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# Contents

Federal Register

Vol. 71, No. 189

Friday, September 29, 2006

## Agriculture Department

See Animal and Plant Health Inspection Service

See Forest Service

## Animal and Plant Health Inspection Service

### RULES

Plant-related quarantine, foreign:

- Pine shoot beetle host material from Canada, 57383–57386

## Antitrust Modernization Commission

### NOTICES

Hearings, 57462

## Army Department

See Engineers Corps

### NOTICES

Patent licenses; non-exclusive, exclusive, or partially exclusive:

- Conductive (electrical, ionic, and photoelectric) polymer membrane articles, and method for producing same, 57487

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

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

## Centers for Disease Control and Prevention

### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 57512–57513

## Centers for Medicare & Medicaid Services

### RULES

Medicare:

- Inpatient rehabilitation facility prospective payment system (2007 FY) Correction, 57447–57448

### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 57513

Medicare:

- Intermediary and carrier performance; evaluation criteria and standards, 57513–57519
- Skilled nursing facilities; prospective payment system and consolidated billing; update Correction, 57519–57543

Medicare and medicaid:

- Program issuances and coverage decisions; quarterly listing, 57604–57642

Meetings:

- Medicare—  
Emergency Medical Treatment and Labor Act Technical Advisory Group, 57543–57544

## Coast Guard

### RULES

Deepwater ports:

- Regulations; revision, 57644–57694

## Commerce Department

See International Trade Administration

See National Oceanic and Atmospheric Administration

## Committee for Purchase From People Who Are Blind or Severely Disabled

### NOTICES

Procurement list; additions and deletions, 57462–57465

## Commodity Futures Trading Commission

### PROPOSED RULES

Commodity Exchange Act:

- Futures commission merchants; equity capital withdrawal limitations, 57451–57455

## Defense Department

See Army Department

See Engineers Corps

See Navy Department

### RULES

Debts resulting from erroneous payments of pay and allowances; waiver, 57427–57428

Personnel and general claims settlement and advance decision requests; settling and processing, 57425–57427

### NOTICES

Meetings:

- Science Board task forces, 57484–57486
- Scientific Advisory Board, 57486

Senior Executive Service Performance Review Board; membership, 57486–57487

## Drug Enforcement Administration

### NOTICES

*Applications, hearings, determinations, etc.:*

- Aptuit, 57568
- Cambrex Charles City, Inc., 57568–57569
- Cambridge Isotope Lab, 57569
- Dakota Pharmaceutical Packaging, 57569
- Johnson Matthey Inc., 57569–57570
- Knoll Pharmaceutical Co., 57570
- Lilly Del Caribe, Inc., 57570
- Mallinckrodt, Inc., 57570–57571
- Organix Inc., 57571
- Stepan Co., 57571

## Education Department

### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 57490–57491

## Employment and Training Administration

### NOTICES

Adjustment assistance; applications, determinations, etc.:  
Moore Wallace, 57572

## Energy Department

See Federal Energy Regulatory Commission

### RULES

Counterintelligence Evaluation Program; polygraph examinations use, 57386–57397

### NOTICES

Meetings:

- Environmental Management Site-Specific Advisory Board—  
Hanford Site, WA, 57491

**Engineers Corps****NOTICES**

- Environmental statements; notice of intent:  
Allegheny and Beaver Counties, PA; Upper Ohio  
Navigation Study, Pennsylvania, 57487-57488
- Land and jurisdictional transfers:  
Fort Ord, CA; land exchange agreement with City of  
Seaside, 57488-57489

**Environmental Protection Agency****RULES**

- Air quality implementation plans; approval and  
promulgation; various States:  
Pennsylvania; Philadelphia-Trenton-Wilmington  
nonattainment area, 57428-57431
- Pesticides; tolerances in food, animal feeds, and raw  
agricultural commodities:  
Flufenoxuron, 57431-57436  
Soybean oil, ethoxylated, 57436-57439
- Toxic substances:  
Preliminary assessment information reporting and health  
safety data reporting—  
Chemical substances withdrawn, 57439-57447

**NOTICES**

- Environmental statements; availability, etc.:  
Agency comment availability, 57503-57504  
Agency weekly receipts, 57504-57505
- Pesticide, food, and feed additive petitions:  
Dow AgroSciences LLC, 57507-57508
- Pesticide programs:  
Tolerance reassessment and risk management decisions—  
Methyl Bromide, 57505-57506
- Pesticide registration, cancellation, etc.:  
Pentachloronitrobenzene, 57506-57507
- Reports and guidance documents; availability, etc.:  
Lead; air quality criteria, 57508-57509
- Pesticides—  
Small-scale field testing and low-level intermittent  
presence in food of plant-incorporated protectants,  
57509-57510
- Superfund; response and remedial actions, proposed  
settlements, etc.:  
Richardson Flat Tailings Site, UT, 57510-57511

**Executive Office of the President**

See Presidential Documents

See Trade Representative, Office of United States

**Federal Aviation Administration****RULES**

- Airworthiness directives:  
Air Tractor, Inc., 57405-57407  
General Electric Co., 57403-57405  
Lycoming Engines, 57407-57412
- Airworthiness standards:  
Special conditions—  
Boeing Model 767-300 series airplanes, 57398-57403
- Class E airspace, 57412-57415

**PROPOSED RULES**

- Airworthiness directives:  
Rolls-Royce plc, 57449-57451

**Federal Communications Commission****PROPOSED RULES**

- Common carrier services, etc.:  
Wireless telecommunications services—  
698-746, 747-762, and 777-792 MHz bands, enhanced  
911 emergency calling systems, and hearing aid-  
compatible telephones, 57455-57456

**Federal Energy Regulatory Commission****NOTICES**

- Electric rate and corporate regulation combined filings,  
57497-57500
- Environmental statements; availability, etc.:  
Augusta, GA, 57500-57501  
North Baja Pipeline, LLC, 57501-57503  
PacifiCorp, 57503
- Applications, hearings, determinations, etc.:*  
Aero Energy LLC, 57491-57492  
Boston Edison Co., et al., 57492  
Colstrip Energy LP, 57492-57493  
Kinder Morgan Illinois Pipeline LLC, 57493-57494  
Natural Gas Pipeline Co. of America, 57494-57495  
Pacific Gas and Electric Co., 57495-57496  
PJM Interconnection, L.L.C. and Duquesne Light Co.,  
57497  
Williston Basin Interstate Pipeline Co., 57497

**Federal Reserve System****NOTICES**

- Banks and bank holding companies:  
Formations, acquisitions, and mergers, 57511

**Fish and Wildlife Service****NOTICES**

- Endangered and threatened species:  
Recovery plans—  
Holmgren milk vetch and Shivwits milk vetch, 57557-  
57558  
Survival enhancement permits—  
Nevada; razorback sucker and bonytail chub; safe  
harbor agreement, 57558-57560
- Environmental statements; availability, etc.:  
Kodiak National Wildlife Refuge, AK; comprehensive  
conservation plan, 57560-57561

**Food and Drug Administration****RULES**

- Animal drugs, feeds, and related products:  
Tulathromycin, 57416

**NOTICES**

- Human drugs:  
Patent extension; regulatory review period  
determinations—  
LYRICA, 57545  
PLENAXIS, 57545-57546  
TARCEVA, 57546-57547
- Reports and guidance documents; availability, etc.:  
Characterization and qualification of cell substrates and  
other biological starting materials used in the  
production of viral vaccines for the prevention an,  
57547-57548  
Regulatory submissions in electronic format; general  
considerations, etc.; withdrawn, 57548-57549

**Forest Service****NOTICES**

- Environmental statements; notice of intent:  
Nebraska National Forest, NE and SD, 57460-57462
- Reports and guidance documents; availability, etc.:  
Small Business Timber Sale Set-Aside Program; share  
recomputation, 57462

**Health and Human Services Department**

See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services

See Food and Drug Administration

See Health Resources and Services Administration  
See National Institutes of Health

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57511–57512

**Health Resources and Services Administration****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57549–57551

**Homeland Security Department**

See Coast Guard

**Housing and Urban Development Department****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57556–57557  
Grants and cooperative agreements; availability, etc.:  
Homeless assistance; excess and surplus Federal properties, 57557

**Interior Department**

See Fish and Wildlife Service

See Land Management Bureau

See Minerals Management Service

See National Indian Gaming Commission

See National Park Service

**International Trade Administration****NOTICES**

Antidumping:

Forged stainless steel flanges from—  
India, 57468–57469

Frozen warmwater shrimp from—  
China, 57469

Polychloroprene rubber from—  
Japan, 57470–57471

Tissue paper products from—  
China, 57471–57472

Antidumping and countervailing duties:

Administrative review requests, 57465–57468

**International Trade Commission****NOTICES**

Import investigations:

Laminated floor panels, 57564–57566

Oil country tubular goods from—  
Various countries, 57566–57567

Seamless carbon and alloy standard, line, and pressure pipe from—  
Various countries, 57567–57568

**Justice Department**

See Drug Enforcement Administration

**Labor Department**

See Employment and Training Administration

See Labor-Management Standards Office

**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 57571–57572

**Labor-Management Standards Office****RULES**

Labor-management standards:

Labor organization annual financial reports, 57716–57762

**Land Management Bureau****NOTICES**

Resource management plans, etc.:

Bay planning area, Bristol Bay and Goodnews Bay, AK, 57562–57563

Survey plat filings:

Oregon and Washington, 57563

**Minerals Management Service****NOTICES**

Reports and guidance documents; availability, etc.:

Coastal Impact Assistance Program guidelines, 57564

**National Indian Gaming Commission****PROPOSED RULES**

Indian Gaming Regulatory Act:

Electronic or electromechanical facsimile of games and electronic, computer, or other technologic aids to Class II games; definitions, 57455

**National Institutes of Health****NOTICES**

Meetings:

National Cancer Institute, 57551

National Center for Research Resources, 57551

National Heart, Lung, and Blood Institute, 57551

National Human Genome Research Institute, 57552

National Institute of Diabetes and Digestive and Kidney Diseases, 57552–57553

National Institute of Environmental Health Sciences, 57554

National Institute of Mental Health, 57553

National Institute of Neurological Disorders and Stroke, 57552

National Institute on Alcohol Abuse and Alcoholism, 57553–57554

Scientific Review Center, 57554–57556

**National Oceanic and Atmospheric Administration****RULES**

Fishery conservation and management:

Magnuson-Stevens Act provisions—

Bering Sea and Aleutian Islands Catcher Processor

Capacity Reduction Program, 57696–57713

**PROPOSED RULES**

Fishery conservation and management:

West Coast states and Western Pacific fisheries—

Pacific Coast groundfish, 57764–57862

**NOTICES**

Committees; establishment, renewal, termination, etc.:

Climate Change Science Program Product Development

Committee for Synthesis and Assessment Product

3.3, 57472

Endangered and threatened species:

Recovery plans—

Upper Columbia Spring Chinook Salmon, Steelhead, and Bull Trout, 57472–57476

Marine mammals:

Incidental taking; authorization letters, etc.—

Fugro West, Inc.; Dumbarton Bridge, South San

Francisco Bay, CA; geophysical seismic surveys;

California sea lions, Pacific harbor seals, harbor

porpoises, 57476–57484

Meetings:

International Commission for Conservation of Atlantic

Tunas, U.S. Section Advisory Committee, 57484

**National Park Service****NOTICES**

National Register of Historic Places; pending nominations, 57564

**Navy Department****NOTICES**

Environmental statements; notice of intent:  
Atlantic Fleet active sonar training; U.S. East Coast and Gulf of Mexico; public scoping meetings, 57489–57490

**Nuclear Regulatory Commission****NOTICES**

Environmental statements; availability, etc.:  
Exelon Generation Co., LLC, 57577–57578  
Reports and guidance documents; availability, etc.:  
Emergency planning, 57578–57579  
Seismically initiated event sequences; review methodology, 57579–57584  
Yucca Mountain Review Plan: preclosure safety analysis; information and reliability estimation level, 57584–57585  
*Applications, hearings, determinations, etc.:*  
Abel, Gary, 57572–57573  
BWX Technologies, Inc., 57574–57575  
STP Nuclear Operating Co., 57575  
Union Carbide Corp., 57576–57577

**Occupational Safety and Health Review Commission****RULES**

Privacy Act; implementation, 57416–57425

**Office of United States Trade Representative**

See Trade Representative, Office of United States

**Pipeline and Hazardous Materials Safety Administration****PROPOSED RULES**

Pipeline safety:  
Gas distribution operators; public awareness regulations applicability, 57457–57459

**Presidential Documents****ADMINISTRATIVE ORDERS**

Narcotics and drugs:  
Certification for major drug producing and drug transit countries (Presidential Determination)  
No. 2006-24 of September 15, 2006, 57863–57870

**Securities and Exchange Commission****NOTICES**

Securities:  
Suspension of trading—  
G Printing, Inc., et al., 57586–57587  
Self-regulatory organizations; proposed rule changes:  
National Association of Securities Dealers, Inc., 57587–57588  
National Securities Clearing Corp., 57588–57590  
New York Stock Exchange LLC, 57590–57598  
Stock Clearing Corporation of Philadelphia, 57598–57599

**Small Business Administration****RULES**

Business loans:  
Gulf Opportunity Pilot Loan Program; regulatory provisions waiver, 57397–57398

**Social Security Administration****RULES**

Social security benefits and supplemental security income:  
Federal old age, survivors, and disability insurance; and aged, blind, and disabled—  
Initial disability claims adjudication; administrative review process; correction, 57415–57416

**Surface Transportation Board****NOTICES**

Rail carriers:  
Control exemptions—  
Sutch, Jeffrey L., 57599–57600  
Waybill data; release for use, 57600  
Railroad operation, acquisition, construction, etc.:  
Deadwood, Black Hills & Western Railroad, 57600–57601  
SMS Rail Lines of New York, LLC, 57601

**Trade Representative, Office of United States****NOTICES**

World Trade Organization:  
European Union—  
Romania and Bulgaria accession; implications for U.S. commercial interests, 57585–57586

**Transportation Department**

See Federal Aviation Administration  
See Pipeline and Hazardous Materials Safety Administration  
See Surface Transportation Board

**Separate Parts In This Issue****Part II**

Health and Human Services Department, Centers for Medicare & Medicaid Services, 57604–57642

**Part III**

Homeland Security Department, Coast Guard, 57644–57694

**Part IV**

Commerce Department, National Oceanic and Atmospheric Administration, 57696–57713

**Part V**

Labor Department, Labor-Management Standards Office, 57716–57762

**Part VI**

Commerce Department, National Oceanic and Atmospheric Administration, 57764–57862

**Part VII**

Executive Office of the President, Presidential Documents, 57863–57870

**Reader Aids**

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

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**CFR PARTS AFFECTED IN THIS ISSUE**

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

<b>3 CFR</b>	78.....57455
<b>Administrative Orders:</b>	80.....57455
Presidential	87.....57455
Determinations:	90.....57455
No. 2006-24 of	95.....57455
September 15,	97.....57455
2006.....57865	101.....57455
<b>7 CFR</b>	<b>49 CFR</b>
319.....57383	<b>Proposed Rules:</b>
<b>10 CFR</b>	192.....57457
709.....57386	<b>50 CFR</b>
710.....57386	600.....57696
<b>13 CFR</b>	<b>Proposed Rules:</b>
120.....57397	660.....57764
<b>14 CFR</b>	
25.....57398	
39 (3 documents) .....57403,	
57405, 57407	
71 (4 documents) .....57412,	
57413, 57414	
<b>Proposed Rules:</b>	
39.....57449	
<b>17 CFR</b>	
<b>Proposed Rules:</b>	
1.....57451	
<b>20 CFR</b>	
404.....57415	
<b>21 CFR</b>	
522.....57416	
<b>25 CFR</b>	
<b>Proposed Rules:</b>	
502.....57455	
546.....57455	
547.....57455	
<b>29 CFR</b>	
403.....57716	
2400.....57416	
<b>32 CFR</b>	
281.....57425	
283.....57427	
<b>33 CFR</b>	
148.....57644	
149.....57644	
150.....57644	
<b>40 CFR</b>	
52.....57428	
180 (2 documents) .....57431,	
57436	
712.....57439	
716.....57439	
<b>42 CFR</b>	
412.....57447	
414.....57447	
424.....57447	
<b>47 CFR</b>	
<b>Proposed Rules:</b>	
1.....57455	
2.....57455	
6.....57455	
7.....57455	
9.....57455	
13.....57455	
20.....57455	
22.....57455	
24.....57455	
27.....57455	
68.....57455	
73.....57455	
74.....57455	

# Rules and Regulations

Federal Register

Vol. 71, No. 189

Friday, September 29, 2006

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 00-073-3]

RIN 0579-AB76

#### Pine Shoot Beetle Host Material From Canada

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with one change, an interim rule that amended the regulations by restricting the importation of pine shoot beetle host material into the United States from Canada. Under the regulations established by the interim rule, as amended by this document, pine nursery stock, as well as pine products that consist of pine bark or have pine bark attached, must meet certain requirements relating to documentation, treatment, handling, and utilization as a condition of importation into the United States from Canada. The interim rule was necessary to help prevent the introduction and spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

**EFFECTIVE DATE:** September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred Thomas, Import Specialist, PPQ, APHIS, 4700 River Road, Unit 160, Riverdale, MD 20737-1236; (301) 734-8367.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 7 CFR part 319, "Foreign Quarantine Notices," prohibit or restrict the importation of certain plants and plant products into the United States to prevent the

introduction of plant pests. "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (§§ 319.37 through 319.37-14 and referred to below as the nursery stock regulations) covers the importation of living plants, plant parts, and seeds for propagation. "Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles" (§§ 319.40-1 through 319.40-11 and referred to below as the wood regulations) covers the importation of logs, lumber, and other wood articles that are unprocessed or have received only primary processing. "Subpart—Gypsy Moth Host Material from Canada" (§§ 319.77-1 through 319.77-5 and referred to below as the gypsy moth regulations) covers the importation of gypsy moth host material into the United States from Canada. This material includes certain trees and shrubs, logs and pulpwood with bark attached, and outdoor household articles and mobile homes and their associated equipment.

