete Application for Crab QS or PQS must be signed by the applicant, or the individual representing the applicant, and include the following, as applicable:

(i) Type of QS or PQS for which the person is applying.

(A) If applying for CVO QS or CPO QS, answer questions (f)(2)(ii) through (f)(2)(iv) of this section;

(B) If applying for CVC QS or CPC QS, answer questions (f)(2)(ii), (f)(2)(iii) and (f)(2)(v) of this section;

(C) If applying for PQS, answer questions (f)(2)(ii), (f)(2)(iii) and (f)(2)(vi) of this section.

(ii) Applicant information.

(A) The name, permanent business mailing address, business telephone, business facsimile, business e-mail of the applicant;

(B) NMFS Person ID (if applicable);

(C) Tax ID/social security number (SSN);

(D) Indicate (YES or NO) whether applicant is a U.S. citizen; if YES, his or her date of birth;

(E) Indicate (YES or NO) whether applicant is a U.S. corporation, association, or other business entity; if YES, the date of incorporation;

(F) Indicate (YES or NO) whether applicant is deceased; if YES, date of death. A copy of the death certificate must be attached to the application;

(G) Indicate (YES or NO) whether applicant described in paragraph (f)(2)(ii)(E) of this section is no longer in existence; if YES, date of dissolution. Valid evidence of dissolution must be attached to the application;

(iii) Type of crab QS;

(iv) CVO or CPO QS;

(A) For vessels whose catch histories are being claimed for purpose of the crab QS program: include name of the vessel, ADF&G vessel registration number, USCG documentation number, moratorium crab permit number(s) or crab LLP license number(s) held by the applicant and used on that vessel, qualifying years or seasons fished, and dates during which those permits were used on that vessel;

(B) Indicate (YES or NO) whether applicant purchased an LLP crab license and vessel identification if a person purchased an LLP crab license prior to January 1, 2002, for purposes of remaining in a crab QS fishery. If YES, include LLP crab license number, ADF&G vessel registration number, USCG documentation number, and name of vessel.

(C) Indicate (YES or NO) whether QS is being claimed for a vessel that was lost or destroyed. If YES, include the vessel name, ADF&G registration number, USCG documentation number of the lost or destroyed vessel, and the date the vessel was destroyed or lost;

(D) Indicate (YES or NO) whether the lost or destroyed vessel described in paragraph (f)(2)(iv)(C) of this section was replaced with a newly constructed vessel. If YES, include the vessel name, ADF&G vessel registration number, USCG documentation number of the replacement vessel, date of vessel construction, date of entry into the fishery, and provide documentation of participation by October 31, 2002 by the new vessel in a Bering Sea crab fishery;

(E) Indicate (YES or NO) whether applying for CPO QS. If YES, attach documentation of processing crab onboard a vessel authorized by an LLP crab license in 1998 or 1999, including harvest area, date of landing, and crab species;

(v) CVC or CPC QS.

(A) Indicate (YES or NO) whether applicant has at least one landing in three of the qualifying years for each crab species for which applying for QS (see Table 7 to this part).

(B) Indicate (YES or NO) whether applicant is a recent participant in a crab QS fishery. Recent participation is defined in Table 7 to this part.

(C) In answer to paragraph (f)(2)(v)(B) of this section in YES, enter State of Alaska Interim Use Permit number, name, ADF&G vessel registration number, USCG documentation number of vessel on which harvesting occurred; qualifying years or seasons fished by QS fishery, and the dates during which those permits were used on that vessel;

(D) Indicate (YES or NO) whether a person is applying as the successor-in-interest to an eligible applicant. If YES, attach to the application documentation proving the person's status as a successor-in-interest to and valid evidence of the death of that eligible applicant;

(vi) Processor QS.

(A) Indicate (YES or NO) whether applicant processed any of the crab species included in the Crab QS program (see Table 1 to this part) in 1998 or 1999.

(B) If answer to paragraph (f)(2)(vi)(A) of this section is YES, enter the following information for each processing facility where QS crab were processed through which applicant is claiming eligibility for BSAI crab PQS:

(*1*) Facility name and ADF&G processor code;

(*2*) Qualifying years or seasons by fishery;

(C) If answer to paragraph (f)(2)(vi)(A) of this section is NO, indicate (YES or NO) whether applicant is claiming eligibility under hardship provisions;

(D) If answer to paragraph (f)(2)(vi)(C) is YES, both of the following provisions must apply to a processor to obtain hardship provisions; attach documentation of both to the application:

(*1*) Processed QS crab in 1998 or 1999, or processed BSS crab between 1988 and 1997; and

(*2*) Invested a total expenditure of $1,000,000 for any processing facility, processing equipment, or a vessel for use in processing operations, including any improvements made to existing facilities made from 1996 to 2002;

(E) Indicate (YES or NO) whether applicant has entered into a Community Right of First Refusal (ROFR) contract, pertaining to the transfer of any PQS and/or IPQ issued as a result of this application, with a community. If YES, attach to the application the following:

(*1*) Copy of signed contract for community ROFR consistent with paragraph (f)(3) of this section;

(*2*) Contract that the legal processing history and rights to apply for and receive PQS based on that legal processing history have been transferred or retained; and

(*3*) Any other information deemed necessary by the Regional Administrator.

(F) If applicant is applying to receive WAG PQS, indicate (YES or NO) whether applicant owns a crab processing facility in the West region (see paraggraph (b)(2)(iii) of this section);

(vii) *Applicant signature and certification.* Printed name and signature of applicant and date signed. If the application is completed by an authorized representative, then a proof of authorization must accompany the application.

(3) *Contract provisions for community right of first refusal (ROFR) in Application for Crab QS or PQS.* (i) To be complete, an Application for Crab QS or PQS from a person based on legal processing that occurred in an ECC must also include a contract for ROFR that includes the terms listed in paragraph (m) of this section and is signed by the applicant for initial allocation of PQS and the ECC entity designated under § 680.41(j)(2).

(ii) To be complete, an Application for Crab QS or PQS from a person based on legal processing that occurred in the Gulf of Alaska north of a line at 56°20′ N. lat. must also include a contract for ROFR that includes the terms listed in paragraph (m) of this section and is signed by the applicant for initial allocation of PQS and the ECC entity designated by the by the City of Kodiak and Kodiak Island Borough under § 680.41(j)(2).

(4) *Application evaluation.* The Regional Administrator will evaluate Applications for Crab QS and PQS submitted during the specified application period and compare all claims in the application with the information in the official crab rationalization record. Claims in the application that are consistent with information in the official crab rationalization record will be accepted by the Regional Administrator. Inconsistent claims in the Applications for Crab QS or PQS, unless verified by documentation, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraph (f)(2) of this section, will be provided a single 30-day evidentiary period as provided in paragraph (f)(5) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official crab rationalization record. An applicant who submits claims that are inconsistent with information in the official crab rationalization record has the burden of proving that the submitted claims are correct.

(5) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted prior to or within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official crab rationalization record will be amended and the information will be used in determining whether the applicant is eligible for QS or PQS. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application are correct, the applicant will be notified by an IAD, that the applicant did not meet the burden of proof to change the information in the official crab rationalization record.

(6) *30-day evidentiary period.* The Regional Administrator will specify by letter a single 30-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official crab rationalization record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section will have 30 days to provide that information. An applicant will be limited to one 30-day evidentiary period per application. Additional information or evidence, or a revised application, received after the 30-day evidentiary period specified in the letter has expired will not be considered for purposes of the IAD.

(7) *Right of First Refusal (ROFR) Contract Provisions.* If an applicant submits an Application for Crab QS and PQS that does not contain the contract provisions for community ROFR, as specified in paragraphs (f)(2)(vi)(E) and (m) of this section, then the Regional Administrator will not prepare an IAD on unverified claims or issue QS or PQS until such contract provisions have been submitted.

(8) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official crab rationalization record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive crab QS or PQS until after the final resolution of that appeal in the applicant's favor.

(g) *Annual allocation of IFQ.* IFQ is assigned based on the underlying QS. The Regional Administrator shall assign crab IFQs to each person who holds QS and submits a complete Annual Application for Crab IFQ/IPQ Permit as described under § 680.4. IFQ will be assigned to a crab QS fishery with the appropriate regional designation, QS sector, and IFQ class. This amount will represent the maximum amount of crab that may be harvested from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IFQ assignment is changed by the Regional Administrator because of an approved transfer, unless revoked, suspended, or modified under 15 CFR part 904.

(h) *Calculation of annual IFQ allocation*—(1) *General.* The annual allocation of IFQ to any person (p) in any crab QS fishery (f) will be based on the TAC of crab for that crab QS fishery less the allocation to the Western Alaska CDQ Program (''CDQ Reserve'') and Western Aleutian Islands golden king crab fishery. Expressed algebraically, the annual IFQ allocation formula is as follows:

(i) IFQ TAC_f = TAC_f - (CDQ $reserve_f$ + Allocation for the Western Aleutian Island golden king crab fishery)

(ii) IFQ_{pf} = IFQ $TAC_f \times (QS_{pf}/QS\ pool_f)$.

(2) *Class A/B IFQ.* (i) QS shall yield Class A or Class B IFQ if:

(A) Initially assigned to the CVO QS sector;

(B) Transferred to the CVO QS sector from the CPO QS sector; or

(C) After July 1, 2008, if initially issued to the CVC QS sector.

(3) *Class A IFQ* will be assigned to all eligible recipients.

(4) *Class B IFQ* will be assigned to all eligible recipients except that Class B IFQ will not be issued to:

(i) Any person who holds PQS or IPQ;

(ii) Any person who holds QS and is affiliated with a person who holds PQS or IPQ. Affiliation will be determined based on an annual affidavit by each QS holder submitted as part of the Annual Application to for Crab IFQ/IPQ Permit.

(5) *Class A/B IFQ issuance ratio.* (i) Class A and Class B IFQ shall be assigned on an annual basis such that the total amount of Class A and B IFQ assigned in a crab fishing year in each crab QS fishery for each region will be in a ratio of 90 percent Class A IFQ and 10 percent Class B IFQ.

(ii) The Regional Administrator will determine the amount of Class A and Class B IFQ that is assigned to a person

eligible to hold IFQ. This is calculated by allocating 90 percent of the IFQ TAC (TAC a) to Class A IFQ. A portion of the IFQ TAC a is allocated to persons eligible to hold only Class A IFQ (TAC a only), the remaining IFQ TAC (TAC r) is allocated for harvest by a person (p) eligible to receive both Class A IFQ and Class B IFQ. Expressed algebraically, for an individual person (p) eligible to hold both Class A and Class B IFQ the annual allocation formula is as follows:

(A) $TAC_a = IFQ\ TAC \times 0.90$

(B) $TAC_r = TAC_a - TAC_a$ only

(C) $IFQ_{ap} = TAC_r$ / (IFQ TAC $- TAC_a$ only) $\times IFQ_p$

(D) $IFQ_{bp} = IFQ_p - IFQ_{ap}$

(6) *CVC IFQ.* (i) QS that is initially allocated to the CVC QS sector shall yield CVC IFQ.

(ii) After July 1, 2008, CVC IFQ will be assigned as CVC Class A and CVC Class B IFQ under the provisions established in paragraph (h)(5)(ii) of this section.

(7) *CPO IFQ.* (i) QS that is initially allocated to the CPO QS sector shall yield CPO IFQ.

(ii) CPO IFQ is not subject to regional designation.

(8) *CPC IFQ.* (i) QS that is initially allocated to the CPC QS sector shall yield CPC IFQ.

(ii) CPC IFQ is not subject to regional designation.

(9) *QS amounts for IFQ calculation.* For purposes of calculating IFQs for any crab fishing year, the amount of a person's QS and the amount of the QS pool for any crab QS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(i) *Annual allocation of IPQ.* IPQ is assigned based on the underlying PQS. The Regional Administrator shall assign crab IPQs to each person who submits a complete Annual Application for Crab IFQ/IPQ Permit as described under § 680.4. Each assigned IPQ will be specific to a crab QS fishery with the appropriate regional designation. This amount will represent the maximum amount of crab that may be received from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IPQ assignment is changed by the Regional Administrator because of an approved transfer or unless revoked, suspended, or modified under 15 CFR part 904.

(j) *Calculation of annual IPQ allocation*—(1) *General.* The annual allocation of TAC to PQS and the resulting IPQ in any crab QS fishery (f) is the Class A IFQ TAC (TAC a). A person's annual IPQ is based on the amount of PQS held by a person (PQS p) divided by the PQS pool for that crab QS fishery for all PQS holders (PQS pool f). Expressed algebraically, the annual IPQ allocation formula is as follows:

$IPQ_{pf} = TAC_{af} \times PQS_{pf}/PQS\ pool_f$.

(2) *PQS amounts for IPQ calculation.* For purposes of calculating IPQs for any crab fishing year, the amount of a person's PQS and the amount of the PQS pool for any crab PQS fishery will be the amounts on record with the Alaska Region, NMFS, at the time of calculation.

(k) *Timing for Issuance of IFQ or IPQ.* IFQ and IPQ will be issued once the TAC for that crab QS fishery in that crab fishing year has been specified by the State of Alaska. All IFQ and IPQ for all persons will be issued once for a crab fishing year for a crab QS fishery. QS issued after NMFS has issued annual IFQ for a crab QS fishery for a crab fishing year will not result in IFQ for that crab QS fishery for that crab fishing year.

(l) *Harvesting and processing privilege.* QS and PQS allocated or permits issued pursuant to this part do not represent either an absolute right to the resource or any interest that is subject to the ''takings'' provision of the Fifth Amendment of the U.S. Constitution. Rather, such QS, PQS, or permits represent only a processing privilege that may be revoked or amended pursuant to the Magnuson-Stevens Act and other applicable law.

(m) *Contract terms for community right of first refusal (ROFR).* The contract for ROFR required for the Application for Crab QS or PQS under paragraph (f)(2) of this section must include the following terms:

(1) The ROFR will apply to transfers of:

(i) PQS, and

(ii) IPQ, if more than 20 percent of the IPQ resulting from PQS held by that person that is derived from legal processing that occurred in that ECC is used outside of that ECC in a crab fishing year.

(2) Any proposed sale of PQS to another person, and any associated IPQ or other goods and appurtenances attached to that sale, must be provided to the ECC entity under the exact same terms and agreements for the exercise of ROFR.

(3) If a PQS holder legally uses IPQ outside of the ECC for which those IPQ are designated, than that use of IPQ is exempt from ROFR. If such IPQ is used outside the ECC by the PQS holder for a period of three consecutive crab fishing years, than those PQS and IPQ are forever exempt from ROFR. This provision only applies if the PQS holder holds the IPQ and uses that IPQ during the three crab fishing year period without transfer or lease to another holder.

(4) If PQS is transferred and the IPQ derived from that PQS is used to process crab within the ECC for which that PQS is designated, ROFR cannot be exercised by the ECC entity while that PQS is used in that ECC. A use of crab in the ECC will exist if the purchaser of the PQS designated for that ECC contracts with the ECC entity to:

(i) Use at least 80 percent of the annual IPQ allocation in the ECC; or

(ii) Grant the community a ROFR on the PQS subject to the same terms and conditions required of the holder of the initial allocation of the PQS.

(5) All terms of any ROFR and contract entered into related to the ROFR will be enforced through civil contract law.

(6) An ECC entity can waive any ROFR. Written proof of any waivers of ROFR must be provided with any proposed transfer of PQS designated for an ECC under § 680.41(j) of this part.

(7) The right of first refusal may be exercised by the ECC entity by providing the PQS holder within 60 days of receipt of a copy of the proposed contract for transfer of PQS:

(i) Notice of the intent to exercise ROFR, and

(ii) Earnest money in the amount of 10 percent of the contract amount or $500,000 whichever is less.

(8) The ECC entity must perform all of the terms of the contract for the transfer of PQS within the longer of:

(i) One hundred and twenty days of receipt of the contract, or

(ii) In the time specified in the contract.

(9) Except as provided for at § 680.41(j)(5), ROFR applies only to the ECC within which the legal processing that gave rise to the PQS occurred. If the ECC entity chooses not to exercise ROFR on the transfer of PQS, that PQS will no longer be subject to ROFR

(10) Any due diligence review conducted related to the exercise of a ROFR will be undertaken by a third party bound by a confidentiality agreement that protects any proprietary information from being released or made public.

§ 680.41 Transfer of QS and IFQ.

(a) *General.* (1) Transfer of crab QS, PQS, IFQ, or IPQ means any transaction, approved by NMFS, requiring QS or PQS, or the use thereof in the form of IFQ or IPQ, to pass from one person to another, permanently or for a fixed period of time, except that:

(2) A Crab IFQ Hired Master Permit issued by NMFS in the name of a vessel master employed by a person is not a transfer of crab QS or IFQ;

(3) The use of IFQ assigned to a crab harvesting cooperative and used within that cooperative is not a transfer of IFQ.

(b) *Transfer procedure.* (1) A person must establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer.

(2) A person must submit a complete a transfer application that is subsequently approved by the Regional Administrator.

(i) *Eligibility Applications.* Applications under this paragraph are required to establish eligibility to receive QS, PQS, IFQ, or IPQ by transfer. If a person is an initial issuee of QS an eligibility application is not required to receive QS, PQS, IFQ or IPQ by transfer. If a person is an initial issuee of PQS an eligibility application is not required to receive PQS or IPQ by transfer.

(A) *Application for Eligibility to Receive QS/IFQ and PQS/IPQ by Transfer.* This application is required to establish a person's eligibility to receive QS, PQS, IFQ, or IPQ by transfer, if the person is not an ECCO.

(B) *Application to Become an ECCO.* This application is required to establish a person's eligibility to receive QS, PQS, IFQ, or IPQ by transfer, if the person is an ECCO.

(ii) *Transfer applications.* An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. Any transfer application will not be approved until the necessary eligibility application in paragraph (b)(1)(i) of this section has been submitted and approved by NMFS:

(A) *Application for Transfer of Crab QS/IFQ or PQS/IPQ.* This application is required to transfer any amount of QS, PQS, IFQ, or IPQ from an entity that is not an ECCO or a crab harvesting cooperative;

(B) *Application for Transfer of Crab QS/IFQ to or from an ECCO.* This application is required to transfer any amount of QS or IFQ to or from an entity that is an ECCO.

(C) *Application for Inter-cooperative Transfer.* This application is required to transfer any amount of IFQ from an entity that is a crab harvesting cooperative to another crab harvesting cooperative.

(c) *Eligibility to receive QS, PQS, IFQ, or IPQ by transfer.* (1) Any person may apply to receive PQS or IPQ by transfer.

(i) To be eligible to receive QS, PQS, IFQ, or IPQ by transfer, a person must first meet the requirements specified in the following table:

Quota Type	Eligible Person	Eligibility Requirements
(A) PQS	Any person	None.
(B) IPQ	Any person	None.
(C) CVO or CPO QS	(*1*) A person initially issued QS	No other eligibility requirements.
	(*2*) An individual	who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.
	(*3*) A corporation, partnership, or other entity	with at least on individual member who is a U.S. citizen and who: (*i*) owns at least 20 percent of the corporation, partnership, or other entity; and (*ii*) has at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery.
	(*4*) An ECCO	that meets the eligibility requirements described under paragraphs (c)(3) and (c)(4) of this section.
	(*5*) A CDQ Group	no other eligibility requirements.
(D) CVO or CPO IFQ	(*1*) All persons eligible for CVO or CPO QS	according to the requirements in paragraph (c)(1)(i)(C)(*5*) of this section.
	(*2*) A crab harvesting cooperative	that meets the eligibility requirements under § 680.21.
(E) CVC or CPC QS	(*1*) An individual initially issued QS	no other eligibility requirements.
	(*2*) An individual	who is a U.S. citizen with: (*i*) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and (*ii*) recent participation in the 365 days prior to the transfer.
(F) CVC or CPC IFQ	(*1*) All eligible persons for CVC or CPC QS	according to the requirements in paragraph (c)(1)(i)(E) of this section.
	(*2*) A crab harvesting cooperative	that meets the eligibility requirements under § 680.21.

(2) *Application for Eligibility to Receive QS/IFQ and PQS/IPQ by Transfer.* (i) Unless a person received crab QS by initial issuance, all persons, except non-profits seeking to become an ECCO, applying to receive QS, PQS, IFQ or IPQ must submit an Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer, containing accurate

information, to the Regional Administrator. The Regional Administrator shall provide an Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer to any person on request.

(ii) Contents. A completed Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer must include the following:

(A) Type of QS, IFQ, PQS, or IPQ for which the applicant is seeking eligibility. Indicate type of QS, IFQ, PQS, IPQ for which applicant is seeking eligibility.

(*1*) If seeking CVO or CPO QS/IFQ, complete paragraphs (c)(2)(i)(B), (c)(2)(ii)(D) if applicable, (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(*2*) If seeking CVC or CPC QS/IFQ, complete paragraphs (c)(2)(i)(B), (c)(2)(ii)(C), (c)(2)(ii)(E), and (c)(2)(ii)(F) of this section;

(*3*) If seeking PQS/IPQ, complete paragraphs (c)(3)(iii)(B) and (c)(2)(iii)(F) of this section;

(B) *Applicant information.* (*1*) Name and NMFS Person ID, date of birth, and social security number or tax ID number;

(*2*) Permanent business mailing address, business telephone number, business facsimile number, and e-mail address (if available) of the applicant. A temporary business mailing address may be provided in addition to the permanent business mailing address.