Pine shoot beetle (PSB, *Tomicus piniperda*) is a pest of pine trees. It can cause damage in weak and dying trees, where reproductive and immature stages of PSB occur, and in the new growth of healthy trees. During "maturation feeding," young beetles tunnel into the center of pine shoots (usually in the current year's growth), causing stunted and distorted growth in host trees. PSB also acts as a vector of several diseases of pine trees. Adult PSB can fly at least 1 kilometer. In addition, infested trees and pine products are often transported long distances, which can result in the establishment of PSB populations far from the location of the original host tree. PSB can damage urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

In an interim rule effective and published in the **Federal Register** on October 20, 2004 (69 FR 61577-61589, Docket No. 00-073-2), we amended the nursery stock regulations, the wood regulations, and the gypsy moth regulations to restrict the importation of PSB host material into the United States from Canada. That action was necessary to help prevent the introduction and spread of PSB into noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending December 20, 2004. We received two

comments by that date, from the Canadian Food Inspection Agency (CFIA) and an exporter of Christmas products. These comments are discussed below.

The CFIA stated that the interim rule was ambiguous about whether or not permits were required for pine Christmas trees, wreaths, and bough tips and questioned whether such permits were necessary, since such materials were likely to be destroyed by the end users before the flight season of PSB begins. They also questioned the need for written permits for other nonpropagative products, such as bark nuggets and wood chips, and suggested that there should not be a written permit requirement except in the case of articles consigned to a designated U.S. facility that operates under a compliance agreement.

While we disagree that the interim rule was ambiguous, after reviewing Canada's PSB directive and our current domestic PSB regulations in 7 CFR part 301, we have decided to remove the requirement for an import permit for nonpropagative material except when the nonpropagative material is moving to a U.S. facility operating under a compliance agreement for specified handling or processing. Nonpropagative material moving to such facilities is not required to be accompanied by a certificate or a statement of origin and movement, while one of those documents is required for other regulated nonpropagative material. We will continue to require a certificate or a statement of origin and movement to accompany other shipments of regulated nonpropagative material imported into the United States.

The exporter of Christmas products noted that the interim rule did not contain any restrictions on the movement of PSB host material produced in the United States. This commenter questioned why we were placing additional restrictions on Canadian-origin products when PSB exists in the United States as well.

The United States and Canada both regulate the movement of PSB host material through domestic and import regulations. The intent of the interim rule was to harmonize our import requirements with Canada's import regulations and our own domestic movement regulations. The restrictions imposed by the interim rule, as



amended by this final rule, on the importation of PSB host material from Canada are entirely consistent with the restrictions that apply to the interstate movement of such articles within the United States, and with the restrictions that the Canadian Government has placed on the importation of PSB host material into Canada from the United States.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the change discussed in this document.

#### Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on October 20, 2004. This rule revises the import restrictions on PSB host material that were established in the interim rule by removing the import permit requirement for regulated articles that are to be accompanied by a certificate or a certificate of movement and origin. Immediate action is necessary to amend the import restrictions in order to relieve restrictions that are not necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

#### Executive Order 12866 and Regulatory Flexibility Act

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

This final rule follows an interim rule that amended the regulations by restricting the importation of PSB host material into the United States from Canada. Under the regulations established by the interim rule, as amended by this document, pine nursery stock, as well as pine products that consist of pine bark or have pine bark attached, must meet certain requirements relating to documentation, treatment, handling, and utilization as a condition of importation into the United States from Canada. The interim rule was necessary to help prevent the introduction and spread of PSB, a pest of pine trees, into noninfested areas of the United States.

For this final rule, we have prepared an economic analysis, which is summarized below. The economic

analysis provides a cost-benefit analysis as required by Executive Order 12866 and a regulatory flexibility analysis regarding the potential economic effects on small entities in accordance with sec. 604 of the Regulatory Flexibility Act. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Regulations.gov Web site.<sup>1</sup>

In the interim rule, we stated that we did not have enough data for a comprehensive analysis of the economic effects of the interim rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we performed an initial regulatory flexibility analysis for the interim rule. We invited comments about the interim rule as it related to small entities and stated that we were interested in determining the number and kind of small entities that may incur benefits or costs from implementation of the interim rule. We did not receive any comments that were responsive to our request for additional economic information.

The interim rule established regulations for the importation of PSB host material into the United States from Canada. The regulations cover pine nursery stock, cut pine Christmas trees, and other pine products that consist of pine bark or have pine bark attached. These products must meet certain documentation, treatment, handling, processing, or utilization requirements. The restrictions affecting the importation of PSB host material from Canada are necessary to prevent the spread of PSB into noninfested areas of the United States. The new regulations parallel in many respects Canadian restrictions on U.S. exports of PSB host material into Canada, and are equivalent to the restrictions placed on domestic movement from infested areas within the United States.

More than 170 billion cubic feet of pine growing stock is present on timberland in noninfested areas of the United States. As hosts for PSB, ponderosa, loblolly, and red pines may be nearly as suitable as Scotch pine, the primary host.<sup>2</sup> All three species are valuable commercial timber species that occur over wide geographical areas in

the United States, primarily in non-PSB infested areas.

At the time of the last Census of Horticulture Specialties in 1998, there were more than 2,200 operations selling pine nursery plants in the United States. These operations had total sales of pine nursery plants of about \$109 million in 1998. About 1,500 of these operations, with total sales of more than \$90 million (83 percent of total sales) were located in noninfested areas of the United States. There were about 1,200 operations selling Scotch pine Christmas trees with sales of about \$27 million in 1998. About 36 percent of these operations are in noninfested areas of the United States. There were also more than 2,100 operations with sales of \$48 million in 1998 selling Christmas trees that are not Scotch pine or Douglas, Fraser, or Noble fir, and include an unknown quantity of other types of *Pinus* species. About 64 percent of these operations, accounting for more than half of the sales, were in noninfested areas of the United States.

In 2004, U.S. exports of these products were valued at approximately \$435 million. About 48 percent of these exports went to countries that currently list PSB as a quarantine pest or have specific treatment requirements for dealing with PSB.

Given the vast forest resources of the United States and the high value of U.S. exports, in conjunction with the destructive potential of the PSB, it is likely that the further spread of that pest in the United States as a result of the unrestricted movement of PSB host material from infested areas of Canada would have a negative impact on the noninfested areas of the United States, and particularly on businesses and industry that rely on pine nursery stock or pine forest materials produced or grown in those areas.

Should PSB spread into previously noninfested areas, it would likely result in control efforts by pine resource owners to mitigate damage to forest resources. Actions by State, local and Federal governments to prevent the further spread of infestation are also likely. In addition, because many U.S. exports of pine products go to countries that currently list PSB as a quarantine pest or have specific treatment requirements for dealing with PSB, maintaining these export markets after further spread would likely involve costs to growers.

#### Pine Nursery Stock

The interim rule placed new restrictions on the importation of pine nursery stock from Canada into the United States. All pine nursery stock

<sup>1</sup> To view the full economic analysis, go to <http://www.regulations.gov>, click on the "Advanced Search" tab and select "Docket Search." In the Docket ID field, enter APHIS-2004-0015, click on "Submit," then click on the Docket ID link in the search results page. The economic analysis will appear in the resulting list of documents.

<sup>2</sup> Pasek, J.E. "Pine Shoot Beetle (*Tomicus piniperda* (L.)): Pest-Initiated Pest Risk Assessment for Likelihood and Consequences of Spread within the Continental United States." March 24, 2000 (Revised). USDA/APHIS.

from Canada must now be issued a written permit as a condition of importation into the United States. In addition, the phytosanitary certificate (PC) accompanying pine nursery stock will have to include specific information regarding the article's origin and destination, as well as provide additional declarations in certain situations.

The overall effect of these requirements should be limited. There is no charge to obtain a written permit from APHIS, and the information required is not extensive. Because a PC is already required for nursery stock, the need for one under this rule should add no additional cost. The specific origin and destination information called for in this rule should be readily available. Despite potentially attractive treatment costs, the use of methyl bromide may be limited due to the potential damage it may cause to certain live plants and to the limited number of facilities where treatments could be performed.<sup>3</sup> The inspection charge by the Canadian Government should range from less than 0.3 percent of the value of the shipment to not more than 3.1 percent.<sup>4</sup> In addition, any movement of pine nursery stock from PSB infested areas within Canada is already regulated by the Government of Canada. Canadian pine nursery stock producers already meeting these standards will incur no additional burden in providing the additional declarations for the PC. Therefore, the rule should have little effect on imports of pine nursery stock from Canada, and thus on U.S. marketers and consumers.

#### Cut Pine Christmas Trees

Depending on the origin, destination, and timing of the shipment, the interim rule required some or all of the following for imports of cut pine Christmas trees from Canada: That the shipment be accompanied by a statement of origin and movement, a specific (written) permit from APHIS, a certificate issued by the National Government of Canada that indicates in the treatment section that the trees have been treated with methyl bromide to kill PSB, or were produced in a plantation that has a program to control or eradicate PSB, or were produced in an area where PSB is not considered to be present, or were 100 percent inspected and found to be free from PSB; and that

the shipment be covered en route. The U.S. destination must also be clearly indicated on the shipment.

The economic effects of these requirements should also be relatively small. A permit is only required for shipments moving to a U.S. facility operating under a compliance agreement. Few shipments of cut pine Christmas trees move to such facilities, but are rather imported for retail sale. There is no charge to obtain a permit from APHIS, and the information required for a written permit is not extensive. There is no cost to obtain the statement of origin and movement, and this document does not have to be signed by a public official. Covering shipments of cut pine Christmas trees that move between January and September should cause little burden. Very few shipments occur during this time frame, and the covering material can be a simple plastic canvas.

We expect the impact of satisfying the certificate, treatment, and additional declaration requirements to be small. First, the cost of obtaining a certificate, treatment, or inspection should be low. The cost of a certificate for cut pine Christmas trees should be similar to the cost of a PC, due to the similarities in the information required and the source of the documents. The cost of the certificate should be less than 1 percent of the shipment value.<sup>5</sup> The inspection fee should range from less than 0.3 percent to not more than 3.1 percent of the shipment value. As was previously discussed, the use of methyl bromide should be limited. In addition, movement of cut pine Christmas trees from PSB infested areas within Canada is already regulated by the Government of Canada. Finally, only those pine Christmas tree shipments from infested areas of Canada to noninfested areas of the United States will need a certificate, and Canadian exports of Christmas trees represent a small portion of the total U.S. supply (less than 2 percent). Therefore, any change in imports of cut pine Christmas trees from Canada should be small and have little effect on U.S. marketers and consumers.

#### Other Pine Products

Depending on the origin, destination, and timing of the shipment, the interim rule required some or all of the following for imports of other pine products from Canada: The shipment be

accompanied by a statement of origin and movement or a certificate issued by the National Government of Canada; be treated for PSB, or consigned under import permit to a designated U.S. facility that operates under a compliance agreement for specified handling or processing of the regulated articles or shipped from a Canadian facility operating under a compliance agreement with CFIA; and that the shipment be covered en route. The U.S. destination must also be clearly indicated on the shipment.

The overall effect of these requirements should be limited for several reasons. First, the majority of U.S. imports of other pine forest products from Canada originate in noninfested Provinces. Therefore, in most cases, the only additional requirement in this rule is the requirement for a statement of origin and movement. A permit is only required for shipments moving to a U.S. facility operating under a compliance agreement. The statement of origin and movement is a document that shippers will generate themselves. There is no cost to obtain the document and it does not have to be signed by a public official.

Second, the presence of alternative shipping arrangements should serve to limit the number of shippers required to obtain a certificate and have articles treated or pine bark ground. There may be some expense incurred by shippers in arranging for these alternatives. However, pine forest products with bark attached (e.g., saw logs, pulp wood, branches) and pine bark are regulated for PSB in Canada. Movement of those products from PSB infested areas within Canada is already regulated by the Government of Canada. Canadian pine forest product and pine bark producers already meeting these standards will incur no additional burden in providing the additional declarations for the certificate. Covering shipments of other pine products that move between January and September should cause little burden. The covering material can be as simple as a plastic canvas.

Finally, even for imports from PSB-infested Canadian provinces, only those shipments destined for or moving through noninfested areas of the United States need to be accompanied by a certificate. While the precise portion of pine forest products and pine bark imported from the infested areas of Canada to noninfested areas of the United States is not known, pine imports from Canada represent a small portion of the overall U.S. supply. Therefore, any change in imports is

<sup>3</sup> An Environmental Protection Agency estimate places the treatment of timber with methyl bromide at \$1–3 per 1,000 board feet.

<sup>4</sup> Canadian Food Inspection Agency. Inspection of a load of pine nursery stock should cost no more than C\$50. If the customs value of a shipment is less than C\$1,600, the inspection charge is C\$5. C\$1,600 = \$1,047.60; C\$5 = \$3.27, C\$50 = \$32.74.

<sup>5</sup> Canadian Food Inspection Agency. Inspection of a load of cut Christmas trees should cost no more than C\$50. Currently, the Canadian charge for a PC is C\$7, where the customs transaction value of that shipment is not more than C\$1,600, and C\$17, where that value is more than C\$1,600. C\$7 = \$4.58; C\$17 = U.S. \$11.13; C\$1,600 = \$1,047.60.

expected to have little effect on U.S. marketers and consumers.

### Alternatives Considered

This rule has been prompted by the need to restrict the importation of PSB host material into the United States from Canada in order to help prevent the introduction of PSB into noninfested areas of the United States. In assessing the need for this rule, we considered several alternatives to the chosen course of action. These alternatives are discussed in the "Regulatory Flexibility" section of the full economic analysis.

In conclusion, we anticipate limited costs associated with this rule, which is parallel to Canadian restrictions imposed on U.S. exports of PSB host material. Some shippers and other importers will be subject to certain costs and other inconveniences in securing the proper documentation for importation of affected products. However, these costs and inconveniences should be limited where they are incurred. There is no charge to obtain a written permit from APHIS, and the information required is not extensive. Obtaining a PC or certificate should cost less than 1 percent of the shipment value. Inspection costs should range from under 0.3 percent to 3.1 percent of shipment value. Because the movement of pine nursery stock, cut pine Christmas trees, pine forest products with bark attached, and pine bark from PSB-infested areas within Canada is already regulated by the Government of Canada, Canadian producers already meeting these standards will incur no additional burden in providing the additional declarations for the PC or certificate. Hence, we expect little reduction in U.S. imports of Canadian products, with small effects on U.S. marketers and consumers. U.S. producers of nursery stock, Christmas trees, and pine products who are located in the United States may benefit slightly to the extent they can market their products at lower costs than Canadian imported products subject to PSB restrictions.

We expect that gains from reducing the risk of further spread of PSB to outweigh the costs of this action. Implementation of this rule will enable APHIS to better prevent the movement of infested PSB host material from Canada into noninfested areas of the United States. This action is equivalent to what is being done domestically. Keeping areas in the United States free from PSB will result in avoided damages to forest resources. Growers will not have to expend funds to control PSB damage or to maintain PSB free

status in relation to exports. Federal, State, and local governments will not have to expend funds to control the further spread of the pest. Entities located in noninfested areas and engaged in the movement of PSB host material will not have to deal with domestic movement controls, export restrictions, or inspection and/or treatment of the regulated articles before they can be moved as is the case in U.S. quarantined areas.

### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

This final rule contains information collection requirements that differ from those in our October 2004 interim rule. Specifically, there has been a reduction of 24 hours in the burden associated with import permits for nonpropagative material that is moving to a destination other than a U.S. facility operating under a compliance agreement for specified handling or processing. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this information collection requirement has been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0257.

### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, the interim rule amending 7 CFR part 319 that was published at 69 FR 61577-61589 on October 20, 2004, is adopted as a final rule with the following changes:

## PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.40-3, paragraph (a)(1)(i) is revised to read as follows:

**§ 319.40-3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a general permit or an importer document.**

(a) \* \* \*

(1) \* \* \*

(i) From Canada: Regulated articles, other than the following:

(A) Regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae, and;

(B) Regulated articles of pine (*Pinus* spp.) that are not completely free of bark from Provinces in Canada that are considered to be infested or partially infested with pine shoot beetle (*Tomicus pinniperda*), as determined by the Canadian Food Inspection Agency, and that are moving to a United States facility operating under a compliance agreement for specified handling or processing under the provisions of § 319.40-8.

\* \* \* \* \*

Done in Washington, DC, this 25th day of September 2006.

**Bruce Knight,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. E6-16079 Filed 9-28-06; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF ENERGY

### 10 CFR Parts 709 and 710

[Docket No. CN-03-RM-01]

RIN 1992-AA33

### Counterintelligence Evaluation Regulations

**AGENCY:** Office of Intelligence and Counterintelligence, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE or Department) today is publishing a final rule to establish new counterintelligence evaluation regulations to minimize the potential for disclosure of classified information, data, and materials. The rule published today, which replaces the current DOE polygraph regulations contained at 10

CFR part 709, requires counterintelligence evaluations for applicants of certain high-risk positions and every five years for incumbents of those positions.

**EFFECTIVE DATE:** This rule is effective October 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Charles Costa, U.S. Department of Energy, Office of Intelligence and Counterintelligence, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5901; or Robert Newton, U.S. Department of Energy, Office of the General Counsel, GC-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6980.

**SUPPLEMENTARY INFORMATION:**

- I. Introduction
- II. Background Information
- III. DOE's Response to Comments
  - A. Response to General Comments
  - B. Response to Comments on Specific Proposed Regulatory Provisions
- IV. Procedural Requirements
  - A. Review Under Executive Order 12866
  - B. Review Under the Regulatory Flexibility Act
  - C. Review Under the Paperwork Reduction Act
  - D. Review Under the National Environmental Policy Act
  - E. Review Under Executive Order 13132
  - F. Review Under Executive Order 12988
  - G. Review Under the Unfunded Mandates Reform Act of 1995
  - H. Treasury and General Government Appropriations Act, 1999
  - I. Review Under the Treasury and General Government Appropriations Act, 2001
  - J. Review Under Executive Order 13211
  - K. Congressional Notification

**I. Introduction**

DOE's existing counterintelligence polygraph regulations are set forth at 10 CFR part 709. Under section 3152(a) of the National Defense Authorization Act for Fiscal Year 2002, Pub. L. 107-107 (NDAA for FY 2002), DOE is obligated to prescribe revised regulations for a new counterintelligence polygraph program the stated purpose of which is " \* \* \* to minimize the potential for release or disclosure of classified data, materials, or information" (42 U.S.C. 7383h-1(a).) Section 3152(b) requires DOE to " \* \* \* take into account the results of the Polygraph Review," which is defined by section 3152 (e) to mean " \* \* \* the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences" (42 U.S.C. 7383h-1(b), (e)).

Upon promulgation of final regulations under section 3152, and "effective 30 days after the Secretary submits to the congressional defense committees the Secretary's certification that the final rule \* \* \* has been fully

implemented, \* \* \*" section 3154 of the National Defense Authorization Act for Fiscal Year 2000 (NDAA for FY 2000) (42 U.S.C. 7383h), is repealed by operation of law. (42 U.S.C. 7383h-1(c).) The repeal of section 3154 would eliminate the existing authority which underlies DOE's current counterintelligence polygraph regulations but would not preclude the retention of some or all of those regulations through this rulemaking pursuant to the later-enacted section 3152 of the NDAA for FY 2002.

On January 7, 2005, DOE published a Supplemental NOPR at 70 FR 1383 to solicit public comments on proposed new counterintelligence evaluation regulations, including revised regulations governing the use of polygraph examinations. The Supplemental NOPR requested written comments by March 8, 2005, and invited oral comments at a public hearing held in Washington, DC on March 2, 2005. Written comments were received from 10 sources, including members of the public, current and former DOE employees and two groups representing employees at two DOE national laboratories. No oral comments were presented at the public hearing.

Part II of this **SUPPLEMENTARY INFORMATION** presents background information useful in understanding the statutory and regulatory background of both DOE's current counterintelligence polygraph examination program, contained in 10 CFR part 709, and the new Counterintelligence Evaluation Program set forth in the regulations that DOE publishes in this notice.

In Part III of this **SUPPLEMENTARY INFORMATION** DOE responds to the major issues raised in the public comments on the Supplemental NOPR.

**II. Background Information**

For more than 50 years, DOE, like its predecessor the Atomic Energy Commission, has had to balance two sets of considerations. On the one hand, we must attract the best minds that we can to do cutting edge scientific work at the heart of DOE's national security mission, and we must allow sufficient dissemination of that work to allow it to be put to the various uses that our national security demands. On the other hand, we must take all reasonable steps to prevent our enemies from gaining access to the work we are doing, lest that work end up being used to the detriment rather than the advancement of our national security. There are no easy answers to the dilemma of how best to reconcile these competing considerations.

The question of whether and to what extent DOE should use the polygraph as a tool for screening individuals for access to our most sensitive information is the latest manifestation of this perennial struggle. This particular chapter begins in 1988, when Congress enacted the Employee Polygraph Protection Act of 1988. That legislation generally restricted employers from using polygraphs to screen potential employees. Congress, however, included three exceptions that are relevant. First, Congress decided that it would not apply any of the legislation's prohibitions to the United States or other governmental employers with respect to their own employees. Second, Congress specifically allowed the Federal Government to administer polygraphs to Department of Defense contractors and contractor employees, and Department of Energy contractors and contractor employees in connection with the Department's atomic energy defense activities. And finally, Congress specifically provided that the Federal Government could administer polygraphs to contractors and contractor employees of the intelligence agencies and any other contractor or contractor employee whose duties involve access to top secret information or information that has been designated as within a special access program.

In February 1998, President Clinton issued Presidential Decision Directive-61. In that classified directive, entitled U.S. Department of Energy Counterintelligence Program, the Department was ordered to enhance its protections against the loss or compromise of highly sensitive information associated with certain defense-related programs by considering a variety of improvements to its counterintelligence program. One of these was the use of polygraph examinations to screen individuals with access to this information.

In order to carry out this directive, after initially proceeding through an internal order governing only Federal employees, on August 18, 1999 (64 FR 45062), the Department proposed a rule, entitled 'Polygraph Examination Regulation,' that would govern the use of the polygraph as a screening tool. It proposed that employees at DOE facilities, contractor employees as well as Federal employees, with access to certain classified information and materials, as well as applicants for such positions, be subject to a counterintelligence polygraph before they received initial access to the information and materials and at five-year intervals thereafter.

In the NDAA for FY 2000, Congress directed that the Department administer a counterintelligence polygraph to all Department employees, consultants, and contractor employees in 'high risk programs' prior to their being given access to the program. Congress specified that these programs were the 'Special Access Programs' and 'Personnel Security and Assurance Programs.'

On January 18, 2000, the Department finalized essentially the rule it had proposed, which included individuals with access to these programs and others in the screening requirement. Thereafter, on October 30, 2000, Congress enacted the NDAA of FY 2001, which added DOE employees, consultants, and contractor employees in programs that use 'Sensitive Compartmented Information' and all others already covered by the Department's prior rule to those to whom the polygraph screening mandate applied.

More recently, in the NDAA for FY 2002 (Pub. L. 107-107), enacted on December 28, 2001, Congress required the Secretary of Energy to carry out, under regulations, a new counterintelligence polygraph program for the Department. Congress directed that the purpose of the new program should be to minimize the potential for release or disclosure of classified data, materials, or information. Congress further directed that the Secretary, in prescribing the regulation for the new program, take into account the results of a not-yet-concluded study being done by the National Academy of Sciences. That study was being conducted pursuant to a contract DOE had entered into with the National Academy of Sciences in November 2000, in which the Department requested the Academy to conduct a review of the existing research on the validity and reliability of polygraph examinations, particularly as used for personnel security screening. Congress directed the Department to propose a new rule regarding polygraphs no later than six months after publication of the NAS study.

The NAS study, entitled *The Polygraph and Lie Detection*, was published in October 2002 (hereinafter referred to as 'NAS Report' or 'NAS Study'). The Department published a Notice of Proposed Rulemaking on April 14, 2003 (68 FR 17886). In that Notice, the Department indicated its then-current intent to continue the current polygraph program under a new rule. As the Secretary of Energy said upon release of that proposed rule, he 'concluded that it was appropriate at the present time to' retain the current

system 'in light of the current national security environment, the ongoing military operations in Iraq, and the war on Terrorism.' At the same time, the Secretary recognized that in the longer term some changes might be appropriate. Therefore, the Department explicitly asked for public comment during a period which ended on June 13, 2003. The Secretary also personally wrote all laboratory directors inviting their comments and views on the proposed rule.

DOE received comments that were mostly critical of the proposal to retain the existing regulations. The comments especially took issue with DOE's proposal, despite the NAS Report, to continue with mandatory employee screening in the absence of an event or other good cause to administer a polygraph examination. Some of the comments recommended random screening as an alternative to mandatory screening. Others complained about the adequacy of the regulatory protections in 10 CFR part 709 against adverse personnel-related action resulting from reliance on adverse polygraph examination results. Some of the management comments of the DOE weapons laboratories expressed concern about the effect of the counterintelligence polygraph program on employee morale and recruitment.

Following the close of the comment period and consideration of public comments, DOE conducted an extensive review of the then current polygraph policy and its implementation history, the NAS Report, and the public and internal comments resulting from the April 2003 Notice of Proposed Rulemaking. Following this review, DOE published a Supplemental NOPR at 70 FR 1383 (January 7, 2005). The Supplemental NOPR proposed a new mandatory counterintelligence (CI) evaluation program including mandatory polygraph screening for individuals with "regular and routine access" to DOE's most sensitive information, in particular all DOE-originated "Top Secret" information, including Top Secret "Restricted Data" and Top Secret "National Security Information." The proposed rule, like the current polygraph regulations, provided for a mandatory CI evaluation and CI-scope polygraph exam prior to initial access being granted, as well as periodic CI evaluations at intervals not to exceed five years. In deciding to propose continued use of mandatory polygraph screening, the Supplemental NOPR noted that the NAS Report's conclusion on the use of the polygraph exam as a screening tool only addresses the use of polygraph results as the *sole*

basis for access determinations. The Supplemental NOPR pointed out that, in fact, the NAS Report acknowledges that the use of the polygraph examination as an investigative lead, in conjunction with other investigative tools can ameliorate the problems the NAS Report attributes to polygraph screening. The NOPR emphasized that the proposed rule would make clear that polygraph exams are only one element to be used in counterintelligence evaluations. Reviews of personnel security files and, as necessary and appropriate, personal interviews and review of financial and credit information, net worth analyses, analyses of foreign travel and foreign contacts and connections, would be employed in conjunction with the polygraph.

The Supplemental NOPR proposed that some elements of the mandatory screening population remain essentially the same as under the current regulation. DOE also proposed a random CI evaluation program including polygraph intended to achieve the objectives of deterrence with the minimum reasonable percentage or number of individuals to which it would apply. In addition to the mandatory and random screening programs, DOE also proposed a provision for conducting "specific-incident" polygraph examinations in response to specific facts or circumstances with potential counterintelligence implications with a defined foreign nexus. That proposal also grew out of the NAS Report, which noted that this kind of use of the polygraph is the one for which the existing scientific literature provides the strongest support. The proposed rule also provided for employee-requested polygraph examinations in the context of a specific incident.

### III. DOE's Response to Comments

The following discussion describes the major issues raised in the comments received from 10 sources, provides DOE's response to these comments, and describes any resulting changes in the final regulations. The comments overwhelmingly focused on the use of the polygraph examination in the proposed new Counterintelligence Evaluation Program. Only one of the commenters supported DOE's proposed reliance on the polygraph examination as an integral part of the Counterintelligence Evaluation Program. The remaining commenters strongly opposed DOE's proposal to continue with mandatory polygraph screening. Some of these commenters objected to the proposed random screening program

and to the use of polygraph testing in specific incident investigations. Some of these commenters also raised objections with respect to specific elements of the proposed new polygraph examination regulations. DOE responds first to the general comments and thereafter to the specific comments.

#### A. Response to General Comments

The commenters opposed to DOE's continued reliance on the polygraph examination argued principally that polygraph testing is not supported by sound science. Most of these commenters cited the NAS Report to support their positions, and they challenged DOE's interpretation of the NAS Report's findings and conclusions. According to the commenters, because polygraph testing lacks scientific reliability, there is a high probability of an unacceptable number of "false positives" and, in part due to what they perceive as the efficacy of countermeasures, "false negatives." [The phenomena of "false positive" and "false negative" examination findings are described in greater detail in the Supplemental NOPR at 70 FR 1383–1389.] Because of problems associated with examination results that produce "false positives" and "false negatives," many of the commenters contended that continued use of polygraph testing would have a highly negative effect on employee morale, retention of present employees, and recruitment of new employees. Additionally, commenters asserted that the likelihood of false negatives undermined any deterrence value of polygraph testing. One commenter urged DOE to reject the use of polygraph testing in its Counterintelligence Evaluation Program and to focus instead on the development of new techniques for the behavioral, psychological, or physiological assessments of individuals in security and counterintelligence evaluations.

In DOE's view, the commenters' arguments for eliminating the use of polygraph testing entirely simply cannot be reconciled with the Congress' direction to DOE in the NDAA for FY 2002. In section 3152 of that Act, Congress required the Secretary of Energy, taking into account the NAS Report, to adopt regulations for a new counterintelligence polygraph program to minimize the potential for release or disclosure of classified data, materials or information. When enacting section 3152, Congress was well aware of the controversy with regard to the scientific basis for polygraph examinations. Nevertheless, Congress' direction was to adopt new polygraph regulations, and DOE believes it would not be

permissible to interpret section 3152 as authorizing a new polygraph regulation that would provide for the total abandonment of polygraph testing.

Nor have the arguments advanced by the commenters caused us to change our view that polygraph testing, including mandatory polygraph screening, may be both a necessary and effective measure in appropriate circumstances for protecting classified data, information and materials.

Consistent with the practices of the Intelligence Community, and the NAS Report, DOE has decided to alter the role of polygraph testing as a required element of the counterintelligence evaluation program by eliminating such testing for general screening of applicants for employment and incumbent employees without specific cause. The rule published today requires a counterintelligence evaluation for applicants for certain high-risk positions and every five years for incumbents of those positions. A polygraph examination only will be required in five situations: (1) If a counterintelligence evaluation of an applicant or an incumbent employee reveals foreign nexus issues which warrant a polygraph exam; (2) if an incumbent employee is to be assigned within DOE to activities involving another agency and a polygraph examination is required as a condition of access to the activities by the other agencies; (3) if an incumbent employee is proposed to be assigned or detailed to another agency and the receiving agency requests DOE to administer a polygraph examination as a condition of the assignment or detail; (4) if, as described below, an incumbent employee is selected for a random counterintelligence evaluation; or (5) if, as described below, an incumbent employee is required to take a specific-incident polygraph examination.

These changes to the proposed rule will significantly reduce the number of individuals who will undergo a polygraph examination. Under the rule, a counterintelligence evaluation consists of a counterintelligence-based review of a "covered person's" personnel security file, and review of other relevant information available in DOE. If the counterintelligence evaluation, including a possible polygraph exam, discloses unresolved foreign nexus issues, DOE may undertake a more comprehensive evaluation that may, in appropriate circumstances, include evaluation of financial, credit, travel, and other relevant information to resolve the issues. Participation by Office of Intelligence and Counterintelligence

personnel in this extended evaluation is subject to Executive Order 12333, the DOE "Procedures for Intelligence Activities," and other relevant laws, guidelines, as may be applicable.

The final rule includes, as proposed, random counterintelligence evaluations, including polygraph screening, to deter unauthorized releases or disclosures of classified information or materials. The rule also includes provision, as proposed, for conducting specific incident polygraph examinations to respond to specific cases presenting facts or circumstances with potential counterintelligence implications with a defined foreign nexus.

As proposed in the Supplemental NOPR, DOE also will retain the policy in the present rule against taking any adverse personnel action solely based on the test results of polygraph examinations. Finally, we will retain the present policy that no adverse decision on access to certain information or programs will be made solely on the basis of such test results.

#### B. Response to Comments on Specific Proposed Regulatory Provisions

##### 1. Random Screening Program

Two of the commenters questioned the scientific merits of the proposed random screening program (section 709.3(c)), contending, without offering support for the proposition, that random screening will neither contribute to good security nor to deterrence. As DOE noted in the Supplemental NOPR, the NAS Report observed that "the value, or utility, of polygraph testing does not lie only in its validity for detecting deception. It may have a deterrent value \* \* \*" and "predictable polygraph testing (e.g. fixed-interval testing of people in specific job classifications) probably has less deterrent value than random testing." This led DOE to conclude that it is appropriate to include random testing as a component of the new Counterintelligence Evaluation Program, to enhance the deterrent value of the polygraph. Another commenter, while expressing support for random screening as an alternative to the mandatory screening program, urged DOE to ensure that the system for identifying individuals who will be subject to random testing is fair. DOE's Energy Information Administration's Statistics and Methods Group has designed the statistical model which will be utilized in the random screening program, and DOE believes that the EIA model will ensure selection fairness.

## 2. Specific Incident Polygraph Examinations

Two commenters contended that the likelihood of a certain percentage of "false negative" and "false positive" responses in polygraph examinations, which could impede an investigation, argue against the use of polygraph testing in specific incident investigations. In DOE's view these comments are largely speculative. As DOE noted in the Supplemental NOPR, the proposed provision [section 709.3(d)] for conducting specific incident polygraph examinations grew out of the NAS Report, which observed that this kind of use of the polygraph is one for which the existing scientific literature provides the strongest support. In the absence of a showing which rebuts the NAS Report, DOE has determined not to abandon what the NAS Report considers a potentially useful investigative tool, employed in appropriate circumstances in conjunction with other investigative techniques, in specific incident investigations, and thus DOE retains the proposed provision in the final rule.

## 3. Other Information Provided to an Individual Prior to a Polygraph Examination

One commenter recommended DOE revise paragraph (a) of proposed section 709.24 (Other information provided to the individual prior to a polygraph examination) in two respects. First, the commenter noted that the proposed provision does not actually require video and audio recording and recommended DOE modify the provision to require these recordings, as a means of protecting both the individual and the examiner. DOE agrees that such a requirement would help protect both the individual being examined as well as the examiner. Section 709.24(a), as modified, reads:

(a) Inform the covered person that video and audio recordings of the examination session will be made, and that other observation devices, such as two-way mirrors and observation rooms, also may be employed.

The commenter also recommended that section 709.24 be revised to provide that a copy of the videotape be made available to the individual, if not routinely at least if the individual challenges the Office of Intelligence and Counterintelligence's determination pursuant to section 709.17 (Final disposition of CI evaluation findings and recommendations). DOE examined this issue in the **Federal Register** notice (64 FR 70962) publishing the current polygraph regulations and adopted the

following position, which DOE reaffirms today:

DOE will not establish a policy of releasing the polygraph reports or videotapes of examinations or permitting individuals to record all or any portion of the polygraph examination or related interviews. Such materials contain information concerning investigative procedures and techniques of the Department. However, an individual may file a request for the release of these materials under the Freedom of Information Act or the Privacy Act and the request will be processed in accordance with applicable regulations.

## 4. Topics Within the Scope of a Polygraph Examination; Defining Polygraph Examination Questions

Several commenters were critical of the question format DOE uses in polygraph examinations (section 709.11), which is known as the "Test for Espionage and Sabotage Format." One commenter claimed that notwithstanding DOE's description of the question format in section 709.11, and section 709.12 ("Defining polygraph examination questions"), the TES methodology actually permits the examiner to go beyond national security questions and to engage in a "fishing expedition" in areas potentially unrelated to the stated scope of DOE's polygraph examination. DOE disagrees. The question format and question methodology employed by DOE examiners has been approved by the Department of Defense Polygraph Institute (DODPI) and is generally used throughout the Federal government. Additionally, DOE polygraph examiners are subject to rigorous training requirements and standards (sections 709.31 and 709.32) and examiners as well as polygraph program results are subject to bi-annual DODPI quality assurance reviews. DOE does not believe the commenters have supported the need for changes to the proposed provisions pertaining to the topics within the scope of a polygraph examination and defining polygraph examination questions, respectively.