(*3*) Indicate (YES or NO) whether the applicant is a U.S. citizen or U.S. corporation, partnership or other business entity. Applicants for CVO, CPO, CVC or CPC QS (and associated IFQ) must be U.S. Citizens or U.S. Corporations, Partnerships or Other Business Entity. Applicants for PQS (and associated IPQ) are not required to be U.S. Citizens.

(C) *Eligibility for CVC or CPC shares.* Indicate (YES or NO) whether this transfer eligibility certificate (TEC) is intended for a person who wishes to buy CVC or CPC QS/IFQ. If YES, provide evidence of at least one delivery of a crab species in any crab QS fishery in the 365 days prior to submission of this form. Acceptable evidence of such delivery shall be limited to an ADF&G fish ticket imprinted with applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner, or a signed receipt for an IFQ crab landing on which applicant was acting as the permit holder's crab IFQ hired master.

(D) *U.S. Corporations, partnerships, or business entities.* (*1*) Indicate (YES or NO) whether this application is submitted by a CDQ Group. If YES, complete paragraph (c)(2)(ii)(F) of this section;

(*2*) Indicate (YES or NO) whether this application is submitted on behalf of a corporation, partnership or other business entity (not including CDQ groups). If YES:

(*i*) At least one member of the corporation, partnership or other business entity that is applying to receive this TEC must provide evidence of at least 150 days as part of a harvesting crew in any U.S. commercial fishery. Identify the individual owner that meets the criteria and complete paragraph (c)(2)(D) of this section, providing this individual's commercial fishing experience; Name, NMFS person ID, and SSN; and Business mailing address, business telephone number, and business facsimile number;

(*ii*) If a corporation, partnership, or other business entity, the applicant also must submit documentation showing at least 20 percent interest in the corporation, partnership, or other entity.

(E) *Commercial fishing experience.* (*1*) Species; enter any targeted species in a U.S. commercial fishery;

(*2*) Gear Type; enter any gear type used to legally harvest in a U.S. commercial fishery;

(*3*) Location; enter actual regulatory, statistical, or geographic harvesting location;

(*4*) Starting date and ending date of claimed fishing period (MMYY);

(*5*) Number of actual days spent harvesting crab;

(*6*) Duties performed while directly involved in the harvesting of crab (be specific):

(*7*) Name and ADF&G vessel registration number or USCG documentation number of the vessel upon which above duties were performed;

(*8*) Name of vessel owner;

(*9*) Name of vessel operator;

(*10*) Reference name. Enter the name of a person (other than applicant) who is able to verify the above experience;

(*11*) Reference's relationship to applicant;

(*12*) Reference's business mailing address and telephone number.

(F) *Applicant certification.* (*1*) Printed name and signature of applicant and date signed;

(*2*) Notary Public signature, date commission expires, and notary stamp or seal.

(G) Verification that the applicant applying for eligibility to receive crab QS/IFQ or PQS/IPQ by transfer has submitted an EDR if required to do so under § 680.6;

(H) A non-profit entity seeking approval to receive crab QS or IFQ by transfer on behalf of a ECC must first complete an Application to Become an ECCO (see paragraph (c)(4) of this section).

(3) *Designation of an ECCO.* (i) The appropriate governing body of each ECC must designate a non-profit organization to serve as the ECCO for that ECC. This designation must be submitted by the non-profit organization in its Application to Become an ECCO to transfer and hold QS on the behalf of that ECC.

(ii) If the non-profit entity is approved by NMFS to serve as the ECCO, then the appropriate governing body of the ECC must authorize the transfer of any QS from the ECCO.

(iii) The appropriate governing body for purposes of designating a non-profit organization for the Application to Become an ECCO, or approve the transfer of any QS from an ECCO in each ECC is as follows:

(A) If the ECC is also a community eligible to participate in the Western Alaska CDQ Program, then the CDQ group is the appropriate governing body;

(B) If the ECC is not a CDQ community and is incorporated as a municipality and is not located in a borough, then the municipal government is the appropriate governing body;

(C) If the ECC is not a CDQ community and is incorporated as a municipality and also located in a borough, then the municipality and borough jointly serve as the appropriate governing body and both must agree to designate the same non-profit organization to serve as the ECCO or authorize the transfer of QS from the ECCO; and

(D) If the ECC is not a CDQ community and is not incorporated as a municipality and is in a borough, then the borough in which the ECC is located is the appropriate governing body .

(iv) The appropriate governing body in each ECC may designate only one non-profit organization to serve as the ECCO for that community at any one time.

(4) *Application to Become an ECCO.* Prior to initially receiving QS or IFQ by transfer on behalf of a specific ECC, a non-profit organization that intends to represent that ECC as a ECCO must submit an Application to Become an ECCO and have that application approved by the Regional Administrator.

(i) *Contents of Application*—(A) *Applicant identification.* (*1*) Name of the non-profit organization, taxpayer identification number, and NMFS Person ID;

(*2*) Permanent business mailing address;

(*3*) Name of contact persons, business phone, business fax, and e-mail address (if available);

(*4*) Name of community or communities represented by the non-profit organization;

(*5*) Name of contact person for the governing body of each community represented.

(B) *Required attachments to the application.* (*1*) The articles of incorporation under the laws of the State of Alaska for that non-profit organization;

(*2*) A statement indicating the ECC(s) represented by that non-profit organization for purposes of holding QS;

(*3*) The bylaws of the non-profit organization;

(*4*) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(*5*) Additional contact information of the managing personnel for the non-profit organization and resumes of management personnel;

(*6*) A description of how the non-profit organization is qualified to manage QS on behalf of the ECC it is designated to represent, and a demonstration that the non-profit organization has the management skills and technical expertise to manage QS and IFQ; and

(*7*) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the ECC represented by that non-profit organization, including; procedures used to solicit requests from residents to lease IFQ, and criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria.

(C) *Applicant certification.* Printed name of applicant or authorized agent, notarized signature, and date signed, Notary Public signature and date when commission expires, and notary seal or stamp. If authorized agent, proof of authorization to act on behalf of the applicant must be provided with the application.

(d) *Application for Transfer of Crab QS/IFQ or PQS/IPQ*—(1) *General.* (i) An Application for Transfer of Crab QS/IFQ or PQS/IPQ must be approved by the Regional Administrator before the transferee may use the IFQ or IPQ to harvest or process crab QS species.

(ii) An Application for Transfer of Crab QS/IFQ or PQS/IPQ will not be approved until the Regional Administrator has reviewed the transfer agreement signed by the parties to the transaction. The Regional Administrator shall provide an Application for Transfer of Crab QS/IFQ or PQS/IPQ to any person on request or on the Internet at *http://www.fakr.noaa.gov/*. Persons who submit an Application for Transfer of Crab QS/IFQ or PQS/IPQ for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(2) *Contents.* This application for transfer must be completed, signed, and notarized by both parties. A complete Application for Transfer of Crab QS/IFQ or PQS/IPQ must include the following information:

(i) *Type of transfer.* (A) Indicate type of transfer requesting;

(B) Indicate (YES or NO) whether this is a transfer of IFQ or IPQ only due to a hardship (medical emergency, etc.). If YES, provide documentation supporting the need for such transfer (doctor's statement, etc.).

(C) If requesting transfer of PQS/IPQ, applications involving the transfer of PQS or IPQ (if applicable) outside the community in which the processing facility resides must include a statement by an authorized representative of that community indicating that the community has been offered the right of first refusal (ROFR) on the sale of the PQS or IPQ under the requirements of this section.

(ii) *Transferor (Seller) information.* (A) The name and NMFS Person ID of the transferor (person currently holding the QS, PQS, IFQ, or IPQ), social security number or tax ID number;

(B) Permanent business mailing address, business telephone, business facsimile, and business e-mail address, and the transferor may also provide a temporary address for each transaction in addition to the permanent business mailing address;

(iii) *Transferee (Buyer) information.* (A) The name and NMFS Person ID of the transferee (person receiving QS, PQS or IFQ, IPQ by transfer), social security number or tax ID number;

(B) Permanent business mailing address, business telephone, business facsimile, and business e-mail address, and the transferee may also provide a temporary address for each transaction in addition to the permanent business mailing address;

(iv) *Transfer of QS or PQS and IFQ or IPQ.* Complete the following information if QS or PQS and IFQ or IPQ are to be transferred together or if transferring only QS or PQS.

(A) QS species;

(B) QS type;

(C) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(D) Number of QS units to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number;

(F) Indicate (YES or NO) whether remaining IFQ or IPQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred;

(G) If this is a transfer of CPO QS, indicate whether being transferred as CPO QS or CVO QS and PQS;

(H) If CPO QS is being transferred as both CVO QS and PQS, specify number of units of each;

(I) If CPO QS is being transferred as CVO QS, select region for which the QS is designated;

(v) *Transfer of IFQ or IPQ only.* Complete the following information if transferring IFQ or IPQ only.

(A) QS species;

(B) IFQ/IPQ type;

(C) Range of serial numbers shown on QS certificate, numbered to and from;

(D) Number of IFQ or IPQ pounds to be transferred;

(E) Transferor (seller) IFQ or IPQ permit number; and

(F) Crab fishing year of the transfer.

(vi) *Price paid for the QS, PQS and/or IFQ, IPQ.* The transferor must provide the following information:

(A) Indicate whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price;

(B) Provide the total amount paid for the QS/IFQ or PQS/IPQ in this transaction, including all fees;

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ or IPQ pounds) of IFQ or IPQ;

(D) Indicate all reasons that apply for transferring the QS/IFQ or PQS/IPQ.

(vii) *Method of financing for the QS, PQS and/or IFQ, IPQ.* The transferee must provide the following information:

(A) Indicate (YES or NO) whether QS/IFQ or PQS/IPQ purchase will have a lien attached; if YES, provide the name of lien holder;

(B) Indicate one primary source of financing for this transfer;

(C) Indicate the sources used to locate the QS, PQS and/or IFQ, IPQ being transferred;

(D) Indicate the relationship, if any, between the transferor and the transferee

(E) Indicate (YES or NO) whether an agreement exists to return the QS/IFQ or

PQS/IPQ to the transferor or any other person, or with a condition placed on resale; If YES, explain;

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(G) Indicate whether an EDR was submitted, if required by § 680.6, and

(H) Whether all fees have been paid.

(viii) *Notary information*—(A) *Certification of transferor.* (*1*) Printed name and signature of transferor or authorized agent. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(*2*) Date signed; and

(*3*) Notary Public signature, date commission expires, and notary stamp or seal.