## 5. Need for Independent Oversight

Three commenters who questioned the credibility and integrity of DOE's polygraph examination process recommended that DOE include in the regulations provision for independent oversight of the examination process by an independent board. DOE believes that the regulations provide sufficient safeguards to ensure the integrity of the examination process and is not persuaded that there is justification or need for independent oversight board. Following a polygraph examination, examinees have the opportunity and are encouraged to complete and to submit

to DOE a quality assurance questionnaire and comments or complaints concerning the examination (section 709.24(f)). Examinees also might submit complaints to the appropriate line Program Manager or laboratory or facility manager. Secondly, as noted in the previous section, DOE polygraph examiners are subject to rigorous training requirements and standards (sections 709.31 and 709.32) and, additionally, as already noted DOE as well as other Federal Departments and agencies are subject to bi-annual DODPI quality assurance reviews.

## 6. Accelerated Access Authorization Program (AAAP)

One commenter, opposed to DOE's use of polygraph examinations, recommended that DOE terminate its AAAP, which DOE discussed in the Supplemental NOPR. As explained in the Supplemental NOPR, DOE reviewed the use of polygraph examinations in the AAAP, in light of the NAS Report, to determine if the AAAP was unduly reliant on the polygraph examination in granting interim access authorizations. DOE's review found that there are sufficient checks and balances in place that the continued use of polygraph examinations, together with other components of the AAAP, is appropriate. In any event, however, DOE determined not to retain in the new counterintelligence evaluation regulations the provision on the use of polygraph exams in the AAAP, since the AAAP is not a component of DOE's Counterintelligence Evaluation Program.

The Secretary has approved for publication this notice of final rulemaking.

## IV. Procedural Requirements

### A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that today's regulatory action is a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). OMB has completed its review of this notice of final rulemaking.

### B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rulemaking does not directly

regulate small businesses or small governmental entities. It applies principally to individuals who are employees of, or applicants for employment by, some of DOE's prime contractors, which generally are large businesses. There may be some affected small businesses that are subcontractors, but the rule will not impose unallowable costs. Accordingly, DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities.

#### *C. Review Under the Paperwork Reduction Act*

DOE has determined that this rulemaking does not contain any new or amended record keeping, reporting, or application requirements, or any other type of information collection requirements that require the approval of OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has defined the term "information" to exclude certifications, consents, and acknowledgments that entail only minimal burden (5 CFR 1320(h)(1)).

#### *D. Review Under the National Environmental Policy Act*

The final rule published today establishes procedures for counterintelligence evaluations to include polygraph examinations and therefore will have no impact on the environment. DOE has determined that this rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations in paragraph a.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings amending an existing regulation that does not change the environmental effect of the regulations being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

#### *E. Review Under Executive Order 13132*

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March

14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

#### *F. Review Under Executive Order 12988*

With respect to the revision of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

#### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires a Federal agency to perform a detailed assessment of the costs and benefits of any rule imposing a Federal mandate with costs to State, local, or tribal government, or to the private sector of \$100 million or more. The final rule adopted today does not

impose a Federal mandate requiring preparation of an assessment under the Unfunded Mandates Reform Act of 1995.

#### *H. Treasury and General Government Appropriations Act, 1999*

The Treasury and General Government Appropriations Act, 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### *I. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's information quality guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's implementing guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE information quality guidelines and has concluded that it is consistent with applicable policies in those guidelines. DOE also has concluded that today's notice is consistent with OMB's "Information Quality Bulletin for Peer Review" applicable to agency disseminations of "influential scientific information" and "highly influential scientific assessments," published at 70 FR 2664 (January 14, 2005). As discussed above, today's final regulations take into account the 2002 report entitled "The Polygraph and Lie Detection" of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences. OMB's Peer Review Bulletin permits agencies, as an alternative to the Bulletin's peer review requirements otherwise applicable to disseminations of influential scientific information and highly scientific assessments, to rely on the principal findings, conclusions and recommendations of a report produced by the National Academy of Sciences.

#### *J. Review Under Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to



prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any significant energy action under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. This rulemaking, although significant, will not have such an effect. Consequently, DOE has concluded that there is no need for a Statement of Energy Effects.

#### K. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects

##### 10 CFR Part 709

Lie detector test, Privacy.

##### 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Nuclear materials.

Issued in Washington, DC, on September 25, 2006.

Rolf Mowatt-Larssen,

Director, Office of Intelligence and Counterintelligence.

■ For the reasons stated in the preamble, DOE hereby amends Chapter III of Title 10 of the Code of Federal Regulations to read as follows:

■ 1. Part 709 is revised to read as follows:

### PART 709—COUNTERINTELLIGENCE EVALUATION PROGRAM

#### Subpart A—General Provisions

Sec.

709.1 Purpose.

709.2 Definitions.

709.3 Covered persons subject to a CI evaluation and polygraph.

709.4 Notification of a CI evaluation.

709.5 Waiver of polygraph examination requirements.

#### Subpart B—CI Evaluation Protocols and Protection of National Security

709.10 Scope of a counterintelligence evaluation.

709.11 Topics within the scope of a polygraph examination.

709.12 Defining polygraph examination questions.

709.13 Implications of refusal to take a polygraph examination.

709.14 Consequences of a refusal to complete a CI evaluation including a polygraph examination.

709.15 Processing counterintelligence evaluation results.

709.16 Application of Counterintelligence Evaluation Review Boards in reaching conclusions regarding CI evaluations.

709.17 Final disposition of CI evaluation findings and recommendations.

#### Subpart C—Safeguarding Privacy and Employee Rights

709.21 Requirements for notification of a polygraph examination.

709.22 Right to counsel or other representation.

709.23 Obtaining consent to a polygraph examination.

709.24 Other information provided to the covered person prior to a polygraph examination.

709.25 Limits on use of polygraph examination results that reflect "Significant Response" or "No Opinion".

709.26 Protection of confidentiality of CI evaluation records to include polygraph examination records and other pertinent documentation.

#### Subpart D—Polygraph Examination and Examiner Standards

709.31 DOE standards for polygraph examiners and polygraph examinations.

709.32 Training requirements for polygraph examiners.

**Authority:** 42 U.S.C. 2011, *et seq.*, 7101, *et seq.*, 7144b, *et seq.*, 7383h-1; 50 U.S.C. 2401, *et seq.*

#### Subpart A—General Provisions

##### § 709.1 Purpose.

This part:

(a) Describes the categories of individuals who are subject for counterintelligence evaluation processing;

(b) Provides guidelines for the counterintelligence evaluation process, including the use of counterintelligence-scope polygraph examinations, and for the use of event-specific polygraph examinations; and

(c) Provides guidelines for protecting the rights of individual DOE employees and DOE contractor employees subject to this part.

##### § 709.2 Definitions.

For purposes of this part:

**Access authorization** means an administrative determination under the Atomic Energy Act of 1954, Executive Order 12968, or 10 CFR part 710 that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.

**Adverse personnel action** means:

(1) With regard to a DOE employee, the removal, suspension for more than 14 days, reduction in grade or pay, or a furlough of 30 days or less as described in 5 U.S.C. Chapter 75; or

(2) With regard to a contractor employee, the discharge, discipline, or

denial of employment or promotion, or any other discrimination in regard to hire or tenure of employment or any term or condition of employment.

**Contractor** means any industrial, educational, commercial, or other entity, assistance recipient, or licensee, including an individual who has executed an agreement with DOE for the purpose of performing under a contract, license, or other agreement, and including any subcontractors of any tier.

**Counterintelligence or CI** means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

**Counterintelligence evaluation or CI evaluation** means the process, possibly including a counterintelligence scope polygraph examination, used to make recommendations as to whether certain employees should have access to information or materials protected by this part.

**Counterintelligence program office** means the Office of Counterintelligence in the Office of Intelligence and Counterintelligence (and any successor office to which that office's duties and authorities may be reassigned).

**Counterintelligence-scope or CI-scope polygraph examination** means a polygraph examination using questions reasonably calculated to obtain counterintelligence information, including questions relating to espionage, sabotage, terrorism, unauthorized disclosure of classified information, deliberate damage to or malicious misuse of a United States Government information or defense system, and unauthorized contact with foreign nationals.

**Covered person** means an applicant for employment with DOE or a DOE contractor, a DOE employee, a DOE contractor employee, and an assignee or detailee to DOE from another agency.

**DOE** means the Department of Energy including the National Nuclear Security Administration (NNSA).

**Foreign nexus** means specific indications that a covered person is or may be engaged in clandestine or unreported relationships with foreign powers, organizations or persons, or international terrorists; contacts with foreign intelligence services; or other hostile activities directed against DOE facilities, property, personnel, programs or contractors by or on behalf of foreign powers, organizations or persons, or international terrorists.

*Human Reliability Program* means the program under 10 CFR part 712.

*Intelligence* means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations or foreign persons.

*Local commuting area* means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their usual employment.

*Materials* means any "nuclear explosive" as defined in 10 CFR 712.3, and any "special nuclear material," hazardous "source material," and hazardous "byproduct material" as those terms are defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014).

*National security information* means information that has been determined pursuant to Executive Order 12958, as amended by Executive Order 13292, or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

*NNSA* means DOE's National Nuclear Security Administration.

*No opinion* means an evaluation of a polygraph test by a polygraph examiner in which the polygraph examiner cannot render an opinion.

*Polygraph examination* means all activities that take place between a Polygraph Examiner and an examinee (person taking the test) during a specific series of interactions, including the pretest interview, the use of the polygraph instrument to collect physiological data from the examinee while presenting a series of tests, the test data analysis phase, and the post-test phase.

*Polygraph examination records* means all records of the polygraph examination, including the polygraph report, audio-video recording, and the polygraph consent form.

*Polygraph instrument* means a diagnostic instrument used during a polygraph examination, which is capable of monitoring, recording and/or measuring at a minimum, respiratory, electrodermal, and cardiovascular activity as a response to verbal or visual stimuli.

*Polygraph report* means a document that may contain identifying data of the examinee, a synopsis of the basis for which the examination was conducted, the relevant questions utilized, and the examiner's conclusion.

*Polygraph test* means that portion of the polygraph examination during which the polygraph instrument collects physiological data based upon the individual's responses to questions from the examiner.

*Program Manager* means a DOE official designated by the Secretary or the Head of a DOE Element to make an access determination under this part.

*Random* means a statistical process whereby eligible employees have an equal probability of selection for a CI evaluation each time the selection process occurs.

*Regular and routine* means access by individuals without further permission more than two times per calendar quarter.

*Relevant questions* are those questions used during the polygraph examination that pertain directly to the issues for which the examination is being conducted.

*Restricted data* means all data concerning the design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the restricted data category pursuant to section 142 of the Atomic Energy Act of 1954.

*Secret* means the security classification that is applied to DOE-generated information or material the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

*Secretary* means the Secretary of Energy or the Secretary's designee.

*Significant response* means an opinion that the analysis of the polygraph charts reveals consistent, significant, timely physiological responses to the relevant questions.

*Special Access Program or SAP* means a program established under Executive Order 12958 for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.

*Suspend* means temporarily to withdraw an employee's access to information or materials protected under § 709.3 of this part.

*System Administrator* means any individual who has privileged system, data, or software access that permits that individual to exceed the authorization of a normal system user and thereby override, alter, or negate integrity verification and accountability procedures or other automated and/or technical safeguards provided by the systems security assets for normal users.

*Top Secret* means the security classification that is applied to DOE-generated information or material the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

*Unresolved issues* means an opinion by a CI evaluator that the analysis of the information developed during a CI evaluation remains inconclusive and needs further clarification before a CI access recommendation can be made.

### § 709.3 Covered persons subject to a CI evaluation and polygraph.

(a) *Mandatory CI evaluation.* Except as provided in § 709.5 of this part with regard to waivers, a CI evaluation, which may include a CI-scope polygraph examination, is required for any covered person in any category under paragraph (b) of this section who will have or has access to classified information or materials protected under this paragraph. Such an evaluation is required for covered persons who are incumbent employees at least once every five years. DOE, in its sole discretion, may require a CI-scope polygraph examination:

(1) If the CI evaluation reveals foreign nexus issues;

(2) If a covered person who is an incumbent employee is to be assigned within DOE to activities involving another agency and a polygraph examination is required as a condition of access to the activities by the other agency; or

(3) If a covered person who is an incumbent employee is proposed to be assigned or detailed to another agency and the receiving agency requests DOE to administer a polygraph examination as a condition of the assignment or detail.

(b) Paragraph (a) of this section applies to covered persons:

(1) In an intelligence or counterintelligence program office (or with programmatic reporting responsibility to an intelligence or counterintelligence program office) because of access to classified intelligence information, or sources, or methods;

(2) With access to Sensitive Compartmented Information;

(3) With access to information that is protected within a non-intelligence Special Access Program (SAP) designated by the Secretary;

(4) With regular and routine access to Top Secret Restricted Data;

(5) With regular and routine access to Top Secret National Security Information; and

(6) Designated, with approval of the Secretary, on the basis of a risk

assessment consistent with paragraphs (e) and (f) of this section, by a Program Manager for the following DOE offices and programs (and any successors to those offices and programs): The Office of the Secretary; the Human Reliability Program; the National Nuclear Security Administration (including the Office of Emergency Operations); and the Office of Health, Safety and Security.

(c) *Random CI evaluation.* Except as provided in § 709.5 of this part with regard to waivers, DOE may require a CI evaluation, including a CI-scope polygraph examination, of covered persons who are incumbent employees selected on a random basis from the following:

(1) All covered persons identified in § 709.3(b);

(2) All employees in the Office of Independent Oversight (or any successor office) within the Office of Health, Safety and Security because of access to classified information regarding the inspection and assessment of safeguards and security functions, including cyber security, of the DOE;

(3) All employees in other elements of the Office of Health, Safety and Security (or any successor office) because of their access to classified information;

(4) All employees in the NNSA Office of Emergency Operations (OEO or any successor office) including DOE field offices or contractors who support OEO because of their access to classified information;

(5) All employees with regular and routine access to classified information concerning: The design and function of nuclear weapons use control systems, features, and their components (currently designated as Sigma 15); vulnerability of nuclear weapons to deliberate unauthorized nuclear detonation (currently designated as Sigma 14); and improvised nuclear device concepts or designs; and

(6) Any system administrator with access to a system containing classified information, as identified by the DOE or NNSA Chief Information Officer.

(d) *Specific incident polygraph examinations.* In response to specific facts or circumstances with potential counterintelligence implications with a defined foreign nexus, the Director of the Office of Intelligence and Counterintelligence (or, in the case of a covered person in NNSA, the Administrator of NNSA, after consideration of the recommendation of the Director, Office of Intelligence and Counterintelligence) may require a covered person with access to DOE classified information or materials to consent to and take an event-specific polygraph examination. Except as

otherwise determined by the Secretary, on the recommendation of the appropriate Program Manager, if a covered person with access to DOE classified information or materials refuses to consent to or take a polygraph examination under this paragraph, then the Director of the Office of Intelligence and Counterintelligence (or, in the case of a covered person in NNSA, the Administrator of NNSA, after consideration of the recommendation of the Director, Office of Intelligence and Counterintelligence) shall direct the denial of access (if any) to classified information and materials protected under paragraphs (b) and (c) of this section, and shall refer the matter to the Office of Health, Safety and Security for a review of access authorization eligibility under 10 CFR part 710. In addition, in the circumstances described in this paragraph, any covered person with access to DOE classified information or material may request a polygraph examination.

(e) *Risk assessment.* For the purpose of deciding whether to designate or remove employees for mandatory CI evaluations under paragraph (b)(6) of this section, Program Managers may consider:

(1) Access on a non-regular and non-routine basis to Top Secret Restricted Data or Top Secret National Security Information or the nature and extent of access to other classified information;

(2) Unescorted or unrestricted access to significant quantities or forms of special nuclear materials; and

(3) Any other factors concerning the employee's responsibilities that are relevant to determining risk of unauthorized disclosure of classified information or materials.

(f) Based on the risk assessments conducted under paragraph (e) of this section and in consultation with the Director of the Office of Intelligence and Counterintelligence, the Program Manager shall provide recommendations as to positions to be designated or removed under paragraph (b)(6) of this section for approval by the Secretary. Recommendations shall include a summary of the basis for designation or removal of the positions and of the views of the Director of the Office of Intelligence and Counterintelligence as to the recommendations.

(g) Not less than once every calendar year quarter, the responsible Program Manager must provide a list of all incumbent employees who are covered persons under paragraphs (b) and (c) of this section to the Director of the Office of Intelligence and Counterintelligence.

#### § 709.4 Notification of a CI evaluation.

(a) If a polygraph examination is scheduled, DOE must notify the covered person, in accordance with § 709.21 of this part.

(b) Any job announcement or posting with respect to any position with access to classified information or materials protected under § 709.3(b) and (c) of this part should indicate that DOE may condition the selection of an individual for the position (709.3(b)) or retention in that position (709.3(b) and (c)) upon his or her successful completion of a CI evaluation, including a CI-scope polygraph examination.

(c) Advance notice will be provided to the affected Program Manager and laboratory/site/facility director of the covered persons who are included in any random examinations that are administered in accordance with provisions at § 709.3(c).

#### § 709.5 Waiver of polygraph examination requirements.

(a) *General.* Upon a waiver request submitted under paragraph (b) of this section, DOE may waive the CI-scope polygraph examination under § 709.3 of this part for:

(1) Any covered person based upon certification from another Federal agency that the covered person has successfully completed a full scope or CI-scope polygraph examination administered within the previous five years;

(2) Any covered person who is being treated for a medical or psychological condition that, based upon consultation with the covered person and appropriate medical personnel, would preclude the covered person from being tested; or

(3) Any covered person in the interest of national security.

(b) *Submission of Waiver Requests.* A covered person may submit a request for waiver under this section, and the request shall assert the basis for the waiver sought and shall be submitted, in writing, to the Director, Office of Intelligence and Counterintelligence, at the following address: U.S. Department of Energy, Attn: Director, Office of Intelligence and Counterintelligence, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) *Disposition of Waiver Requests.* The Director, Office of Intelligence and Counterintelligence, shall issue a written decision on a request for waiver prior to the administration of a polygraph examination. The Director shall obtain the concurrence of the Secretary in his or her decision on a request for waiver under § 709.5(a)(3) and shall obtain the concurrence of the

Administrator of NNSA in a decision on a waiver request from an NNSA covered person under § 709.5(a)(1) and § 709.5(a)(2). Notification of approval of a waiver request will contain information regarding the duration of the waiver and any other relevant information. Notification of the denial of a waiver request will state the basis for the denial and state that the covered person may request reconsideration of the denial by the Secretary under § 709.5(d).

(d) *Reconsideration Rights.* If a waiver is denied, the covered person may file with the Secretary a request for reconsideration of the denial within 30 days of receipt of the decision, and the Secretary's decision will be issued prior to the administration of a polygraph examination.

### Subpart B—CI Evaluation Protocols and Protection of National Security

#### § 709.10 Scope of a counterintelligence evaluation.

A counterintelligence evaluation consists of a counterintelligence-based review of the covered person's personnel security file and review of other relevant information available to DOE in accordance with applicable guidelines and authorities. As provided in § 709.3(b), DOE also may require a CI-scope polygraph examination. As provided for in § 709.3(c), a CI evaluation, if conducted on a random basis, will include a CI-scope polygraph examination. As set forth in § 709.15(b) and (c) of this part, a counterintelligence evaluation may also include other pertinent measures to address and resolve counterintelligence issues in accordance with Executive Order 12333, the DOE "Procedures for Intelligence Activities," and other relevant laws, guidelines and authorities, as applicable.

#### § 709.11 Topics within the scope of a polygraph examination.

(a) DOE may ask questions in a specific incident polygraph examination that are appropriate for a CI-scope examination or that are relevant to the counterintelligence concerns with a defined foreign nexus raised by the specific incident.

(b) A CI-scope polygraph examination is limited to topics concerning the covered person's involvement in espionage, sabotage, terrorism, unauthorized disclosure of classified information, unauthorized foreign contacts, and deliberate damage to or malicious misuse of a U.S. government information or defense system.

(c) DOE may not ask questions that:

- (1) Probe a covered person's thoughts or beliefs;
- (2) Concern conduct that has no CI implication with a defined foreign nexus; or
- (3) Concern conduct that has no direct relevance to a CI evaluation.

#### § 709.12 Defining polygraph examination questions.

The examiner determines the exact wording of the polygraph questions based on the examiner's pretest interview of the covered person, the covered person's understanding of the questions, established test question procedures from the Department of Defense Polygraph Institute, and other input from the covered person.

#### § 709.13 Implications of refusal to take a polygraph examination.

(a) Subject to § 709.14 of this part, a covered person may refuse to take a polygraph examination pursuant to § 709.3 of this part, and a covered person being examined may terminate the examination at any time.

(b) If a covered person terminates a polygraph examination prior to the completion of the examination, DOE may treat that termination as a refusal to complete a CI evaluation under § 709.14 of this part.

#### § 709.14 Consequences of a refusal to complete a CI evaluation including a polygraph examination.

(a) If a covered person is an applicant for employment or assignment or a potential detailee or assignee with regard to an identified position and the covered person refuses to complete a CI evaluation including a polygraph examination required by this part as an initial condition of access, DOE and its contractors must refuse to employ, assign, or detail that covered person with regard to the identified position.

(b) If a covered person is an incumbent employee in an identified position subject to a CI evaluation including a polygraph examination under § 709.3(b), (c), or (d), and the covered person refuses to complete a CI evaluation, DOE and its contractors must deny that covered person access to classified information and materials protected under § 709.3(b) and (c) and may take other actions consistent with the denial of access, including administrative review of access authorization under 10 CFR part 710. If the covered person is a DOE employee, DOE may reassign or realign the DOE employee's duties, or take other action, consistent with that denial of access and applicable personnel regulations.

(c) If a DOE employee refuses to take a CI polygraph examination, DOE may

not record the fact of that refusal in the employee's personnel file.

#### § 709.15 Processing counterintelligence evaluation results.

(a) If the reviews under § 709.10 or a polygraph examination present unresolved foreign nexus issues that raise significant questions about the covered person's access to classified information or materials protected under § 709.3 of this part that justified the counterintelligence evaluation, DOE may undertake a more comprehensive CI evaluation that, in appropriate circumstances, may include evaluation of financial, credit, travel, and other relevant information to resolve any identified issues. Participation by Office of Intelligence and Counterintelligence personnel in any such evaluation is subject to Executive Order 12333, the DOE "Procedures for Intelligence Activities," and other relevant laws, guidelines, and authorities as may be applicable with respect to such matters.

(b) The Office of Intelligence and Counterintelligence, in coordination with NNSA with regard to issues concerning a NNSA covered person, may conduct an in-depth interview with the covered person, may request relevant information from the covered person, and may arrange for the covered person to undergo an additional polygraph examination.

(c) Whenever information is developed by the Office of Health, Safety and Security indicating counterintelligence issues, the Director of that Office shall notify the Director, Office of Intelligence and Counterintelligence.

(d) If, in carrying out a comprehensive CI evaluation of a covered person under this section, there are significant unresolved issues, not exclusively related to polygraph examination results, indicating counterintelligence issues, then the Director, Office of Intelligence and Counterintelligence shall notify the DOE national laboratory director (if applicable), plant manager (if applicable) and program manager(s) for whom the individual works that the covered person is undergoing a CI evaluation pursuant to this part and that the evaluation is not yet complete.

(e) Utilizing the DOE security criteria in 10 CFR part 710, the Director, Office of Intelligence and Counterintelligence, makes a determination whether a covered person completing a CI evaluation has made disclosures that warrant referral, as appropriate, to the Office of Health, Safety and Security or the Manager of the applicable DOE/NNSA Site, Operations Office or Service Center.

**§ 709.16 Application of Counterintelligence Evaluation Review Boards in reaching conclusions regarding CI evaluations.**

(a) General. If the results of a counterintelligence evaluation are not dispositive, the Director of the Office of Intelligence and Counterintelligence may convene a Counterintelligence Evaluation Review Board to obtain the individual views of each member as assistance in resolving counterintelligence issues identified during a counterintelligence evaluation.

(b) Composition. A Counterintelligence Evaluation Review Board is chaired by the Director of the Office of Intelligence and Counterintelligence (or his/her designee) and includes representation from the appropriate line Program Managers, lab/site/facility management (if a contractor employee is involved), NNSA, if the unresolved issues involve an NNSA covered person, the DOE Office of Health, Safety and Security and security directors for the DOE or NNSA site or operations office.

(c) Process. When making a final recommendation under § 709.17 of this part, to a Program Manager, the Director of Intelligence and Counterintelligence shall report on the Counterintelligence Evaluation Review Board's views, including any consensus recommendation, or if the members are divided, a summary of majority and dissenting views.

**§ 709.17 Final disposition of CI evaluation findings and recommendations.**

(a) Following completion of a CI evaluation, the Director of the Office of Intelligence and Counterintelligence must recommend, in writing, to the appropriate Program Manager that the covered person's access be approved or retained, or denied or revoked.

(b) If the Program Manager agrees with the recommendation, the Program Manager notifies the covered person that the covered person's access has been approved or retained, or denied or revoked.

(c) If the Program Manager disagrees with the recommendation of the Director, Office of Intelligence and Counterintelligence, the matter is referred to the Secretary for a final decision.

(d) If the Program Manager denies or revokes a DOE employee's access, DOE may reassign the employee or realign the employee's duties within the local commuting area or take other actions consistent with the denial of access.

(e) If the Program Manager revokes the access of a covered person assigned or detailed to DOE, DOE may remove the

assignee or detailee from access to the information that justified the CI evaluation and return the assignee or detailee to the agency of origin.

(f) Covered persons whose access is denied or revoked may request reconsideration by the head of the relevant DOE element.

(g) For cases involving a question of loyalty to the United States, the Director of the Office of Intelligence and Counterintelligence may refer the matter to the FBI as required by section 145d of the Atomic Energy Act of 1954. For cases indicating that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power, DOE is required by 50 U.S.C. 402a(e) to refer the matter to the Federal Bureau of Investigation.

**Subpart C—Safeguarding Privacy and Employee Rights**

**§ 709.21 Requirements for notification of a polygraph examination.**

When a polygraph examination is scheduled, the DOE must notify the covered person, in writing, of the date, time, and place of the polygraph examination, the provisions for a medical waiver, and the covered person's right to obtain and consult with legal counsel or to secure another representative prior to the examination. DOE must provide a copy of this part to the covered person. The covered person must receive the notification at least ten days, excluding weekend days and holidays, before the time of the examination except when good cause is shown or when the covered person waives the advance notice provision.

**§ 709.22 Right to counsel or other representation.**

(a) At the covered person's own expense, a covered person has the right to obtain and consult with legal counsel or another representative. However, the counsel or representative may not be present during the polygraph examination. Except for interpreters and signers, no one other than the covered person and the examiner may be present in the examination room during the polygraph examination.

(b) A covered person has the right to consult with legal counsel or another representative at any time during an interview conducted in accordance with § 709.15 of this part.

**§ 709.23 Obtaining consent to a polygraph examination.**

DOE may not administer a polygraph examination unless DOE:

(a) Notifies the covered person of the polygraph examination in writing in

accordance with § 709.21 of this part; and

(b) Obtains written consent from the covered person prior to the polygraph examination.

**§ 709.24 Other information provided to a covered person prior to a polygraph examination.**

Before administering the polygraph examination, the examiner must:

(a) Inform the covered person that audio and video recording of each polygraph examination session will be made, and that other observation devices, such as two-way mirrors and observation rooms, also may be employed;

(b) Explain to the covered person the characteristics and nature of the polygraph instrument and examination;

(c) Explain to the covered person the physical operation of the instrument and the procedures to be followed during the examination;

(d) Review with the covered person the relevant questions to be asked during the examination;

(e) Advise the covered person of the covered person right against self-incrimination; and

(f) Provide the covered person with a pre-addressed envelope, which may be used to submit a quality assurance questionnaire, comments or complaints concerning the examination.

**§ 709.25 Limits on use of polygraph examination results that reflect "Significant Response" or "No Opinion".**

DOE or its contractors may not:

(a) Take an adverse personnel action against a covered person or make an adverse access recommendation solely on the basis of a polygraph examination result of "significant response" or "no opinion"; or

(b) Use a polygraph examination that reflects "significant response" or "no opinion" as a substitute for any other required investigation.

**§ 709.26 Protection of confidentiality of CI evaluation records to include polygraph examination records and other pertinent documentation.**

(a) DOE owns all CI evaluation records, including polygraph examination records and reports and other evaluation documentation.

(b) DOE maintains all CI evaluation records, including polygraph examination records and other pertinent documentation acquired in conjunction with a counterintelligence evaluation, in a system of records established under the Privacy Act of 1974 (5 U.S.C. 552a).

(c) DOE must afford the full privacy protection provided by law to information regarding a covered

person's refusal to participate in a CI evaluation to include a polygraph examination and the completion of other pertinent documentation.

(d) With the exception of the polygraph report, all other polygraph examination records are destroyed ninety days after the CI evaluation is completed, provided that a favorable recommendation has been made to grant or continue the access to the position. If a recommendation is made to deny or revoke access to the information or involvement in the activities that justified conducting the CI evaluation, then all of the polygraph examination records are retained until the final resolution of any request for reconsideration by the covered person or the completion of any ongoing investigation.

#### Subpart D—Polygraph Examination and Examiner Standards

##### § 709.31 DOE standards for polygraph examiners and polygraph examinations.

(a) DOE adheres to the procedures and standards established by the Department of Defense Polygraph Institute (DODPI). DOE administers only DODPI approved testing formats.

(b) A polygraph examiner may administer no more than five polygraph examinations in any twenty-four hour period. This does not include those instances in which a covered person voluntarily terminates an examination prior to the actual testing phase.

(c) The polygraph examiner must be certified to conduct polygraph examinations under this part by the DOE Psychophysiological Detection of Deception/Polygraph Program Quality Control Official.

(d) To be certified under paragraph (c) of this section, an examiner must have the following minimum qualifications:

(1) The examiner must be an experienced CI or criminal investigator with extensive additional training in using computerized instrumentation in Psychophysiological Detection of Deception and in psychology, physiology, interviewing, and interrogation.

(2) The examiner must have a favorably adjudicated single-scope background investigation, complete a CI-scope polygraph examination, and must hold a "Q" access authorization, which is necessary for access to Secret Restricted Data and Top Secret National Security Information. In addition, he or she must have been granted SCI access approval.

(3) The examiner must receive basic Forensic Psychophysiological Detection of Deception training from the DODPI.

##### § 709.32 Training requirements for polygraph examiners.

(a) Examiners must complete an initial training course of thirteen weeks, or longer, in conformance with the procedures and standards established by DODPI.

(b) Examiners must undergo annual continuing education for a minimum of forty hours training within the discipline of Forensic Psychophysiological Detection of Deception.

(c) The following organizations provide acceptable curricula to meet the training requirement of paragraph (b) of this section:

- (1) American Polygraph Association,
- (2) American Association of Police Polygraphists, and
- (3) Department of Defense Polygraph Institute.

#### PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL

■ 2. The authority citation for part 710 is revised to read as follows:

**Authority:** 42 U.S.C. 2165, 2201, 5815, 7101, *et seq.*, 7383h-1; 50 U.S.C. 2401, *et seq.*; E.O. 10450, 3 CFR 1949-1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 comp., p. 398, as amended, 3 CFR Chap. IV.

■ 3. Section 710.6 is amended by redesignating paragraph (a) as paragraph (a)(1) and by adding at the end of redesignated paragraph (a)(1) a new paragraph (a)(2) to read as follows:

##### § 710.6 Cooperation by the individual.

(a) \* \* \*

(2) It is the responsibility of an individual subject to § 709.3(d) to consent to and take an event-specific polygraph examination. A refusal to consent to or take such an examination may prevent DOE from reaching an affirmative finding required for continuing access authorization. In this event, DOE may suspend or terminate any access authorization.

\* \* \* \* \*

[FR Doc. E6-16049 Filed 9-28-06; 8:45 am]

BILLING CODE 6450-01-P

#### SMALL BUSINESS ADMINISTRATION

##### 13 CFR Part 120

##### Gulf Opportunity Pilot Loan Program (GO Loan Pilot)

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of extension of waiver of regulatory provisions.

**SUMMARY:** This notice announces the extension of the "Notice of waiver of regulatory provisions" for SBA's Gulf Opportunity Pilot Loan Program (GO Loan Pilot) until September 30, 2007. Due to the scope and magnitude of the devastation to Presidentially-declared disaster areas resulting from Hurricanes Katrina and Rita, the Agency is extending its full guaranty and streamlined and centralized loan processing available through the GO Loan Pilot to the small businesses in the eligible parishes/counties through September 30, 2007.

**DATES:** The waiver of regulatory provisions published in the **Federal Register** on November 17, 2005, is extended under this notice until September 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Charles Thomas, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205-6490; [charles.thomas@sba.gov](mailto:charles.thomas@sba.gov).

**SUPPLEMENTARY INFORMATION:** In November 2005, SBA initiated, on an emergency basis, the GO Loan Pilot, which was designed to provide expedited small business financial assistance to businesses located in those communities severely impacted by Hurricanes Katrina and Rita. Under this unique initiative, the Agency provides its full (85%) guaranty and streamlined and centralized loan processing to all eligible lenders that agree to make expedited SBA 7(a) loans available to small businesses located in, locating to or re-locating in the parishes/counties that have been Presidentially-declared as disaster areas resulting from Hurricanes Katrina and Rita, plus any contiguous parishes/counties.

To maximize the effectiveness of the GO Loan Pilot, on November 17, 2005, SBA published a notice in the **Federal Register** waiving for the GO Loan Pilot certain Agency regulations applicable to the 7(a) Business Loan Program. (70 FR 69645) Since the pilot was designed as a temporary program scheduled to expire on September 30, 2006, the waiver of certain Agency regulations also was due to expire on September 30, 2006. However, the Agency believes that there is a continuing, substantial need for the specific SBA assistance provided by this pilot in the affected areas. As part of a comprehensive federal initiative to assist in the continuing recovery of these highly devastated communities, the Agency believes it is essential that SBA extend this unique

and vital program through September 30, 2007. Accordingly, the SBA also is extending its waiver of the certain Agency regulations identified in the **Federal Register** notice at 70 FR 69645 through September 30, 2007.

SBA's waiver of these provisions is authorized by Agency regulations. These waivers apply only to those loans approved under the GO Loan Pilot and will last only for the duration of the Pilot, which expires September 30, 2007. As part of the GO Loan Pilot, these waivers apply only to those small businesses located in, locating to or relocating in the parishes/counties that have been Presidentially-declared as disaster areas resulting from Hurricanes Katrina or Rita, plus any contiguous parishes/counties. (A list of all eligible parishes/counties is located at <http://www.sba.gov/financing/index.html>.)

(Authority: 15 U.S.C. 636(a)(24); 13 CFR 120.3)

**Michael W. Hager,**

*Associate Deputy Administrator for Capital Access.*

[FR Doc. E6-15993 Filed 9-28-06; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM353; Special Conditions No. 25-332-SC]

#### Special Conditions: Boeing Model 767-300 Series Airplanes; Forward Lower Lobe Crew Rest Module (CRM)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 767-300 series airplanes. These airplanes, modified by TIMCO Aviation Services, Inc. (TIMCO), will have a novel or unusual design feature associated with a forward lower lobe crew rest module (CRM). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** *Effective Date:* The effective date for these special conditions is

September 11, 2006 We must receive any comments by November 13, 2006.