(B) *Certification of transferee.* (*1*) Printed name and signature of transferor or authorized agent. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(*2*) Date signed;

(*3*) Notary Public signature, date commission expires, and notary stamp or seal;

(C) *Certification of authorized representative of community holding first ROFR.* (*1*) Printed name and signature of authorized community representative;

(*2*) Date signed;

(*3*) Printed name of community; and

(*4*) Notary Public signature, date commission expires, and notary stamp or seal.

(ix) *Attachments to the application and other conditions to be met.* (A) Indicate whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR if required to do so under § 680.6; and

(B) Whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has paid all fees, as required by § 680.44.

(C) A written acknowledgment by an ECC entity for transfer of PQS or IPQ under paragraphs (j)(3) through (j)(5) of this section.

(D) All individuals applying to receive CVC QS or IFQ or CPC QS or IFQ by transfer must submit proof of at least one delivery of a crab QS species in any crab QS fishery in the 365 days prior to submission to NMFS of the Application for Transfer of QS/IFQ or PQS/IPQ. Proof of this landing is:

(*1*) Signature of the applicant on an ADF&G Fish Ticket; or

(*2*) An affidavit from the vessel owner attesting to that individual's participation as a member of a fish harvesting crew on board a vessel during a landing of a crab QS species within the 365 days prior to submission of an Application for Transfer of Crab QS/IFQ or PQS/IPQ.

(e) *Approval criteria for an Application for Transfer of Crab QS/IFQ or PQS/IPQ.* (1) Except as provided in paragraph (i) of this section, an Application for Transfer of QS/IFQ or PQS/IPQ will not be approved until the Regional Administrator has determined that:

(i) The person applying to receive the QS, PQS, IFQ or IPQ meets the requirements of eligibility in paragraph (c) of this section;

(ii) The person applying for transfer and the person applying to receive QS or IFQ/IPQ have their original notarized signatures on the application;

(iii) No fines, civil penalties, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either party exist;

(iv) The person applying to receive QS, PQS, IFQ or IPQ currently exists;

(v) The transfer would not cause the person applying to receive the QS, PQS, IFQ or IPQ to exceed the use limits in this section;

(vi) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has paid all IFQ or IPQ fees described under § 680.44; or has timely appealed the IAD of underpayment as described under § 680.44;

(vii) The person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR if required to do so under § 680.6;

(viii) In the case of the transfer of PQS or IPQ from an ECC, that the provisions for ROFR under paragraph (j) of this section have been met;

(ix) In the case of an individual applying to receive CVC QS or IFQ or CPC QS or IFQ, the individual has demonstrated active participation in a crab QS fishery in the 365 days prior to the submission of the application for transfer;

(x) Other pertinent information requested on the application for transfer has been supplied to the satisfaction of the Regional Administrator.

(f) *Application for Transfer of Crab QS/IFQ to or from an ECCO.* (1) An Application for Transfer of Crab QS/IFQ to or from an ECCO must be approved by the Regional Administrator before the transferee may use the IFQ to harvest or process crab QS species.

(2) An Application for Transfer of Crab QS/IFQ to or from an ECCO will not be approved until the Regional Administrator has reviewed and approved the transfer agreement signed by the parties to the transaction. The Regional Administrator shall provide an Application for Transfer of Crab QS/IFQ to or from an ECCO to any person on request or on the Internet at *http://www.fakr.noaa.gov/*. Persons who submit an Application for Transfer of Crab QS/IFQ to or from an ECCO for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application, and if applicable, the reason(s) for disapproval, by mail, unless another communication mode is requested on the application.

(3) *Contents.* A complete Application for Transfer of Crab QS/IFQ to or from an ECCO includes the following:

(i) *General requirements.* (A) This form may only be used if an ECCO is the proposed transferor (seller) or the proposed transferee (buyer) of the QS or IFQ.

(B) The party to whom a ECCO is seeking to transfer the QS/IFQ must hold a Transfer Eligibility Certificate (TEC).

(C) If the ECCO is applying to permanently transfer QS, a representative of the community on whose behalf the QS is held must sign the application.

(D) If authorized representative represents either the transferor or transferee, proof of authorization to act on behalf of transferor or transferee must be attached to the application.

(ii) *Transferor (seller) information.* The name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail address of the Transferor (person currently holding the QS or IFQ), and if transferor is an ECCO, the name of ECC represented by the ECCO. The transferor may also provide a temporary address for each transaction in addition to the permanent business mailing address;

(iii) *Transferee (buyer) information.* The name, NMFS Person ID, social security number or Tax ID, permanent business mailing address, business telephone, business facsimile, and business e-mail of the transferee (person receiving QS or IFQ by transfer), and if transferee is an ECCO, name of community (ECC) represented by the ECCO. The transferee may also provide a temporary address for each transaction in addition to the permanent business mailing address;

(iv) *Identification* of QS/IFQ to be transferred. Complete the following information if QS and IFQ are to be transferred together or if transferring only QS.

(A) QS species;

(B) QS type;

(C) Number of QS or IFQ units to be transferred;

(D) Total QS units;

(E) Number of IFQ pounds;

(F) Range of serial numbers to be transferred (shown on QS certificate) numbered to and from;

(G) Name of community to which QS are currently assigned;

(H) Indicate (YES or NO) whether remaining IFQ pounds for the current fishing year should be transferred; if NO, specify the number of pounds to be transferred;

(v) *Transfer of IFQ only.* (A) IFQ permit number and year of permit;

(B) Actual number of IFQ pounds to be transferred.

(vi) *Transferor Information, if an ECCO.* Reason(s) for transfer:

(A) ECCO management and administration;

(B) Fund additional QS purchase;

(C) Participation by community residents;

(D) Dissolution of ECCO; and

(E) Other (please specify).

(vii) *Transferor Information.* The transferor must provide the following information:

(A) Whether (YES or NO) a broker was used for this transaction; If YES, provide dollar amount paid in brokerage fees or percentage of total price;

(B) Provide the total amount paid for the QS/IFQ in this transaction, including all fees;

(C) Provide the price per unit of QS (price divided by QS units) and the price per pound (price divided by IFQ or IPQ pounds) of IFQ or IPQ;

(D) Indicate all reasons that apply for transferring the QS/IFQ.

(viii) *Transferee information.* The transferee must provide the following information:

(A) Indicate (YES or NO) whether QS/IFQ purchase will have a lien attached; if YES, provide the name of lien holder;

(B) Indicate one primary source of financing for this transfer;

(C) Indicate the sources used to locate the QS or IFQ being transferred;

(D) Indicate the relationship, if any, between the transferor and the transferee;

(E) Indicate (YES or NO) whether an agreement exists to return the QS or IFQ to the transferor or any other person, or with a condition placed on resale; If YES, explain;

(F) Attach a copy of the terms of agreement for the transfer, the bill of sale for QS, or lease agreement for IFQ.

(ix) *Certification of transferor.* (A) Printed name and signature of transferor or authorized agent. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(B) Date signed;

(C) Notary Public signature, date commission expires, and notary stamp or seal;

(x) *Certification of transferee.* (A) Printed name and signature of transferor or authorized agent. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(B) Date signed;

(C) Notary Public signature, date commission expires, and notary stamp or seal;

(xi) *Certification of authorized representative of community.* (A) Printed name, title and signature of authorized community representative;

(B) Date signed;

(C) Printed name of community;

(D) Notary Public signature, date commission expires, and notary stamp or seal;

(4) *Attachments to the application and other conditions to be met.* (i) Whether the person applying to make or receive the QS, PQS, IFQ or IPQ transfer has submitted an EDR if required to do so under § 680.6;

(ii) Whether the person applying for transfer and the person applying to receive the QS or IFQ/IPQ have paid all fees, as required by § 680.44.

(iii) A copy of the terms of agreement for the transfer, the bill of sale for QS or PQS, or lease agreement for IFQ or IPQ.

(iv) An affirmation that the individual receiving IFQ from an ECCO has been a permanent resident in the ECC for a period of 12 months prior to the submission of the Application for Transfer QS/IFQ to or from an ECCO on whose behalf the ECCO holds QS.

(v) Authorization of the appropriate governing body of an ECC, for any transfer of QS by the ECCO that holds QS on behalf of that ECC.

(g) *Approval criteria for an Application for Transfer of Crab QS/IFQ to or from an ECCO.* In addition to the criteria required for approval under § 680.41(e), the following criteria are also required:

(1) The ECCO applying to receive or transfer crab QS has submitted a complete annual report(s) required by § 680.5;

(2) The ECCO applying to transfer crab QS has provided information on the reasons for the transfer as described in paragraph (e) of this section; and

(3) An individual applying to receive IFQ from an ECCO is a permanent resident of the ECC in whose name the ECCO is holding QS.

(h) *Inter-cooperative transfer*—(1) *Application.* (i) A crab harvesting cooperative may only transfer its IFQ to another crab harvesting cooperative. Crab harvesting cooperatives wishing to engage in an inter-cooperative transfer must complete an Application for Inter-cooperative Transfer to transfer crab IFQ between crab harvesting cooperatives.

(ii) *Contents.* A complete application consists of the following items.

(A) *Identification of Transferor (lessor).* The name, NMFS Person ID, date of incorporation, Tax ID, name of crab harvesting cooperative's representative, permanent business mailing address, business telephone, business facsimile, and business e-mail of the crab harvesting cooperative transferor. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(B) *Identification of transferee (lessee).* The name, NMFS Person ID, date of incorporation, Tax ID, name of crab harvesting cooperative's representative, permanent business mailing address, business telephone, business facsimile, and business e-mail of the crab harvesting cooperative transferee. A temporary mailing address for each transaction may also be provided in addition to the permanent business mailing address.

(C) *Crab cooperative IFQ to be transferred.* The identification of the crab IFQ being transferred, including the type of crab cooperative IFQ being transferred, crab cooperative permit number, year that permit was issued, whether (YES or NO) all remaining pounds for the current fishing year are to be transferred, if NO, specify number of pounds to be transferred

(D) *Transferor Information.* Indicate whether (YES or NO) a broker was used . If YES, indicate dollar amount paid in brokerage fees or percentage of total price, the total amount being paid and the price per pound.

(E) *Certification of Transferor.* Printed name and signature of transferor or authorized agent and date signed, signature of Notary Public, date commission expires, and notary stamp or seal. If authorized agent, proof of authorization to act on behalf of the transferor must be provided with the application.

(F) *Certification of Transferee.* Printed name and signature of transferee or authorized agent and date sign, signature of Notary Public, date commission expires, and notary stamp or seal. If authorized agent, proof of authorization to act on behalf of the transferee must be provided with the application.

(iii) Whether the person applying to make or receive the IFQ transfer has paid all fees, as required by § 680.44.

(iv) Original notarized signatures of both the transferee and transferor or authorized representative.

(2) *Member of a crab harvesting cooperative receiving additional crab QS and/or IFQ by transfer.* A member of a crab harvesting cooperative may receive additional crab QS and/or IFQ by transfer in accordance with transfer and use provisions at §§ 680.41 and 680.42. A member of a crab harvesting cooperative may receive a separate annual IFQ permit or may transfer the IFQ to the members's cooperative.

(3) *Member of a crab harvesting cooperative transferring crab QS to someone outside the cooperative.* A member of a crab harvesting cooperative may transfer any crab QS held by that person to any person qualified to receive crab QS by transfer as provided in this section.

(4) *Member of a crab harvesting cooperative transferring the IFQ resulting from QS to a person outside the cooperative.* Once a person joins a cooperative, that person may not transfer IFQ resulting from that person's QS to anyone outside the cooperative. The cooperative may transfer the IFQ it controls on the behalf of a member of the cooperative to another cooperative if an Application for Inter-cooperative Transfer has been submitted and approved by NMFS.

(i) *QS, PQS, IFQ, or IPQ accounts.* QS, PQS, IFQ, or IPQ accounts affected by a transfer approved by the Regional Administrator will change on the date of approval. Any necessary IFQ or IPQ permits will be sent with the notification of approval if the receiver of the IFQ or IPQ permit has completed an Annual Application for Crab IFQ/IPQ Permit for the current fishing year as required under § 680.4.

(j) *Eligible crab community right of first refusal (ROFR)*—(1) *Applicability*—(i) *Exempt Fisheries.* PQS and IPQ issued for the BST, WAG, or WAI crab QS fisheries are exempt from ROFR provisions.

(ii) *Eligible Crab Communities (ECCs).* The ROFR extends to the ECCs and their associated governing bodies. The ROFR may be exercised by the ECC entity representing that ECC.

(2) *Community representation*—(i) *CDQ Communities.* Any ECC that is also a CDQ community shall designate the CDQ group to which it is a member as the ECC entity in the exercise of any ROFR.

(ii) *Non-CDQ communities.* (A) Any ECC that is a non-CDQ community must designate an ECC entity that will represent the community in the exercise of ROFR at least 30 days prior to the ending date for the initial application period for the crab QS program specified in the **Federal Register**.

(B) The ECC entity eligible to exercise the right of first refusal on behalf of an ECC will be identified by the governing body (s) of the ECC. If the ECC is incorporated under the laws of the State of Alaska, then the municipality is the governing body; if the ECC is incorporated and within an incorporated borough, then the municipality and borough are the governing bodies and must agree to designate the same ECC entity; if the ECC is not incorporated and in an incorporated borough, then the borough is the governing body.

(C) Each ECC may designate only one ECC entity to represent that community in the exercise of ROFR at any one time through a statement of support from the governing body of the ECC. That statement of support must be submitted to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, Alaska 99802, as a resolution from the City Council or other municipal body incorporated under the laws of the State of Alaska for that community at least 3 days prior to the ending date of the initial application period for the crab QS program under § 680.40. The ECC entity eligible to exercise ROFR on behalf of an ECC must be identified in the contract submitted to NMFS as part of the application for PQS under § 680.40(m).

(D) The ECC ROFR is not assignable by the ECC entity.

(3) *Transfer of PQS or IPQ from an ECC.* Any transfer of PQS or IPQ from an ECC will not be approved by NMFS unless the ECC entity representing the ECC is a signatory on the contract submitted under § 680.40(m) and acknowledges in writing to the Regional Administrator that the community does not wish to exercise ROFR.

(4) *Transfer of PQS within an ECC.* Any transfer of PQS within an ECC will not be approved by NMFS unless the ECC entity representing the ECC is a signatory on a contract submitted under § 680.40(m) to exercise ROFR.

(5) *Restrictions on transfer of PQS out of North Gulf of Alaska communities*—(i) *Applicability.* Any community in the Gulf of Alaska north of a line at 56°20′ N. lat.

(ii) *Notification of PQS transfer.* A PQS holder proposing to transfer PQS for use in processing outside any community identified under this paragraph must notify the ECC entity designated by the City of Kodiak and Kodiak Island Borough under paragraph (j)(2) of this section 30 days prior to the intended transfer of PQS out of the community.

(iii) *ROFR in the North Gulf of Alaska.* The ECC entity designated by the City of Kodiak and Kodiak Island Borough will have the opportunity to exercise ROFR to purchase from a PQS holder any PQS proposed to be transferred for use in processing outside the community identified under paragraph (j)(5)(i) of this section consistent with contract provisions under § 680.40(m).

(k) *Transfer of QS, PQS, IFQ or IPQ with restrictions.* If QS, PQS, IFQ or IPQ must be transferred as a result of a court order, operation of law, or as part of a security agreement, but the person receiving the QS, PQS, IFQ or IPQ by transfer does not meet the eligibility requirements of this section, the Regional Administrator will approve an Application for Transfer of Crab QS/IFQ or PQS/IPQ with restrictions. The Regional Administrator will not assign IFQ or IPQ resulting from the restricted QS or PQS to any person. IFQ or IPQ with restrictions may not be used for harvesting or processing species covered under this program. The QS, PQS, IFQ or IPQ will remain restricted until:

(1) The person who received the QS, PQS, IFQ or IPQ with restrictions meets the eligibility requirements of this section and the Regional Administrator approves an application for eligibility for that person; or

(2) The Regional Administrator approves the application for transfer from the person who received the QS, PQS, IFQ or IPQ with restrictions to a person who meets the requirements of this section.

(l) *Transfer of CVO, CPO, CVC, CPC QS or PQS*—(1) *General.* PQS or QS may be transferred, with approval of the Regional Administrator, to persons qualified to receive PQS or QS by transfer. However, the Regional Administrator will not approve a transfer of any type of PQS or QS that would cause a person to exceed the maximum amount of PQS or QS allowable under the use limits provided for in § 680.42, except as provided for under § 680.41(k).

(2) *CVO QS.* Notwithstanding QS use limitations under § 680.42, CVO QS may be transferred to any person eligible to receive CVO or CPO QS as defined under paragraph (c) of this section.

(3) *CPO QS.* Persons holding CPO QS may transfer CPO QS as CVO QS and PQS to eligible recipients under the following provisions:

(i) Each unit of CPO QS shall yield 1 unit of CVO QS, and 0.9 units of PQS; and

(ii) The CVO QS and PQS derived from the transfer of CPO QS may be transferred separately, except that these shares must receive the same regional designation. The regional designation shall be determined at the time of transfer by the person receiving the CVO QS.

(4) *CVC or CPC QS.* Notwithstanding QS use limitations under § 680.42, CVC or CPC QS may be transferred to any person eligible to receive CVC or CPC QS as defined under paragraph (c) of this section. CVC and CPC QS may only be used in the sector for which it is originally designated.

(m) *Transfer of IFQ or IPQ by Lease*—(1) *IFQ derived from CVO or CPO QS.* IFQ derived from CVO or CPO QS may be transferred by lease until June 30, 2010. IFQ derived from CVO or CPO QS must be leased:

(i) If the IFQ will be used on a vessel on which the QS holder has less than a 10-percent ownership interest; or

(ii) If the IFQ will be used on a vessel on which the QS holder is not present.

(2) Ownership of a vessel means, for the purposes of this section:

(i) A sole proprietor; or

(ii) A relationship between 2 or more entities in which one directly or indirectly owns a 10 percent or greater interest in a vessel.

(3) *IFQ derived from CVC QS or CPC QS.* (i) IFQ derived from CVC or CPC QS may be transferred by lease only until June 30, 2008 unless the IFQ permit holder demonstrates a hardship.

(ii) In the event of a hardship, as described at paragraph (m)(2)(iii) in this section, a holder of CVC or CPC QS may lease the IFQ derived from this QS for the term of the hardship. However, the holder of CVC or CPC QS may not lease the IFQ under this provision for more than 2 crab fishing years total in any 10 crab fishing year period. Such transfers are valid only during the crab fishing year for which an IFQ permit is issued and the QS holder must re-apply for any subsequent transfers.

(iii) An application for a transfer of IFQ under this provision will not be approved unless the QS holder can demonstrate a hardship by an inability to participate in the crab QS fisheries because:

(A) Of a medical condition of the QS holder. The QS holder is required to provide documentation of the medical condition from a licensed medical doctor who verifies that the QS holder cannot participate in the fishery because of the medical condition;

(B) Of a medical condition involving an individual who requires the QS holder's care. The QS holder is required to provide documentation of the individual's medical condition from a licensed medical doctor. The QS holder must verify that he or she provides care for that individual and that the QS holder cannot participate in the fishery because of the medical condition of that individual;

(C) Of the total or constructive physical loss of a vessel. The QS holder must provide evidence that the vessel was lost and could not be replaced in time to participate in the fishery for which the person is claiming a hardship.

(4) *IPQ derived from PQS.* IPQ derived from PQS may be leased.

(n) *Survivorship transfer privileges.* (1) On the death of an individual who holds QS or PQS, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (m)(3) of this section, receives all QS, PQS and IFQ or IPQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an application for transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) A QS or PQS holder may provide the Regional Administrator with the name of the designated beneficiary from the QS or PQS holder's immediate family to receive survivorship transfer privileges in the event of the QS or PQS holders death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following the date of the death of an individual, an Application for Transfer of Crab QS/IFQ or PQS/IPQ from the surviving spouse or, in the absence of a surviving spouse, a beneficiary from the QS or PQS holder's immediate family designated pursuant to paragraph (m)(3) of this section to a person eligible to receive IFQ or IPQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ and IPQ in this section and the use limitations under § 680.42.

(o) *Notification of Approval or Disapproval of Applications.* (1) Applicants submitting any application under § 680.41 will be notified by mail of the Regional Administrator's approval of an application. If the Regional Administrator will notify applicants if an application submitted under § 680.41 is disapproved. This notification of disapproval will include:

(i) The disapproved Application for Eligibility to Receive QS/IFQ or PQS/IPQ by Transfer; and

(ii) An explanation why the application was not approved.

(2) *Reasons for disapproval.* Reasons for disapproval of an application include, but are not limited to:

(i) U.S. citizenship, where required;

(ii) Failure to meet minimum requirements for sea time as a member of a harvesting crew;

(iii) An incomplete application;

(iv) An untimely application;

(v) Fines, civil penalties, or other payments due and owing, or outstanding permit sanctions resulting from Federal fishery violations; or

(vi) Fees owed but not paid as assessed under § 680.44.

(3) *Application deadline.* The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from August 1 until the date of the issuance of IFQ or IPQ for that crab QS fishery.

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

(a) *QS, PQS, IFQ and IPQ regional designation and IFQ class.* The QS, PQS, IFQ or IPQ specified for one crab QS fishery may not be used to harvest or process crab in any other crab QS fishery.