**ADDRESSES:** Please mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, *Attention:* Rules Docket (ANM-113), Docket No. NM353, 1601 Lind Avenue, SW., Renton, Washington 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the same address. You must mark your comments: Docket No. NM353. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jayson Claar, FAA, Airframe/Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057-3356; telephone (425) 227-2194; facsimile (425) 227-1320.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable, because these procedures would significantly delay certification and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change these special conditions, based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### Background

On January 24, 2006, TIMCO Aviation Services, Inc. (TIMCO) applied for a supplemental type certificate to permit installation of a forward lower lobe crew rest module (CRM) in Boeing 767-300 series airplanes.

The CRM will be a one-piece, self-contained unit to be installed under the passenger cabin floor in the aft portion of the forward cargo compartment. It will be mounted on a pallet compatible with the existing cargo loading system and may be easily installed or removed from the aircraft. The CRM will be occupied only in flight—not during taxi, takeoff, or landing—and no more than six crewmembers may occupy it at a time. The module will have an approved berth able to withstand the maximum flight loads for each occupant permitted in it and will contain a smoke detection system, a fire-extinguishing system, an oxygen system, and occupant amenities.

The CRM requires two entry hatches in the main deck area. The floor structure will be modified to provide access for the main entry hatch and the emergency access hatch.

#### Type Certification Basis

Under the provisions of § 21.101, TIMCO must show that Boeing Model 767-300 series airplanes with the CRM continue to meet either:

- (1) The applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM, or
- (2) The applicable regulations in effect on the date of TIMCO's application for the change.

The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for Boeing Model 767-300 series airplanes is 14 CFR part 25, as amended by Amendments 25-1 through 25-37. Refer to Type Certificate No. A1NM for a complete description of the certification basis for this model.

According to 14 CFR 21.16, if the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Boeing Model 767-300 series airplanes because of a novel or unusual design feature, she or he prescribes special conditions for the airplane.

As defined in 14 CFR 11.19, special conditions are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.101.

Special conditions are initially applicable to the model for which they are issued. If the type certificate for that model is amended to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to that model. Similarly, if any other model already included on the same type certificate is modified to incorporate the same or similar novel or unusual design feature, the special conditions would apply to that other model under the provisions of 14 CFR 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 767-300 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

#### Novel or Unusual Design Features

While installation of a CRM is not a new concept for large transport category airplanes, each module has unique features based on its design, location, and use. The CRM to be installed on the Boeing Model 767-300 series airplanes is novel in that

- (1) It will be located below the passenger cabin floor in the aft portion of the forward cargo compartment, and
- (2) It has a maintenance door, which allows access to and from the cargo compartment.

Because of the novel or unusual features associated with the installation of a CRM, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificates of these airplanes. These special conditions do not negate the need to address other applicable part 25 regulations.

#### Operational Evaluations and Approval

These special conditions specify requirements for design approvals (i.e., type design changes and supplemental type certificates) of CRMs administered by the FAA's Aircraft Certification Service. The FAA's Flight Standards Service, Aircraft Evaluation Group, must evaluate and approve the "basic suitability" of the CRM for occupation by crewmember before the module may be used. If an operator wishes to use a CRM as "sleeping quarters," the module must undergo an additional operational

evaluation and approval. The Aircraft Evaluation Group would evaluate the CRM for compliance to §§ 121.485(a) and 121.523(b), with Advisory Circular 121-31, *Flight Crew Sleeping Quarters and Rest Facilities*, providing one method of compliance to these operational regulations.

To obtain an operational evaluation, the supplemental type design holder must contact the Aircraft Evaluation Group within the Flight Standards Service which has operational approval authority for the project. In this instance, it is the Seattle Aircraft Evaluation Group. The supplemental type design holder must request a "basic suitability" evaluation or a "sleeping quarters" evaluation of the crew rest module. The supplemental type design holder may make this request concurrently with the demonstration of compliance with these special conditions.

The Boeing Model 767-300 Flight Standardization Board Report Appendix will document the results of these evaluations. In discussions with the FAA Principal Operating Inspector, individual operators may refer to these standardized evaluations as the basis for an operational approval, instead of an on-site operational evaluation.

Any change to the approved CRM configuration requires an operational re-evaluation and approval, if the change affects any of the following:

- Procedures for emergency egress of crewmembers,
- Other safety procedures for crewmembers occupying the CRM, or
- Training related to these procedures.

The applicant for any such change is responsible for notifying the Seattle Aircraft Evaluation Group that a new evaluation of the CRM is required.

All instructions for continued airworthiness, including service bulletins, must be submitted to the Seattle Aircraft Evaluation Group for approval before the FAA approves the modification.

#### Discussion of Proposed Special Conditions No. 9 and 12

The following clarifies the intent of proposed Special Condition No. 9 relative to the requirements of § 25.1439(a):

Amendment 25-38 modified the requirements of § 25.1439(a) by adding,

"In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation."

The CRM is an isolated, separate compartment, so § 25.1439(a) is applicable. However, the requirements of § 25.1439(a) for protective breathing equipment in isolated, separate compartments are not appropriate, because the CRM is novel and unusual in terms of the number of occupants.

In 1976 when Amendment 25-38 was adopted, small galleys were the only isolated, separate compartments that had been certificated. Two crewmembers were the maximum expected to occupy those galleys.

These special conditions address a CRM which can accommodate up to six crewmembers. This number of occupants in an isolated, separate compartment was not envisioned at the time Amendment 25-38 was adopted. It is not appropriate for all occupants to don protective breathing equipment in the event of a fire, because the first action should be for each occupant to leave the confined space, unless that occupant is fighting the fire. Taking the time to don protective breathing equipment would prolong the time for the emergency evacuation of the occupants and possibly interfere with efforts to extinguish the fire.

In regard to proposed Special Condition No. 12, the FAA considers that during the 1-minute smoke detection time, penetration of a small quantity of smoke from the this forward lower lobe CRM into an occupied area of the airplane would be acceptable, given the limitations in these special conditions. The FAA considers that the special conditions place sufficient restrictions on the quantity and type of material allowed in crew carry-on bags that the threat from a fire in the remote CRM would be equivalent to the threat from a fire in the main cabin.

#### Applicability

As discussed above, these special conditions are applicable to Boeing Model 767-300 series airplanes as modified by TIMCO to include a forward lower lobe CRM. If TIMCO applies at a later date for a change to the supplemental type certificate to include another model listed on the same type certificate data sheet which incorporates the same or similar novel or unusual design feature, these special conditions would also apply to that model.

#### Conclusion

This action affects only certain novel or unusual design features on Boeing Model 767-300 series airplanes. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.



**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 767-300 series airplanes, modified by TIMCO.

1. Occupancy of the forward lower lobe crew rest module (CRM) is limited to the total number of installed bunks and seats in each module. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the CRM. The maximum occupancy in the CRM is six.

(a) There must be appropriate placard(s) displayed in a conspicuous place at each entrance to the CRM to indicate the following:

(1) The maximum number of occupants;

(2) Occupancy is restricted to crewmembers who are trained in evacuation procedures for the CRM;

(3) Occupancy is prohibited during taxi, take-off and landing;

(4) Smoking is prohibited in the CRM;

(5) Hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited in the CRM.

(6) Stowage in the CRM must be limited to emergency equipment, airplane-supplied equipment (e.g., bedding), and crew personal luggage. Cargo or passenger baggage is not allowed.

(b) There must be at least one ashtray located conspicuously on or near the entry side of any entrance to the CRM.

(c) There must be a means to prevent passengers from entering the CRM in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the CRM and the passenger cabin to be opened quickly from inside the module, even when crowding occurs at each side of the door.

(e) For all doors installed in the evacuation routes, there must be a means to prevent anyone from being trapped inside the module. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the module at any time.

2. There must be at least two emergency evacuation routes, each of which can be used by each occupant of the CRM to rapidly evacuate to the main cabin. The exit door/hatch for each route must be able to be closed from the main cabin after evacuation of the CRM. In addition—

(a) The routes must be located with one at each end of the module or with two having sufficient separation within the module and between the routes to minimize the possibility of an event (either inside or outside the CRM) rendering both routes inoperative.

(b) The routes must minimize the possibility of blockage which might result from fire, mechanical or structural failure or from persons standing on top of or against the escape route. If an evacuation route uses an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If a hatch is installed in an evacuation route, the point at which the evacuation route terminates in the passenger cabin should not be located where normal movement by passengers or crew occurs. Examples include the main aisle, cross aisle, passageway, or galley complex. If it is not possible to avoid such a location there must be a means of ensuring that the hatch or door can be opened when a person, the weight of a ninety-fifth percentile male, is standing on the hatch or door. The use of evacuation routes must not depend on any powered device. If there is low headroom at or near an evacuation route, there must be provisions to prevent or to protect occupants of the CRM from head injury.

(c) There must be emergency evacuation procedures, including procedures for the emergency evacuation of an incapacitated occupant from the crew rest module. All of these procedures must be transmitted to all operators for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means of requiring training in the use of evacuation routes for the crewmembers.

3. There must be a means for the evacuation of an incapacitated person representative of a 95th percentile male from the CRM to the passenger cabin floor. The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant within the CRM) may provide assistance in the evacuation. Up to three persons in the main passenger compartment may provide additional assistance. For evacuation routes having stairways, the

additional assistants may descend to one half the elevation change from the main deck to the lower deck compartment or to the first landing, whichever is higher.

4. The following signs and placards must be provided in the CRM:

(a) At least one exit sign located near each exit which meets the requirements of § 25.812(b)(1)(i) at Amendment 25-58. However, the exit sign may have a reduced background area of no less than 5.3 square inches (excluding the letters), provided that it is installed so that the material surrounding the exit sign is light in color (e.g., white, cream or light beige). If the material surrounding the exit sign is not light in color, an exit sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit, defining the location and the operating instructions for each evacuation route;

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions; and

(d) The exit handles and placards for each evacuation route (see 4.(b) above) must be illuminated to at least 160 micro lamberts under emergency lighting conditions.

5. In the event of failure of the airplane's main power system or of the normal lighting system for the CRM, there must be a means to automatically provide emergency illumination to the CRM.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems, if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the CRM to locate and transfer to the main passenger cabin floor by means of each evacuation route.

(d) If the privacy curtains are in the closed position, the illumination level must be sufficient for each occupant of the CRM to locate a deployed oxygen mask.

6. There must be means for two-way voice communications between crewmembers on the flightdeck and occupants of the CRM. There must also be public address system microphones at each flight attendant seat which is required to be near a floor level exit in the passenger cabin per § 25.785(h) at Amendment 25-51. The public address system must allow two-way voice

communications between flight attendants and the occupants of the CRM. However, one microphone may serve more than one exit, if the proximity of the exits allows unassisted verbal communication between seated flight attendants.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flightdeck and at each pair of required floor level emergency exits to alert occupants of the CRM of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided it has an adequate means of differentiating between normal and emergency communications. The system must be powered in flight for at least ten minutes after the shutdown or failure of all engines and auxiliary power units or the disconnection or failure of all power sources which depend on the continued operation of the engines and auxiliary power units.

8. There must be a means, readily detectable by seated or standing occupants of the CRM, of indicating when the occupants must fasten their seat belts. In the event there are no seats, there must be at least one means to address anticipated turbulence (e.g., sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts be fastened when the berth is occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) at Amendment 25–38 that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small, isolated galley, the following equipment must be provided in the CRM:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) Protective breathing equipment approved to Technical Standard Order (TSO)—C116 (or equivalent) suitable for fire fighting for at least two persons. If there are three or more hand-held fire extinguishers, there must be protective breathing equipment for one person for each hand-held fire extinguisher; and

(c) One flashlight.

**Note:** Additional protective breathing equipment and fire extinguishers in specific

locations (beyond the minimum numbers prescribed in Special Condition No. 9) may be required as a result of any egress analysis accomplished to satisfy Special Condition No. 2(a).

10. There must be a smoke or fire detection system (or systems) to monitor each occupiable area within the CRM, including areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide the following:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the CRM; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The CRM must be designed so that fires within the CRM can be controlled without a crewmember entering the module or so that crewmembers equipped for fire fighting have unrestricted access to the module. The time for a crewmember on the main deck to react to the fire alarm, don protective gear (such as protective breathing equipment and gloves), obtain fire-fighting equipment, and gain access to the module must not exceed the time for the module to become smoke-filled, making it difficult to locate the fire source.

12. There must be a means to exclude hazardous quantities of smoke or extinguishing agent originating in the CRM from entering any other compartment occupied by crewmembers or passengers. Smoke entering any other compartment occupied by crewmembers or passengers when the entrance to the CRM is opened during an emergency evacuation must dissipate within five minutes after the entrance to the module is closed. Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the CRM. (The amount of smoke entrained by a firefighter exiting the module through the access is not considered hazardous). During the 1 minute smoke detection time, penetration of a small quantity of smoke from the CRM into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used instead of manual fire fighting, the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will

enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the CRM, considering the fire threat, the volume of the module, and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the CRM. The system must provide aural and visual signals to warn the occupants of the module to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet and must sound continuously for a minimum of five minutes or until a reset push button in the CRM is depressed. Procedures for occupants of the CRM to follow in the event of decompression must be established. These procedures must be transmitted to the operators for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to CRMs that are divided into several sections by curtains or partitions:

(a) To warn sleeping occupants, there must be an aural alert that can be heard in each section of the CRM and that accompanies automatic presentation of supplemental oxygen masks. In each section where seats or berths are not installed, there must be a visual indicator that occupants must don oxygen masks. A minimum of two supplemental oxygen masks is required for each seat or berth. There must also be a means by which crewmembers can manually deploy the oxygen masks from the flightdeck.

(b) There must be a placard adjacent to each curtain that visually divides or separates the CRM into small sections for privacy. The placard must specify that the curtain remains open when the private section it creates is unoccupied.

(c) For each section of the CRM created by a curtain, the following requirements of these special conditions apply both with the curtain open and with the curtain closed:

(1) Emergency illumination (Special Condition No. 5);

(2) Emergency alarm system (Special Condition No. 7);

(3) Seat belt fasten signal (see Special Condition No. 8) or return to seat signal, as applicable; and

(4) The smoke or fire detection system (Special Condition No. 10).

(d) Crew rest modules visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. There must be exit signs in each separate section of the CRM

which meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58. An exit sign with reduced background area as described in Special Condition No. 4(a) may be used to meet this requirement.

(e) For sections within a CRM that are created by a partition with a door separating the sections, the following requirements of these special conditions must be met both with the door open and with the door closed:

(1) There must be a secondary evacuation route from each section to the maindeck. Alternatively, any door between the sections must preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short time, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant within this area must be considered.

(2) Any door between the sections must be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section which meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58 that direct occupants to the primary stairway exit. An exit sign with reduced background area, as described in Special Condition No. 4(a), may be used to meet this requirement.

(5) The following Special Conditions apply both with the door open and with the door closed

- Special Conditions No. 5 (emergency illumination),
- No. 7 (emergency alarm system),
- No. 8 (fasten seat belt signal or return to seat signal, as applicable) and
- No. 10 (smoke or fire detection system) must be met.

(6) Special Conditions No. 6 (two-way voice communication) and No. 9 (emergency fire fighting and protective equipment) apply independently for each separate section, except for lavatories or other small areas that are not occupied for extended periods of time.

15. Each waste disposal receptacle must have a built-in fire extinguisher which discharges automatically upon occurrence of a fire in the receptacle.

16. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853 at Amendment 25–72 and mattresses must comply with the flammability requirements of § 25.853(b) and (c) at Amendment 25–72.

17. All lavatories within the CRM must meet the requirements for a lavatory installed on the main deck, except with regard to Special Condition No. 10 for smoke detection.

18. When a CRM is installed or enclosed as a removable module in part of a cargo compartment or is located directly adjacent to a cargo compartment without an intervening cargo compartment wall, the following apply:

- (a) Any wall of the module which forms part of the boundary of the

reduced cargo compartment subject to direct flame impingement from a fire in the cargo compartment and which includes any interface between the module and the airplane structure or systems must meet the applicable requirements of § 25.855 at Amendment 25–72.

(b) When the CRM is not installed, the fire protection level of the cargo compartment must comply with the following regulations:

- § 25.855 at Amendment 25–72,
- § 25.857 at Amendment 25–60, and
- § 25.858 at Amendment 25–54.

(c) Use of each emergency evacuation route must not require occupants of the CRM to enter the cargo compartment in order to return to the passenger compartment.

(d) The aural warning in Special Condition No. 7 must sound in the CRM.

19. During all airplane flight operations, there must be means to prevent access into the Class C cargo compartment and to ensure that the maintenance door is closed.

20. All enclosed stowage compartments within the CRM that are not limited to stowage of emergency equipment or airplane-supplied equipment (e.g., bedding) must meet the design criteria given in the table below. As indicated by the table, this special condition does not address enclosed stowage compartments with an interior volume greater than 200 cubic feet. (Fire protection for such large stowage compartments would necessitate design requirements and operational procedures similar to those for Class C cargo compartments.)

Fire Protection Features	Stowage compartment interior volumes		
	Less than 25 ft <sup>3</sup>	25 ft <sup>3</sup> to 57 ft <sup>3</sup>	57 ft <sup>3</sup> to 200 ft <sup>3</sup>
Materials of Construction <sup>1</sup> .....	Yes .....	Yes .....	Yes.
Detectors <sup>2</sup> .....	No .....	Yes .....	Yes.
Liner <sup>3</sup> .....	No .....	No .....	Yes.
Locating Device <sup>4</sup> .....	No .....	Yes .....	Yes.

<sup>1</sup> Material

The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards for interior components specified in § 25.853. For compartments with an interior volume less than 25 cubic feet, the design must contain a fire likely to occur within the compartment under normal use.

<sup>2</sup> Detectors

Enclosed stowage compartments equal to or exceeding 25 cubic feet in interior volume must have a smoke or fire detection system to ensure that a fire can be detected within one minute. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide the following:

- (a) A visual indication in the flightdeck within one minute after the start of a fire;
- (b) An aural warning in the CRM; and
- (c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into account the location of flight attendants throughout the main passenger compartment during various phases of flight.