(b) *QS and IFQ use caps*—(1) *General.* Separate and distinct QS and IFQ use caps apply to all QS and IFQ categories pertaining to a given crab QS fishery with the following provisions:

(i) A person who receives an initial allocation of QS that exceeds the use cap listed in paragraph (b)(2) of this section are limited to hold no more than that amount. A person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002;

(ii) QS and IFQ use caps shall be based on the initial quota share pools used to determine initial allocations of QS;

(iii) Non-individuals holding QS will be required to provide, on an annual basis, ownership information as required in the Annual Application for Crab IFQ/IPQ Permit.

(2) Except for persons who hold PQS, or a CDQ group, a person may not, individually or collectively, hold:

(i) QS in amounts in excess of the amounts specified in the following table, unless that person's QS was received in the initial allocation:

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) 1.0 percent of the initial QS pool for BBR	3,880,000	120,000
(B) 1.0 percent of the initial QS pool for BSS	9,700,000	300,000
(C) 1.0 percent of the initial QS pool for BST	1,940,000	60,000
(D) 2.0 percent of the initial QS pool for PIK	582,000	18,000
(E) 2.0 percent of the initial QS pool for SMB	582,000	18,000
(F) 10.0 percent of the initial QS pool for EAG	970,000	30,000
(G) 10.0 percent of the initial QS pool for WAG	3,880,000	120,000
(H) 10.0 percent of the initial QS pool for WAI	5,820,000	180,000

(ii) Use IFQ in excess of the amount of IFQ that is yielded from the QS caps in paragraph (b)(2)(i) of this section, unless that IFQ is yielded from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(3) A CDQ Group may not:

(i) Hold QS in excess of more than the amounts of QS specified in the following table:

Fishery	CDQ CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for BST	9,700,000
(D) 10.0 percent of the initial QS pool for PIK	2,910,000
(E) 10.0 percent of the initial QS pool for SMB	2,910,000
(F) 20.0 percent of the initial QS pool for EAG	1,940,000
(G) 20.0 percent of the initial QS pool for WAG	7,760,000
(H) 20.0 percent of the initial QS pool for WAI	11,640,000

(ii) Use IFQ in excess of the amount of IFQ that is yielded from the QS caps in paragraph (b)(2)(i) of this section, unless that IFQ is yielded from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(4) A person who holds PQS may not individually or collectively:

(i) Hold QS in excess of the amounts specified in the following table:

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000	600,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000	1,500,000
(C) 5.0 percent of the initial QS pool for BST	9,700,000	300,000
(D) 5.0 percent of the initial QS pool for PIK	1,455,000	45,000
(E) 5.0 percent of the initial QS pool for SMB	1,455,000	45,000
(F) 5.0 percent of the initial QS pool for EAG	485,000	15,000
(G) 5.0 percent of the initial QS pool for WAG	1,940,000	60,000
(H) 5.0 percent of the initial QS pool for WAI	2,910,000	90,000

(ii) Use IFQ in excess of the amount of IFQ that is yielded from the QS caps in paragraph (b)(2)(i) of this section, unless that IFQ is yielded from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(5) Any person who receives an allocation of QS in excess of the use caps established in paragraph (b) of this section and who subsequently transfers any QS to another person so that the total amount of QS held by that person is less than the amount of the use caps in this paragraph will be subject to the

use caps established in this paragraph after that transfer.

(6) IFQ that is used by a crab harvesting cooperative is not subject to the use caps in paragraph (b) of this section.

(7) Non-individual persons holding QS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual QS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the Annual Application to for Crab IFQ/IPQ Permit. A person will be considered to be a holder of QS or IFQ for purposes of applying the QS and IFQ use caps in this paragraph of that person:

(i) Is the sole proprietor of an entity that holds QS or IFQ; or

(ii) Directly or indirectly owns a 10 percent or greater interest in an entity that holds QS or IFQ.

(c) *PQS and IPQ Use Caps.* (1) A person may not:

(i) Hold more than 30 percent of the initial PQS pool in any crab QS fishery unless that person received an initial allocation of PQS in excess of this limit. A person will not be issued PQS in excess of the use caps established in this section based on PQS derived from the transfer of legal processing history after June 10, 2002.

(ii) Use IPQ in excess of the amount of IPQ that is yielded from the PQS caps in paragraph (C)(1)(i) of this section unless that IPQ is yielded from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery.

(2) A person may not use more than 60 percent of the IPQ issued in the BSS crab QS fishery with a North region designation during a crab fishing year.

(3) Non-individual persons holding PQS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual PQS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual person. This annual submission of information must be submitted as part of the Annual Application for Crab IFQ/IPQ Permit. A person will be considered to be a holder of PQS for purposes of applying the PQS use caps in this paragraph if that persons:

(i) Is the sole proprietor of an entity that holds PQS; or

(ii) Directly or indirectly owns a 10 percent or greater interest in an entity that holds PQS.

(4) The amount of IPQ issued in any crab fishing year shall not exceed:

(i) 175,000,000 raw crab pounds (79,378.6 mt) in the BSS crab QS fishery;

(ii) 20,000,000 raw crab pounds (9,071.8 mt) in the BBR crab QS fishery;

(iii) Any amount of Class A IFQ that is issued in excess of the amount of IPQ in the BSS or BBR crab QS fisheries that is not required to be delivered to an RCR with unused IPQ;

(iv) The amount of Class A IFQ issued in excess of the amount of IPQ issued in the BSS or BBR crab QS fisheries will be issued to all Class A IFQ recipients on a pro rata basis in proportion to the amount of Class A IFQ held by each person.

(5) Before July 1, 2007, IPQ for the BSS, BBR, PIK, SMB, and EAG crab QS fisheries may not be used to process crab outside the ECC in which the PQS from which that IPQ is derived. Except that, before July 1, 2007:

(i) Ten percent of the IPQs that are issued for a crab QS fishery or an amount of IPQ that yields up to 500,000 raw crab pounds (226.7 mt) on an annual basis, whichever is less, may be leased for use in processing crab outside that ECC. The amount of IPQ that is issued on an annual basis for use in that ECC and the amount that may be leased outside that ECC will be established annually and will be divided on a pro rata basis among all IPQ permit holders issued IPQ for use in that ECC for that year;

(ii) IPQ in excess of the amounts specified in paragraph (c)(5)(i) of this section may be used outside the ECC for which that IPQ is designated if an unavoidable circumstance prevents crab processing within that ECC. For purposes of this section, an unavoidable circumstance exists if the specific intent to conduct processing for a crab QS species in that ECC was thwarted by a circumstance that was:

(A) Unavoidable;

(B) Unique to the IPQ permit holder, or to the processing facility used by the IPQ permit holder in that ECC;

(C) Unforeseen and reasonably unforeseeable to the IPQ permit holder;

(D) The circumstance that prevented the IPQ permit holder from processing crab in that ECC actually occurred; and

(E) The IPQ permit holder took all reasonable steps to overcome the circumstance that prevented the IPQ permit holder from conducting processing for that crab QS fishery in that ECC.

(iii) This provision does not exempt any IPQ permit holder from any regional processing requirements that may apply to that IPQ.

(6) Any person harvesting crab under a Class A CVO or CVC IFQ Permit, except as provided under § 680.42(c)(4), must deliver that crab:

(i) Only to RCRs with unused IPQ for the same QS fishery;

(ii) Only to an RCR in the region for which the QS and IFQ is designated.

(7) Any person harvesting crab under a Class B IFQ, CPO IFQ, CVC IFQ, or CPC IFQ permit may deliver that crab to any RCR.

(d) *Vessel limitations.* (1) Except for vessels that participate in a crab harvesting cooperative as described under § 680.20 and under the provisions described in paragraph (d)(4) of this section, no vessel may be used to harvest CVO or CPO IFQ in excess of the following percentages of the TAC for that crab QS fishery for that crab fishing year:

(i) 2.0 percent for BSS;

(ii) 2.0 percent for BBR;

(iii) 2.0 percent for BST;

(iv) 4.0 percent for PIK;

(v) 4.0 percent for SMB;

(vi) 20.0 percent for EAG;

(vii) 20.0 percent for WAG; or

(viii) 20.0 percent for the WAI crab QS fishery west of 179° W. long.

(2) CVC or CPC QS used on a vessel will not be included in determining whether a vessel use cap is met.

(3) An initial allocation of QS that results in an initial issuance of crab QS to a single person and that results in IFQ that is in excess of the vessel use caps described above allows that person to catch and retain crab harvested with that IFQ with a single vessel in excess of the vessel use caps as described in paragraph (e)(1) of this section provided that any transfers of a valid, fully transferable LLP license that resulted in the issuance of QS to that person occurred prior to June 10, 2002. Any subsequent transfers of a valid, fully transferable LLP license that resulted in the issuance of QS, or any transfers of QS to that person would not be exempted from these vessel use caps. However, two or more persons may not catch and retain their IFQ with one vessel in excess of these limitations.

(4) A vessel use cap would not apply to a vessel if all of the IFQ used on that vessel in a crab fishing year is IFQ held by a crab harvesting cooperative. This exemption is forfeited if that vessel is used to harvest any amount of IFQ not held by a crab harvesting cooperative during the same crab fishing year.

(5) A person holding CVC or CPC QS is required to be aboard the vessel upon

which their IFQ is being harvested; unless the IFQ resulting from that QS has been leased to a qualified person under § 680.41 or has been converted into crab cooperative IFQ under § 680.21.

(6) A person holding CVO or CPO QS does not have to be aboard the vessel being used to harvest their IFQ if they hold at least a 10 percent ownership interest in the vessel upon which the IFQ is to be harvested and are represented on board the vessel by a crab IFQ hired master employed by that QS holder as authorized under § 680.4.

(7) Ownership of a vessel means, for purposes of this section:

(i) A sole proprietor; or

(ii) Directly or indirectly owns a 10 percent or greater interest in an entity that owns a vessel.

§ 680.43 Determinations and appeals.

See § 679.43 of this chapter.

§ 680.44 Cost recovery.

(a) *Cost recovery fees*—(1) *Responsibility.* The person documented on the IFQ, IPQ, CDQ, RCR, Commercial Fisheries Entry Commission (CFEC), or State of Alaska Commissioner's permit as the permit holder at the time of a CR crab landing must comply with the requirements of this section.

(i) Subsequent transfer of IFQ, IPQ, CDQ, or QS does not affect the permit holder's liability for noncompliance with this section.

(ii) Non-renewal of an RCR permit does not affect the permit holder's liability for noncompliance with this section.

(2) *Fee Liability determination.* (i) All CR allocation holders and RCR permit holders will be subject to a fee liability for any CR crab debited from a CR allocation during a crab fishing year.