<sup>3</sup> Liner

If the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment, then no liner would be required for enclosed stowage compartments equal to or greater than 25 cubic feet but less than 57 cubic feet in interior volume. For those enclosed stowage compartments whose interior volume is equal to or greater than 57 cubic feet but less than or equal to 200 cubic feet, the liner must meet the requirements of § 25.855 at Amendment 25–72 for a class B cargo compartment.

<sup>4</sup> Location Detector

Crew rest areas which contain enclosed stowage compartments whose interior volume exceeds 25 cubic feet and which are located away from one central location, such as the entry to the crew rest module or a common area within the crew rest module, would require additional fire protection devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on September 11, 2006.

**Kevin Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6-15868 Filed 9-28-06; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-25896; Directorate Identifier 2006-NE-33-AD; Amendment 39-14775; AD 2006-20-06]

RIN 2120-AA64

#### Airworthiness Directives; General Electric Company CF34-10E Series Turbofan Engines

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for General Electric Company (GE) CF34-10E series turbofan engines. This AD requires removing the main fuel pump (MFP) inlet strainer from certain MFPs, installing a certain replacement flange as an interim repair, and performing initial and repetitive visual inspections of the main fuel filter. This AD results from three reports of release of the tripod support legs on the MFP inlet strainer, leading to engine in-flight shutdown. We are issuing this AD to prevent engine in-flight shutdown due to MFP malfunctions.

**DATES:** This AD becomes effective October 16, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 16, 2006.

We must receive any comments on this AD by November 28, 2006.

**ADDRESSES:** Use one of the following addresses to comment on this AD:

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672-8400, fax (513) 672-8422.

**FOR FURTHER INFORMATION CONTACT:** Tara Fitzgerald, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238-7130, fax: (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** In August 2006, we became aware of one report, and in September 2006, two reports of cracking and release of the tripod support legs on the MFP inlet strainer, leading to engine in-flight shutdown, on GE CF34-10E series turbofan engines. When the tripod support legs release, they travel downstream and impact against the MFP gear assembly. This causes the MFP to jam, interrupting fuel flow, which leads to engine flameout. Investigations are ongoing, and our preliminary determination is that the cause of failure is a manufacturing quality control problem with the MFP inlet strainers. Current field data shows that the failures are an infant mortality type of failure. This AD requires removing the low-time strainers first. This condition, if not corrected, could result in an engine in-flight shutdown due to MFP malfunctions.

#### Relevant Service Information

We have reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) No. CF34-10E S/B 73-A0011, dated September 15, 2006. That ASB describes procedures for removing the MFP inlet strainer, installing a certain replacement flange as an interim repair, and initial and repetitive visual inspections of the main fuel filter.

#### FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GE CF34-10E series turbofan engines of the same type design. For that reason, we are issuing this AD to

prevent engine in-flight shutdown due to MFP malfunctions. This AD requires:

- Within 40 engine flight hours after the effective date of this AD, removing the MFP inlet strainer from the affected MFPs listed by serial number in GE ASB No. CF34-10E S/B 73-A0011, dated September 15, 2006; and
- Within 150 engine flight hours after the effective date of this AD, removing all other MFP inlet strainers; and
- Installing a certain replacement flange in all MFPs as an interim repair; and
- Remarketing the MFP part number from 2043M12P03 to 2043M12P04; and
- Performing initial and repetitive visual inspections of the main fuel filter.

You must use the service information described previously to perform the actions required by this AD.

#### FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

#### Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

#### Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. FAA-2006-25896; Directorate Identifier 2006-NE-33-AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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 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 AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

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

For the reasons discussed above, I certify that the 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 summary of the costs to comply with this AD 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, Incorporation by reference, Safety.

### Adoption of the Amendment

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

**2006-20-06 General Electric Company:**  
Amendment 39-14775. Docket No. FAA-2006-25896; Directorate Identifier 2006-NE-33-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective October 16, 2006.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to General Electric Company (GE) CF34-10E2A1, -10E5, -10E5A1, -10E6, -10E6A1, and -10E7 turbofan engines. These engines are installed on, but not limited to, Embraer ERJ 190-100-STD, ERJ 190-100-LR, and ERJ 190-100-IGW airplanes.

#### Unsafe Condition

(d) This AD results from three reports of release of the tripod support legs on the main fuel pump (MFP) fuel inlet strainer, leading to engine in-flight shutdown. We are issuing this AD to prevent engine in-flight shutdown due to MFP malfunctions.

#### 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.

#### Removal of Main Fuel Pump Inlet Strainers

(f) Within 40 engine flight hours after the effective date of this AD, remove the MFP inlet strainer from the affected MFPs listed by serial number in paragraph D. of GE Alert Service Bulletin (ASB) No. CF34-10E S/B 73-A0011, dated September 15, 2006.

(g) Within 150 engine flight hours after the effective date of this AD, remove all other MFP inlet strainers.

(h) Install a replacement flange, part number 837683, in all MFPs as an interim repair.

(i) Remark the MFP part number from 2043M12P03 to 2043M12P04.

(j) When performing the actions in paragraphs (f), (g), (h), and (i) of this AD, use paragraphs 3.A. through 3.E.(1)(c) of the Accomplishment Instructions of GE ASB No. CF34-10E S/B 73-A0011, dated September 15, 2006.

#### Inspection of Main Fuel Filters

(k) Perform an initial visual inspection of the main fuel filter at the time of MFP inlet strainer removal in paragraphs (f) and (g) of this AD.

(l) Perform repetitive visual inspections of the main fuel filter within every additional 160 engine flight hours.

(m) When performing main fuel filter visual inspections in paragraphs (k) and (l) of this AD, use paragraphs 3.F.(1) through 3.F.(6) of the Accomplishment Instructions of GE ASB No. CF34-10E S/B 73-A0011, dated September 15, 2006.

#### Recommended Actions

(n) We recommend that operators avoid performing the actions in this AD on both engines installed on the same airplane at the same time, if at all possible.

#### Alternative Methods of Compliance

(o) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

#### Related Information

(p) Brazilian emergency airworthiness directive No. 2006-09-04, dated September 15, 2006, also addresses the subject of this AD.

#### Material Incorporated by Reference

(q) You must use General Electric Company Alert Service Bulletin No. CF34-10E S/B 73-A0011, dated September 15, 2006, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672-8400, fax (513) 672-8422, for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html>.

**Francis A. Favara,**  
 Manager, Engine and Propeller Directorate,  
 Aircraft Certification Service.  
 [FR Doc. 06-8284 Filed 9-28-06; 8:45 am]  
 BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2006-24710; Directorate Identifier 2006-CE-29-AD; Amendment 39-14779; AD 2006-20-10]

RIN 2120-AA64

**Airworthiness Directives; Air Tractor, Inc. Models AT-802 and AT-802A Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Air Tractor, Inc. (Air Tractor) Models AT-802 and AT-802A airplanes. This AD requires you to repetitively inspect the attach angles on the firewall mounted hopper rinse tank shelf for damage and/or cracks and replace damaged and/or cracked attach angles with steel attach angles. Replacing the attach angles with steel attach angles terminates the repetitive inspection requirement. Reports of an uncommanded change in the engine power setting caused by separation of the hopper rinse tank shelf from the firewall prompted this AD. We are

issuing this AD to detect and correct damage and/or cracks in the attach angles on the firewall mounted hopper rinse tank shelf, which could result in failure of the attach angles. This failure could lead to shelf movement under maneuver load and shifting of the engine power cables, which could result in an uncommanded engine power setting change.

**DATES:** This AD becomes effective on November 3, 2006.

As of November 3, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

**ADDRESSES:** For service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564-5616; fax: (940) 564-5612.

To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the internet at <http://dms.dot.gov>. The docket number is FAA-2006-24710; Directorate Identifier 2006-CE-29-AD.

**FOR FURTHER INFORMATION CONTACT:** Andrew McAnaul, Aerospace Engineer, ASW-150 (c/o MDO-43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308-3365; fax: (210) 308-3370.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On June 13, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Models AT-802 and AT-802A airplanes. This proposal was

published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 20, 2006 (71 FR 35398). The NPRM proposed to require you to repetitively inspect the attach angles on the firewall mounted hopper rinse tank shelf for damage and/or cracks and replace damaged and/or cracked attach angles. Replacing the attach angles with steel attach angles, part number 60568-3, would terminate the proposed repetitive inspection requirement.

**Comments**

We provided the public the opportunity to participate in developing this AD. We received one comment from Carroll Communications. The comment is in reference to wind turbine radar interference.

We determined the comment is not relevant to this AD. We are not changing the final rule AD action based on the comment.

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

**Costs of Compliance**

We estimate that this AD affects 219 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × \$80 an hour = \$80 .....	Not applicable .....	\$80	\$80 × 219 = \$17,520.

We estimate the following costs to do any necessary replacements that will be

required based on the results of the inspection. We have no way of

determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost for each airplane
3 work-hours × \$80 an hour = \$240 .....	\$105	\$240 + \$105 = \$345.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more

detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in

air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

**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 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket.

You may get a copy of this summary by sending a request to us at the address

listed under **ADDRESSES**. Include "Docket No. FAA-2006-24710; Directorate Identifier 2006-CE-29-AD" in your request.

**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 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. FAA amends § 39.13 by adding the following new AD:

**2006-20-10 Air Tractor, Inc.:** Amendment 39-14779; Docket No. FAA-2006-24710; Directorate Identifier 2006-CE-29-AD.

**Effective Date**

(a) This AD becomes effective on November 3, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Models AT-802 and AT-802A airplanes, all serial numbers beginning with 802/802A-0001 through 802/802A-0219, that are certificated in any category.

**Unsafe Condition**

(d) This AD results from reports of an uncommanded change in engine power setting caused by separation of a hopper rinse tank shelf from the firewall. We are issuing this AD to detect and correct damage and/or cracks in the attach angles on the firewall mounted hopper rinse tank shelf, which could result in failure of the attach angles. This failure could lead to shelf movement under maneuver load and shifting of the engine power cables, which could result in an uncommanded engine power setting change.

**Compliance**

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Visually inspect the three attach angles on the firewall mounted hopper rinse tank shelf for damage and/or cracks.	Initially inspect within the next 100 hours time-in-service (TIS) after November 3, 2006 (the effective date of this AD). If no damage and/or cracks are found, repetitively inspect thereafter at intervals not to exceed 100 hours TIS. Replacing all three attach angles with steel attach angles, part number (P/N) 60568-3 (or FAA-approved equivalent P/N), terminates the repetitive inspection requirement of this AD.	Follow Snow Engineering Co. Service Letter #248, dated August 31, 2005.
(2) If you find any damage and/or cracks on any of the three attach angles during any inspection required in paragraph (e)(1) of this AD, replace all three attach angles with steel attach angles, P/N 60568-3 (or FAA-approved equivalent P/N).	Before further flight after the inspection in which damage and/or cracks are found. Replacing all three attach angles with steel attach angles, P/N 60568-3 (or FAA-approved equivalent P/N), terminates the repetitive inspection requirement of paragraph (e)(1) of this AD.	Follow Snow Engineering Co. Service Letter #248, dated August 31, 2005.
(3) You may replace the aluminum attach angles on the firewall mounted hopper rinse tank shelf with steel attach angles, P/N 60568-3 (or FAA-approved equivalent P/N), at any time to terminate the repetitive inspections required in paragraph (e)(1) of this AD.	As of November 3, 2006 (the effective date of this AD)	Follow Snow Engineering Co. Service Letter #248, dated August 31, 2005.
(4) Do not install aluminum attach angles on the hopper rinse tank shelf attach angles.	As of November 3, 2006 (the effective date of this AD)	Not applicable.

(f) 14 CFR 21.303 allows for replacement parts through parts manufacturer approval (PMA). The phrase "or FAA-approved equivalent P/N" in this AD is intended to allow for the installation of parts approved through identity to the design of the replacement parts. Equivalent replacement parts to correct the unsafe condition under PMA (other than identity) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.

**Alternative Methods of Compliance (AMOCs)**

(g) The Manager, Fort Worth Airplane Certification Office, FAA, ATTN: Andrew McAnaul, Aerospace Engineer, ASW-150 (c/o MIDO-43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308-3365; fax: (210) 308-3370, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

**Material Incorporated by Reference**

(h) You must do the actions required by this AD following the instructions in Snow Engineering Co. Service Letter #248, dated

August 31, 2005. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Air Tractor Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564-5616; fax: (940) 564-5612. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html) or call (202) 741-6030. To view the AD docket, go to the Docket

Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-2006-24710; Directorate Identifier 2006-CE-29-AD.

Issued in Kansas City, Missouri, on September 18, 2006.

**Kim Smith,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E6-15819 Filed 9-28-06; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-24785; Directorate Identifier 2006-NE-20-AD; Amendment 39-14778; AD 2006-20-09]

RIN 2120-AA64

#### **Airworthiness Directives; Lycoming Engines (L)O-360, (L)IO-360, AEIO-360, O-540, IO-540, AEIO-540, (L)TIO-540, IO-580, and IO-720 Series Reciprocating Engines.**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Lycoming Engines (L)O-360, (L)IO-360, AEIO-360, O-540, IO-540, AEIO-540, (L)TIO-540, IO-580, and IO-720 series reciprocating engines. This AD requires replacing certain crankshafts. This AD results from reports of 23 confirmed failures of similar crankshafts in Lycoming Engines 360 and 540 series reciprocating engines. We are issuing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

**DATES:** This AD becomes effective November 3, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 3, 2006.

**ADDRESSES:** You can get the service information identified in this ad from Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323-6181; fax (570) 327-7101, or on the internet at [www.Lycoming.Textron.com](http://www.Lycoming.Textron.com).

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in Room PL-401 on the plaza level of the

Nassif Building, 400 Seventh Street, SW., Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine & Propeller Directorate, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228-7337; fax (516) 794-5531.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to certain Lycoming Engines (L)O-360, (L)IO-360, AEIO-360, O-540, IO-540, AEIO-540, (L)TIO-540, IO-580, AEIO-580, and IO-720 series reciprocating engines. We published the proposed AD in the **Federal Register** on May 25, 2006 (71 FR 30078, May 19, 2006). That action proposed to require replacing certain crankshafts.

#### **Examining the AD Docket**

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

#### **Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

#### **Suggest to Only Reference 360-Series Engines**

One private citizen suggests that since Lycoming Mandatory Service Bulletin (MSB) No. 569A, referenced in the proposed AD, only applies to 360-series engines with counterweighted crankshafts, the AD should do the same.

We agree. The commenter is correct that MSB No. 569A refers only to counterweighted (L)O-360 engines. We changed paragraph (c) to limit the applicability of this AD to only those engines listed in the tables in Lycoming MSB No. 569A. The MSB lists the specific engine models and serial numbers (SNs) for engines that have a suspect crankshaft. The MSB also lists the specific crankshaft SNs installed on engines after the engine entered service. We have made this change to limit the AD's applicability to only those engines with a suspect crankshaft.

#### **Need To Correct the Table of Engine Models and Aircraft**

One private citizen states that we need to correct the table in paragraph (c), "Applicability." The Lycoming O-540-J3C5D engine listed is actually used in the normally-aspirated Cessna R182, not the turbocharged TR182, as currently listed. The engine in the TR182 is the O-540-L3C5D.

We agree, and have corrected the table. We need to note, however, that the table is provided for information only and does not control whether the AD applies to a listed engine/aircraft combination. As we have noted in paragraph (c), the affected engines may or may not be installed in the listed aircraft models.

#### **12-Year Overhaul Limit Not in Lycoming Engines Service Instruction (SI) No. 1009AR**

One private citizen states that the 12-year overhaul limit referred to in the proposed rule is not in Lycoming Engines SI No. 1009AR, as we stated.

We do not agree. The Lycoming Engines service instruction states that engines that do not reach the recommended overhaul hours specified in that publication should be overhauled in the twelfth year. We note that this AD does not require an engine overhaul. We have incorporated Lycoming Engines SI No. 1009AS, dated May 25, 2006, only for the purpose of providing a maximum time by which crankshaft replacement must occur, if the engine has not required earlier maintenance that involves separating the crankcase. Therefore, crankshaft removal must occur at the earliest of maintenance involving crankcase separation, the time-in-service specified in Lycoming Engines SI No. 1009AS for engine overhaul, or 12 years from the time the crankshaft first entered service. For clarification, we have added to the AD new sub-paragraphs (j)(3) and (k)(3) that now directly specify the 12-year compliance end time for crankshaft removal.

#### **Engine Model Included in Error in MSB**

One commenter, Lycoming Engines, states that engine model TIO-540-U2A, SN L-4641-61A, was included in MSB No. 569A in error and it is not affected by the MSB and should not be included in this AD. We agree and added new paragraph (i) in the AD that states that no action is required for this engine model. We have also added a new sub-paragraph (f)(5) to clarify that if the AD applies to an engine, but no action is required because the crankshaft on that engine is not identified as one needing



replacement, the owner or operator of the aircraft may make an entry in the AD status log required by 14 CFR 91.417(a)(2)(v) that the AD required no action.

#### **Engine Model Included in Error in Proposed AD**

Since we issued the proposed AD, we have identified the engine model AEIO-580 as not type certified for operation in the United States. Although this engine is listed in Table 3 of MSB No. 569A, we have removed this engine model from the AD applicability.

#### **Consider an Additional 100 Hours Operation**

One private citizen suggests that for aircraft that are already beyond Lycoming's time-between-overhaul (TBO) that we provide an additional 100 hours of operation from the effective date of the AD, as this would give people time to get new crankshafts or overhauls lined up.

We do not agree. This final rule will not become effective until 35 days after it is published in the **Federal Register**. That should be ample time to prepare for compliance with the AD for those operators with engines that have operated past the Lycoming recommended TBO. If an operator needs additional time, that operator may request an alternative method of compliance (AMOC), using the procedures found in 14 CFR 39.19. We note that the AD does not require an engine overhaul, but only replacement of an identified crankshaft.