(ii) Fee liability must be calculated by multiplying the applicable fee percentage by the ex-vessel value of the CR crab received by the RCR at the time of receipt.

(iii) NMFS will provide a summary to all CR allocation and RCR permit holders available through a secure Internet site or on request during the last quarter of the crab fishing year. The summary will explain the fee liability determination including details of raw crab pounds debited from CR allocations by permit, port or port-group, species, date, and prices.

(3) *Fee collection.* (i) All RCRs who receive CR crab are responsible for submitting the cost recovery payment for all CR crab received.

(ii) All RCRs who receive CR crab in a crab fishing year must maintain and submit records for any crab cost recovery fees collected under the corresponding RCR permit.

(4) *Payment*—(i) *Payment due date.* An RCR permit holder must submit any crab cost recovery fee liability payment(s) to NMFS at the address provided in paragraph (a)(4)(iii) of this section no later than July 31 of the crab fishing year following the crab fishing year in which the payment for a CR crab landing was made.

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Mail payment and related documents to the Administrator, Alaska Region, NMFS; Attn: Operations, Management, & Information Division (OMI); P.O. Box 21668; Juneau, AK 99802-1668; Facsimile: 907-586-7354. Payments may also be submitted electronically to NMFS via forms available from RAM or on the RAM area of the Alaska Region Home Page at *http://www.fakr.noaa.gov/ram.*

(iv) *Payment method.* Payment must be made in U.S. dollars by personal check drawn on a U.S. bank account, money order, bank certified check, or credit card.

(b) *Ex-vessel value determination and use*—(1) *General.* An RCR permit holder must use either the ex-vessel value determined for shoreside processors or the ex-vessel value determined for at-sea Catcher/Processors (CP), depending on their activity. Ex-vessel value includes all cash, services, or other goods-in-kind exchanged for CR crab.

(2) *Shoreside Ex-vessel value.* Shoreside processing facilities must use the price paid at the time of purchase as ex-vessel value for the purposes of calculating fee liability. Shoreside processing facilities must include any subsequent retropayments as adjustments to the initial calculation of fee liability.

(3) *Catcher/Processor Ex-vessel value*—(i) *General.* Catcher/processors must use the corresponding CP standard price(s) as published in the **Federal Register** as ex-vessel value for the purposes of calculating fee liability.

(ii) *Duty to publish list.* As part of the summary described in paragraph (a)(2)(iii) of this section, the Regional Administrator will publish CP standard prices in the **Federal Register** during the last quarter of each crab fishing year. The CP standard prices will be described in U.S. dollars per raw crab pound, for CR crab debited from CR allocations during the previous crab fishing year.

(iii) *Effective duration.* The Regional Administrator may revise the CP standard prices annually by publication in the **Federal Register**. CP standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same crab fishing year as the CP standard price publication and shall replace any CP standard prices previously provided by NMFS.

(iv) *Determination.* NMFS will calculate the CP standard prices to reflect, as closely as possible, the previous year's average shoreside processor price by fishery and by species, and any variations in reported shoreside ex-vessel values of CR crab. The Regional Administrator will base CP standard prices on the following types of information:

(A) Landed pounds by CR crab, port-group, and month;

(B) Total shoreside ex-vessel value by CR crab, port-group, and month; and

(C) Price adjustments, including retro-payments.

(4) *Fee liability calculation.* All RCRs must base all fee liability calculations on the ex-vessel value that correlates to CR crab that is debited from a CR allocation and recorded in raw crab pounds.

(c) *Crab fee percentage*—(1) *Default percentage.* The crab fee percentage is 3 percent of the ex-vessel value of crab unless adjusted by the Regional Administrator by publication in the **Federal Register** in accordance with paragraphs (c)(3) and (c)(4) of this section.

(i) The calculated crab fee percentage will be divided equally between the harvesting and processing sectors.

(ii) Catcher/processors must pay the full crab fee percentage determined by the fee percentage calculation for all CR crab debited from a CR allocation.

(2) *Calculating fee percentage value.* Each year the Regional Administrator will calculate the fee percentage.

(i) *Factors.* In making the calculations the Regional Administrator will consider the following factors:

(A) The catch to which the crab cost recovery fee will apply;

(B) The projected ex-vessel value of that catch;

(C) The costs directly related to the management and enforcement of the Crab Rationalization Program;

(D) The funds available for the Crab Rationalization Program in the Limited Access System Administrative Fund (LASAF);

(E) Nonpayment of fee liabilities.

(ii) *Methodology.* In making the calculation, the Regional Administrator will use the following methodology:

Harvesting and Processing Sectors: $[[100 \times (DPC - AB) / V] / (1 - NPR)] \times 0.5$

Catcher/Processors: $[100 \times (DPC - AB) / V] / (1 - NPR)$

where:

DPC is the direct program costs for the Crab Rationalization Program for the previous fiscal year,

AB is the projected end of the year LASAF account balance for the Crab Rationalization Program, and

V is the projected ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year, and NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments.* During the first quarter of each crab fishing year, the Regional Administrator will consider adjusting the crab fee percentage. Consideration will be based on the calculations described in paragraph (c)(2) of this section.

(4) *Publication.* The Regional Administrator will make any adjustments in the crab fee percentage by publication in the **Federal Register**.

(5) *Applicable percentage.* The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from a CR allocation to calculate the crab cost recovery fee liability for such CR crab. The RCR permit holder must use the crab fee percentage in effect at the time a CR crab is debited from an CR allocation to calculate the crab cost recovery fee liability for any retro-payments for that CR crab.

(d) *Underpayment of fee liability.* (1) Under § 680.4, an applicant will not receive new IFQ, IPQ, or RCR permits until he or she submits a complete application. A complete application shall include full payment of an applicant's complete crab cost recovery fee liability as reported by the RCR.

(2) If an RCR fails to submit full payment for crab cost recovery fee liability by the date described in paragraph (a)(4) of this section, the Regional Administrator may:

(i) At any time thereafter send an IAD to the RCR permit holder stating that the RCR permit holder's estimated fee liability, as indicated by his or her own submitted information, is the crab cost recovery fee liability due from the RCR permit holder.

(ii) Disapprove any transfer of IFQ, IPQ, or QS to or from the RCR permit holder in accordance with § 680.41.

(3) If an RCR fails to submit full payment by the application deadline described at § 680.4(e), no IFQ or IPQ permit will be issued to that RCR for that crab fishing year.

(4) Upon final agency action determining that an RCR permit holder has not paid his or her crab cost recovery fee liability, the Regional Administrator may continue to withhold issuance of any new IFQ, IPQ, or RCR permit for any subsequent crab fishing years. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(e) *Over payment.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the crab cost recovery fee liability determined to be due by the final agency action will be returned to the RCR permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future crab cost recovery fee liability.

(f) *Appeals and requests for reconsideration.* An RCR permit holder who receives an IAD may either appeal the IAD pursuant to § 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates reconsideration, the 60-day period for appeal under § 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an RCR permit holder fails to file an appeal of the IAD pursuant to § 679.43 or request reconsideration within the time period provided, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an RCR permit holder has the burden of proving his or her claim.

(g) *Fee Submission Form.* An RCR must submit an RCR Permit Holder Fee Submission Form according to § 680.5(e).

TABLE 1 TO PART 680—CRAB RATIONALIZED (CR) FISHERY

Code	CR Fishery	Boundary Description
EAG	Eastern Aleutian Islands golden (brown) king crab (*Lithodes aequispinus*)	In waters of the EEZ with: (1) *an eastern boundary* the longitude of Scotch Cap Light (164°44′ W. long.) to 53°30′ N. lat., then West to 165° W. long. (2) *a western boundary* of 174° W. long., and (3) *a northern boundary* of a line from the latitude of Cape Sarichef (54°36′ N. lat.) westward to 171° W. long., then north to 55°30′ N. lat., then west to 174° W. long.
WAG	Western Aleutian Islands golden (brown) king crab (*Lithodes aequispinus*)	In waters of the EEZ with: (1) *an eastern boundary* the longitude 174° W. long., (2) *a western boundary* the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) *a northern boundary* of a line from the latitude of 55°30′ N. lat., then west to the U.S.-Russian Convention line of 1867.

TABLE 1 TO PART 680—CRAB RATIONALIZED (CR) FISHERY—Continued

Code	CR Fishery	Boundary Description
BST	Bering Sea Tanner crab (*Chionoecetes bairdi*)	In waters of the EEZ east of the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991) to 171° W. long., and then south to 54°30′N. lat. with *a southern boundary* of 54°36′ N. lat.
BSS	Bering Sea Snow crab (*Chionoecetes opilio*)	In waters of the EEZ east of the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991) to 171° W. long., and then south to 54°30′ N. lat. with *a southern boundary* of 54°36′ N.
BBR	Bristol Bay red king crab (*Paralithodes camtshaticus*)	In waters of the EEZ with: (1) *a northern boundary* of 58°30′ N. lat., (2) *a southern boundary* of 54°36′ N. lat., and (3) *a western boundary* of 168° W. long. and including all waters of Bristol Bay.
PIK	Pribilof red king and blue king crab (*Paralithodes camtshaticus* and *Paralithodes platypus*)	In waters of the EEZ with: (1) *a northern boundary* of 58°30′ N. lat., (2) *an eastern boundary* of 168° W. long., (3) *a southern boundary* line from 54°36′ N. lat., 168° W. long., to 54°36′ N. lat., 171° W. long., to 55°30′ N. lat., 171° W. long., to 55°30′ N. lat., 173°30′ E. lat., and then westward to the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
SMB	St. Matthew blue king crab (*Paralithodes platypus*)	In waters of the EEZ with: (1) *a northern boundary* of 62° N. lat., (2) *a southern boundary* of 58°30′ N. lat., and (3) *a western boundary* of the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).
WAI	Western Aleutian Islands red king crab (*Paralithodes camtshaticus*)	In waters of the EEZ with: (1) *an eastern boundary* the longitude 179° W. long., (2) *a western boundary* of the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991), and (3) *a northern boundary* of a line from the latitude of 55°30′ N. lat., then west to the maritime Boundary Agreement Line as that line is described in the text of and depicted in the annex to the Maritime Boundary Agreement between the United States and the Union of Soviet Socialist Republics signed in Washington, June 1, 1990, and as the Maritime Boundary Agreement Line as depicted on NOAA Chart No. 513 (6th edition, February 23, 1991) and NOAA Chart No. 514 (6th edition, February 16, 1991).

TABLE 2 TO PART 680—CRAB SPECIES CODES

Species Code	Species Description	
900	Box	*Lopholithodes mandtii*
910	Dungeness	*Cancer magister*
921	Red king crab	*Paralithodes camtshaticus*
922	Blue king crab	*Paralithodes platypus*
923	Golden (brown) king crab	*Lithodes aequispinus*
924	Scarlet king crab	*Lithodes couesi*
931	Tanner crab	*Chionoecetes bairdi*
932	Snow crab	*Chionoecetes opilio*
933	Grooved Tanner crab	*Chionoecetes tanneri*
934	Triangle Tanner crab	*Chionoecetes angulatus*
940	Korean horsehair crab	*Erimacrus isenbeckii*
951	Multispinus crab	*Paralomis multispinus*
953	Verrilli crab	*Paralomis verrilli*

TABLE 3A TO PART 680—CRAB DELIVERY CONDITION CODES

(The condition of the fish or shellfish at the point it is weighed and recorded on the ADF&G fish ticket)

Code	Description
01	Whole crab, live
79	Deadloss

TABLE 3B TO PART 680—CRAB DISPOSITION OR PRODUCT CODES

Code	Description
80	Sections
95	Personal use - not sold
97	Other retained product (specify condition)

TABLE 4 TO PART 680—CRAB PROCESS CODES

Process Code	Description
1	Fresh
18	Fresh/vacuum pack
2	Frozen
21	Frozen/block
22	Frozen/shatter pack
28	Frozen/vacuum pack
3	Salted/brined
6	Cooked
7	Live
0	Other (specify)

TABLE 5 TO PART 680—CRAB SIZE

Size Code	Description
1	Standard or large sized crab or crab sections.
2	Smaller size crab or crab sections, e.g., snow crab less than 4 inches.

TABLE 6 TO PART 680—CRAB GRADE

Grade Code	Description
1	Standard or premium quality crab or crab sections.
2	Lower quality product, e.g., dirty shelled crab or a pack that is of lower quality than No. 1 crab.

TABLE 7 TO PART 680—ELIGIBILITY FOR INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

Column A: Crab QS Fisheries	**Column B:** Qualifying Years for CVO and CPO QS	**Column C:** Qualifying Years for CVC and CPC QS	**Column D:** Recent Participation Seasons for CVC and CPC QS	**Column E:** Subset of Qualifying Years
For each crab QS fishery the Regional Administrator shall calculate (see § 680.4(c)(2)):	CVO and CPO QS for any qualified person based on that person's total legal landings of crab in each of the crab QS fisheries for any:	CVC and CPC QS for any qualified person based on that person's legal landings on the State of Alaska fish ticket during:	In addition, each person receiving CVC or CPC QS, must have made at least one landing as recorded on a State of Alaska fish ticket in at least 2 of the last 3 fishing seasons in each of the crab QS areas as those seasons are described below:	The maximum number of qualifying years that can be used to calculate QS for each QS fishery are:
1. Eastern Aleutian Islands golden (brown) king crab (EAG)	5 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; and (5) August 15, 2000 through September 24, 2000.	3 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; and (5) August 15, 2000 through September 24, 2000.	(1) September 1 1999 through October 25, 1999. (2) August 15, 2000 through September 24, 2000. (3) August 15, 2001 through September 10, 2001.	5 for CVO and CPO QS; and 3 for CVC and CPC QS.
2. Western Aleutian Islands golden (brown) king crab (WAG)	5 years of the 5-year base period beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; and (5) August 15, 2000 through March 30, 2001.	3 years of the 5-year base period beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; and (5) August 15, 2000 through March 30, 2001.	(1) September 1 1999 through August 14, 2000. (2) August 15, 2000 through March 28, 2001. (3) August 15 2001 through March 30, 2002.	5 for CVO and CPO QS; and 3 for CVC and CPC QS.

TABLE 7 TO PART 680—ELIGIBILITY FOR INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	**Column B:** Qualifying Years for CVO and CPO QS	**Column C:** Qualifying Years for CVC and CPC QS	**Column D:** Recent Participation Seasons for CVC and CPC QS	**Column E:** Subset of Qualifying Years
3. Bering Sea Tanner crab (BST)	4 years of the 6-year period beginning on: (1) November 15, 1992 through March 31, 1993; (2) November 1, 1993 through November 10, 1993; (3) November 20, 1993 through January 1, 1994; (4) November 1, 1994 through November 21, 1994; (5) November 1, 1995 through November 16, 1995; and (6) November 1, 1996 through November 5, 1996 and November 15, 1996 through November 27, 1996.	3 years of the 6-year period beginning on: (1) November 15, 1992 through March 31, 1993; (2) November 1, 1993 through November 10, 1993; (3) November 20, 1993 through January 1, 1994; (4) November 1, 1994 through November 21, 1994; (5) November 1, 1995 through November 16, 1995; and (6) November 1, 1996 through November 5, 1996 and November 15, 1996 through November 27, 1996.	in any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea *C. opilio* crab, or Bristol Bay red king crab fisheries.	4 for CVO and CPO QS;and 3 for CVC and CPC QS.
4. Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 21, 1998; (4) January 15, 1999 through March 22, 1999; and (5) April 1, 2000 through April 8, 2000.	3 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 21, 1998; (4) January 15, 1999 through March 22, 1999; and (5) April 1, 2000 through April 8, 2000.	(1) April 1, 2000 through April 8, 2000. (2) January 15, 2001 through February 14, 2001. (3) January 15, 2002 through February 8, 2002.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.
5. Bristol Bay red king crab (BBR)	4 years of the 5-year QS base period beginning on: (1) November 1, 1996 through November 5, 1996; (2) November 1, 1997 through November 5, 1997; (3) November 1, 1998 through November 6, 1998; (4) October 15, 1999 through October 20, 1999; and (5) October 16, 2000 through October 20, 2000.	3 years of the 5-year QS base period beginning on: (1) November 1, 1996 through November 5, 1996; (2) November 1, 1997 through November 5, 1997; (3) November 1, 1998 through November 6, 1998; (4) October 15, 1999 through October 20, 1999; and (5) October 16, 2000 through October 20, 2000.	(1) October 16, 2000 through October 20, 2000. (2) October 15, 2001 though October 18, 2001. (3) October 15, 2002 though October 18, 2002.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.

TABLE 7 TO PART 680—ELIGIBILITY FOR INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	**Column B:** Qualifying Years for CVO and CPO QS	**Column C:** Qualifying Years for CVC and CPC QS	**Column D:** Recent Participation Seasons for CVC and CPC QS	**Column E:** Subset of Qualifying Years
6. Pribilof red king and blue king crab (PIK)	4 years of the 5-year period beginning on: (1) September 15, 1994 through September 21, 1994; (2) September 15, 1995 through September 22, 1995; (3) September 15, 1996 through September 26, 1996; (4) September 15, 1997 through September 29, 1997; and (5) September 15, 1998 through September 28, 1998.	3 years of the 5-year period beginning on: (1) September 15, 1994 through September 21, 1994; (2) September 15, 1995 through September 22, 1995; (3) September 15, 1996 through September 26, 1996; (4) September 15, 1997 through September 29, 1997; and (5) September 15, 1998 through September 28, 1998.	in any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea *C. opilio* crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60′ LOA at the time of harvest are exempt from this requirement.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.
7. St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on: (1) September 15, 1994 through September 22, 1994; (2) September 15, 1995 through September 20, 1995; (3) September 15, 1996 through September 23, 1996; (4) September 15, 1997 through September 22, 1997; and (5) September 15, 1998 through September 26, 1998.	3 years of the 5-year period beginning on: (1) September 15, 1994 through September 22, 1994; (2) September 15, 1995 through September 20, 1995; (3) September 15, 1996 through September 23, 1996; (4) September 15, 1997 through September 22, 1997; and (5) September 15, 1998 through September 26, 1998.	in any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea *C. opilio* crab, or Bristol Bay red king crab fisheries.	4 for CVO and CPO QS; and 3 for CVC and CPC QS.
8. Western Aleutian Islands red king crab (WAI)	3 years of the 4-year period beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1, 1994 through November 28, 1994; and (4) November 1, 1995 through February 13, 1996.	3 years of the 4-year period beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1, 1994 through November 28, 1994; and (4) November 1, 1995 through February 13, 1996.	in any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea *C. opilio* crab, or Bristol Bay red king crab fisheries.	3 for CVO and CPO QS; and 3 for CVC and CPC QS.

TABLE 8 TO PART 680—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY

Crab QS Fishery	Initial QS Pool	Initial PQS Pool
EAG - Eastern Aleutian Islands golden king crab	10,000,000	10,000,000
WAG - Western Aleutian Islands golden (brown) king crab	40,000,000	40,000,000
BST - Bering Sea Tanner crab *C. bairdi*	200,000,000	200,000,000
BSS - Bering Sea snow crab *C. opilio*	1,000,000,000	1,000,000,000
BBR - Bristol Bay red king crab	400,000,000	400,000,000

TABLE 8 TO PART 680—INITIAL QS AND PQS POOL FOR EACH CRAB QS FISHERY—Continued

Crab QS Fishery	Initial QS Pool	Initial PQS Pool
PIK - Pribilof Islands red and blue king crab	30,000,000	30,000,000
SMB - St. Matthew blue king crab	30,000,000	30,000,000
WAI - Western Aleutian Islands red king crab	60,000,000	60,000,000

TABLE 9 TO PART 680—ELIGIBILITY FOR INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

Column A: For each crab QS fishery the Regional Administrator shall calculate:	*Column B:* PQS for any qualified person based on that person's total legal processing of crab in each of the crab QS fisheries for any...
Eastern Aleutian Island golden (brown) king crab (EAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; and (4) September 1, 1999 through October 25, 1999.
Western Aleutian Island golden (brown) king crab (WAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; and (4) September 1, 1999 through August 14, 2000.
Bering Sea *C. bairdi* crab (BST)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea *C. opilio* fishery during the qualifying years established for the QS fishery; and 50 percent of the totally legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that crab QS fishery.
Bering Sea *C. opilio* crab (BSS)	3 years of the 3-year period beginning on: (1) January 15, 1997 through March 21, 1997; (2) January 15, 1998 through March 21, 1998; and (3) January 15, 1999 through March 22, 1999.
Bristol Bay red king crab (BBR)	3 years of the 3-year QS base period beginning on: (1) November 1, 1997 through November 5, 1997; (2) November 1, 1998 through November 6, 1998; and (3) October 15, 1999 through October 20, 1999.
Pribilof Islands red and blue king crab (PIK)	3 years of the 3-year period beginning on: (1) September 15, 1996 through September 26, 1996; (2) September 15, 1997 through September 29, 1997; and (3) September 15, 1998 through September 28, 1998.
St. Matthew blue king crab (SMB)	3 years of the 3-year period beginning on: (1) September 15, 1996 through September 23, 1996; (2) September 15, 1997 through September 22, 1997; and (3) September 15, 1998 through September 26, 1998.
Western Aleutian Islands red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden (brown) king crab fishery during the qualifying years established for that crab QS fishery.

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