#### **Deadline for Crankshaft Replacement Needs To Be at the Next Overhaul**

One private citizen, states that the deadline for crankshaft replacement needs to be at the next overhaul.

We do not agree. The AD requires replacement of identified crankshafts at the earliest of the next time maintenance requires splitting the crankcase, or the time specified for the next engine overhaul listed in Lycoming Engines SI No. 1009AS, or 12 years from when the crankshaft entered service. An operator may request additional time through a request for an AMOC using the procedures found in 14 CFR 39.19. Note that the AD does not require the engine to be overhauled. It only requires replacing the affected crankshaft, which can be done with other maintenance.

#### **Remove Calendar Time Compliance**

One commenter, Cessna Pilots Association, states that there should be no calendar time mandated, and that compliance should be determined by the appropriate Federal Aviation

Regulations for the type of operations for which the aircraft is used.

Another commenter, Aircraft Owners and Pilots Association, states that aircraft owners should be allowed to continue to operate their engine until reaching time-for-overhaul based on hours without any calendar end time.

We do not agree. We re-evaluated the risk that this unsafe condition presents to aircraft and have determined that adequate risk mitigation can only be achieved by establishing an end limit for crankshaft removal based on years since a crankshaft enters service. The variability of the size and orientation of the metallurgical anomalies present in the identified crankshafts, results in variation in the operating times at which failures could occur. Therefore, while we stated in the proposal that the unsafe condition was unrelated to calendar time, a compliance end-time is necessary to minimize the probability of a crankshaft failure at operating times less than the specified overhaul interval. The 12-year calendar end time was selected to provide the necessary risk mitigation while minimizing the burden on owners and operators. We fully expect that few crankshafts will be replaced solely because of the 12-year calendar end time because crankshafts must be replaced earlier if maintenance requires splitting the crankcase or operations accumulate enough hours to meet the engine TBO.

However, if an owner (or) operator has data to justify an extension of the hourly limit and (or) the calendar end-limit, the owner (or) operator can request an AMOC using the procedures found in 14 CFR 39.19.

Determining crankshaft removal times by the type of operation would impose an overly complex record-keeping requirement on owners and operators. The identified crankshafts are installed in engines that are engaged in multiple types of operations ranging from personal use to commercial operations. We note that for some commercial operators the recommended TBO times may be mandated as a necessary component of their approved maintenance programs. For these operators, then, crankshaft replacement will be a part of the required engine overhaul unless earlier maintenance requires splitting the crankcase.

#### **Evidence for AD Is Not Convincing Enough**

One private citizen states that the evidence used to justify the proposed AD is not convincing enough to require parts replacement, and the lengthy compliance time (12 years) implies crankshaft replacement is not urgent,

and, if it is urgent, the crankshafts should be replaced in a shorter time.

We do not agree. While we determined that the risk to safety of flight was not urgent enough to warrant publishing an emergency AD that would become effective immediately upon publication, we have sufficient data on which to conclude that an unsafe condition exists and that it is likely to exist or develop on other products of the same type design. We selected the compliance times in this AD because:

- The same metallurgical flaw that was found in 23 confirmed crankshaft failures in different groups of Lycoming 360 and 540 engines has been found in the crankshafts in this group of engines; and
- Because of the presence of the flaw, this group of crankshafts has a higher potential for failure than other crankshaft groups that do not have the flaw, and it may only take longer to fail; and
- The overhaul may be the first opportunity that the crankshaft is removed from the engine and the first opportunity to replace the crankshaft. As previously stated in another comment, we do not have the data to support an hourly or calendar time extension beyond the hourly times contained in Lycoming Engines SI No. 1009AS, or the 12-year compliance end-time.

#### **Suggest Crankshaft Fractures Noted Are From an As-Yet Unidentified Cause**

Three private citizens suggest that the 23 crankshaft fractures noted are from an as-yet unidentified cause, or causes, within the engine, which results in crankshaft fracture.

We do not agree. The proposal referred to 23 confirmed failures of similar crankshafts in Lycoming 360 and 540 series reciprocating engines. These are 23 crankshafts that exhibited the same, subsurface material flaw that progress to a fatigue failure. There were several other crankshaft failures that exhibited most of the same failure characteristics as the 23 confirmed failures, but the fracture surface was too badly damaged for a complete examination to confirm that they were the same. The two examples of crankshaft failures mentioned by the commenters were not examined by the Lycoming Materials Laboratory, or any of the other Materials Laboratories that participated in this investigation.

One is an Australian Transport Safety Bureau report of a Lycoming O-540 crankshaft failure, that is known to the FAA, but was not included in the 23 confirmed failures. The other example is the failure of a crankshaft identified as

being from a Lycoming O-360 series engine. However, the laboratory failure report did not identify the engine model or SN. This crankshaft failed in two locations and neither of the locations are the same as the single failure location of the crankshafts in this investigation (the 23 confirmed failures and the unconfirmed failures all failed in the same location.) In addition, the report does not contain the engine type, type of engine operation, crankshaft part number, serial number, heat code, overhaul rework data, or overhaul assembly data. This makes it impossible to determine if the crankshaft was a Lycoming part or a PMA part, when the part was manufactured, or if the crankshaft was installed in an aerobatic engine and operated at a higher than certified horsepower. Based on the above, we cannot accept these examples as data to support their position that we have inadequate data on which to conclude that an unsafe condition exists and that it is likely to either exist or develop on other products of the same type design.

#### **No Reason To Change Lycoming Engines Current Compliance Conditions**

One commenter, Lycoming Engines, sees no reason to change its current compliance conditions, as there is no data to suggest any adjustment to the compliance terms.

We do not agree. Crankshafts from the group listed in Lycoming Engines MSB No. 569A have been found to have the same material flaws as those in the groups that were addressed by previous Lycoming Engines MSBs and FAA ADs. We selected a crankshaft replacement schedule that minimizes the burden on owners and operators by requiring replacement of the crankshaft only when accessible during engine maintenance or overhaul, but contains a compliance end-time of 12 years after the crankshaft enters service to provide the necessary risk mitigation. There is no current data to support an accelerated removal of the crankshafts, so we determined that the crankshafts can continue in service until the next engine overhaul as specified in Lycoming Engines SI No. 1009AS. However, if new data becomes available at a later date, we will re-evaluate our conclusion.

#### **Lycoming Engines Should Pay Regardless of Calendar Time**

Six commenters, the Cessna Pilots Association, the Aircraft Owners and Pilots Association, and four private citizens state that Lycoming Engines should pay for the complete replacement cost or extend the \$2,000

crankshaft kit price, regardless of when an owner replaces the crankshaft required to be removed to comply with this AD.

We view this comment as beyond the scope of this rulemaking. We have no authority to regulate when or by how much a manufacturer reimburses an owner for actions required as a result of compliance with an AD.

#### **Update to Lycoming Engines SI No. 1009AR**

We updated the references of Lycoming Engines SI No. 1009AR, dated June 22, 2004, to Lycoming Engines SI No. 1009AS, dated May 25, 2006, in this AD.

#### **Conclusion**

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

#### **Costs of Compliance**

We estimate that this AD will affect 3,774 engines installed on airplanes of U.S. registry. Because the AD compliance interval coincides with engine overhaul or other engine maintenance, we estimate no additional labor hours will be needed to comply with this AD. Parts will cost about \$16,000 per engine. Based on these figures, we estimate the total cost of the AD to be \$60,384,000. Lycoming said it may provide the parts for \$2,000, until February 21, 2009, but will not extend the parts price beyond that date. In addition, since we issued the NPRM, Lycoming Engines has provided additional information on their Web site, explaining that engines affected by MSB No. 569 or MSB No. 569A, which get overhauled at the Lycoming factory at any time within the FAA mandated 12-year limit, will receive a replacement crankshaft during overhaul at no additional charge.

#### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### **Regulatory Findings**

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD 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, Incorporation by reference, Safety.

#### **Adoption of the Amendment**

- Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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:

**2006-20-09 Lycoming Engines (formerly Textron Lycoming):** Amendment 39-14778. Docket No. FAA-2006-24785; Directorate Identifier 2006-NE-20-AD.

#### **Effective Date**

- (a) This airworthiness directive (AD) becomes effective November 3, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to those Lycoming Engines (L)O-360, (L)IO-360, AEIO-360, O-

540, IO-540, AEIO-540, (L)TIO-540, IO-580, and IO-720 series reciprocating engines listed by engine model number and serial number in Table 1, Table 2, Table 3, or Table 4 of Lycoming Mandatory Service Bulletin (MSB) 569A, dated April 11, 2006, and those engines with crankshafts listed by crankshaft

serial number in Table 5 of Lycoming MSB 569A, dated April 11, 2006. These applicable engines are manufactured new or rebuilt, overhauled, or had a crankshaft installed after March 1, 1997. These engines are installed on, but not limited to, the following aircraft:

Engine model	Manufacturer	Aircraft model
AEIO-360-A1B6	Moravan Scottish Avia Valmet	Z242L Zlin. Bulldog. Leko 70.
AEIO-360-A1E6	Integrated Systems	Omega.
IO-360-A1B6	Aircraft Manufacturing Factory Beech Cessna Korean Air Partenavia Saab Scottish Avia Cessna Siai Marchetti	Mushshak. C-24R Sierra or 200 Sierra. R-G Cardinal. Chang Gong-91. P-68C. MFI-15 Safari, MFI-17 Supporter. Bulldog. R-6 Cardinal. S-205.
IO-360-A1B6D	Siai Marchetti	S-205.
IO-360-A3B6	Mod Works	Trophy 212 Conversion.
IO-360-A3B6D	Mooney	M20J-201.
IO-360-B1G6	American	Blimp Spector 42.
IO-360-C1C6	Piper Aircraft Ruschmeyer	PA-28-200R Arrow IV. MF-85.
IO-360-C1D6	M.B.B. Rockwell	Flamingo 223. 112.
IO-360-C1E6	Piper	PA-34-200 Seneca I.
IO-360-C1G6	Zeppelin	NT.
IO-360-X178	Ly-Con	STC.
(L)O-360-A1G6D	Beech	76 Duchess.
(L)O-360-A1H6	Piper	PA-44 Seminole.
O-360-A1F6	Cessna	177 Cardinal.
O-360-A1F6D	Cessna	177 Cardinal.
O-360-A1G6D	Beech	Teal III 76 Duchess.
O-360-A1H6	Piper	PA-44 Seminole.
O-360-E1A6D	Piper	PA-44-180 Seminole.
O-360-F1A6	Cessna	C-172RG Cutlass RG.
AEIO-540-D4A5	Christen H.A.L. Siai-Marchetti Slingsby Extra-Flugzeugbau F.F.A.	Pitts S-2S, S-2B. HPT-32. SF-260. T3A Firefly. Extra 300. FFA-2000 Eurotrainer.
AEIO-540-L1B5	Apex Piper	Apex. 602P Sequoia.
AEIO-540-L1D5	Cessna	C-182 Skylane.
IO-540-AA1A5	Cessna	C-206 Stationair.
IO-540-AB1A5	Robinson	R44.
IO-540-AC1A5	Aerofab	250 Renegade.
IO-540-AE1A5	Avions Pierre Robin	HR100/250.
IO-540-C4B5	Bellanca Piper Wassmer	T-250 Aries. Aztec C PA-23 "250", Aztec F. WA4-21.
IO-540-C4D5	S.O.C.A.T.A.	TB-20.
IO-540-C4D5D	S.O.C.A.T.A.	TB-20 Trinidad.
IO-540-D4A5	Piper Siai-Marchetti	PA-24 260 Comanche. SF-260.
IO-540-D4B5	Cerva	CF-34 Guepard.
IO-540-E1A5	Aero Commander	500-E.
IO-540-E1B5	Aero Commander Poeschel Shrike	500-U. P-300. 500-S.
IO-540-J4A5	Piper	Aztec PA-23 "250".
IO-540-K1A5	Aeronautica Agrícola Mexicana Celair Embraer	Quail. Eagle. EMB-720 Minuano, EMB-721 Sertanejo.
IO-540-K1A5D	Piper	PA-32-300 Cherokee Six.
IO-540-K1B5	Piper Evangel-Air Pilotus Britton-Norman	PA-32-300. Evangel-Air. BN-2B Islander.

Engine model	Manufacturer	Aircraft model
IO-540-K1E5 .....	Transavara .....	T-300 Skyfarmer.
IO-540-K1F5 .....	Bellanca .....	Bellanca.
IO-540-K1G5 .....	Ted Smith .....	Aerostar 600.
IO-540-K1G5D .....	Embraer .....	EMB-720 Minuano.
IO-540-K1H5 .....	Piper .....	Saratoga PA-32-300, Brave 300.
IO-540-K1J5 .....	Embraer .....	EMB-721 Sertanejo.
IO-540-K1J5D .....	Piper .....	PA-32-300R Lance, SP PA-32-300R Saratoga.
IO-540-K1K5 .....	Seawind .....	Seawind.
IO-540-L1C5 .....	Piper .....	600A Aerostar.
IO-540-M1A5 .....	Embraer .....	EMB-201 Ipanema.
IO-540-M1C5 .....	Piper .....	T35.
IO-540-S1A5 .....	Swearingen .....	SX300.
IO-540-T4A5D .....	Piper .....	PA-31-300 Navajo.
IO-540-T4B5 .....	King Engineering .....	Angel.
IO-540-T4B5D .....	Piper .....	601B Aerostar, 601P Aerostar.
IO-540-V4A5 .....	General Aviation .....	Model 114.
IO-540-W1A5 .....	Commander .....	114B.
IO-540-X160 .....	Rockwell .....	114.
IO-540-X170 .....	Aircraft Manufacturing Factory .....	Aircraft Manufacturing Factory.
O-540-A1A5 .....	Maule .....	MT-7-260, M-7-260.
O-540-A1B5 .....	Maule .....	MX-7-235, MT-7-235, M7-235.
O-540-A1C5 .....	Airship Management .....	Airship Management.
O-540-A1D5 .....	Robinson .....	Robinson.
O-540-A4D5 .....	Helio .....	Military H-250.
O-540-B1A5 .....	Piper .....	PA-32 "250" Aztec, PA-24 "250" Comanche.
O-540-B2B5 .....	Piper .....	PA-24 "250" Comanche.
O-540-B2C5 .....	American Champion .....	PA-24 "250" Comanche.
O-540-B4B5 .....	Gomozig .....	American Champion.
O-540-E4A5 .....	Avipro .....	Gomozig.
O-540-E4B5 .....	Piper .....	Bearhawk.
O-540-E4C5 .....	Piper .....	PA-23 "235" Apache.
O-540-F1B5 .....	S.O.C.A.T.A. ....	235CA Rallye.
O-540-G1A5 .....	Piper .....	PA-24 "235" Pawnee.
O-540-J1A5D .....	Embraer .....	EMB-710 Corioca.
O-540-J3A5 .....	Maule .....	MX-7-235 Star Rocket, M-6-235 Super Rocket, M-7-235 Super Rocket.
O-540-J3A5D .....	Piper .....	PA-28 "235" Cherokee.
O-540-J3C5D .....	S.O.C.A.T.A. ....	235GT Rallye, 235C Rallye.
O-540-L3C5D .....	Aviamilano .....	F-250 Flamingo.
TIO-540-AA1AD .....	Piper .....	PA-24 "260" Comanche.
TIO-540-AB1AD .....	Siai-Marchetti .....	SF-260, SF-208.
TIO-540-AE2A .....	Britton-Norman .....	BN-2.
TIO-540-AF1B .....	Piper .....	PA-32 "260" Cherokee Six.
TIO-540-AG1A .....	Pilotus Britton-Norman .....	BN-2A-26 Islander; BN-2A-27 Islander; BN-2B-26 Islander II; BN-2A-21 Islander; BN-2A-Mark III-2 Trislander.
TIO-540-AH1A .....	Robinson .....	R-44.
TIO-540-AK1A .....	Piper .....	PA-25 "260" Pawnee.
TIO-540-C1A .....	Maule .....	MX-7-235 Star Rocket, M-6-235 Super Rocket, M-7-235 Super Rocket.
TIO-540-J2B .....	Robin .....	R-3000/235.
TIO-540-U2A .....	Piper .....	PA-28-236 Dakota.
TIO-540-W2A .....	Cessna .....	R-182 Skylane.
TIO-540-X136 .....	Cessna .....	TR-182 Turbo Skylane.
TIO-540-X155 .....	Aerofab Inc .....	270 Turbo Renegade.
IO-720-D1B .....	S.O.C.A.T.A. ....	TC TB-21 Trinidad.
	Piper .....	PA-46-350P Mirage.
	Mooney .....	TLS M20M.
	Commander Aircraft .....	112TC.
	Piper .....	TC PA-32-301T TurboSaratoga.
	Cessna .....	T182T Turbo Skylane.
	Piper .....	PA-23-250 Turbo Aztec.
	Piper .....	T-1020.
	Piper .....	700P Aerostar.
	Aero Mercantil .....	Gavilan.
	Schweizer .....	Schweizer.
	Cessna .....	T182 (AK1A).
	Embraer .....	EMB-400 Ipanema, IAR-821.
	Nauchang .....	N5.

Engine model	Manufacturer	Aircraft model
IO-720-D1C .....	Piper .....	PA-36-375 Brave.

**Unsafe Condition**

(d) This AD results from reports of 23 confirmed failures of similar crankshafts in Lycoming Engines 360 and 540 series reciprocating engines. We are issuing this AD to prevent failure of the crankshaft, which will result in total engine power loss, in-flight engine failure, and possible loss of the aircraft.

**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.

**Engines for Which No Action Is Required**

(f) If your engine meets any of the following conditions, and you have not had the crankshaft replaced since meeting the condition, no further action is required:

(1) Engines that are in compliance with Lycoming MSB No. 552 (AD 2002-19-03) or MSB No. 553 (AD 2002-19-03 Table 3 or Table 5); or

(2) Engines that are in compliance with Lycoming MSB No. 566 AD (2005-19-11); or

(3) Engines that are in compliance with Lycoming Supplement No. 1 to MSB No. 566 (AD 2006-06-16); or

(4) Engines that are in compliance with the original issue of Lycoming MSB No. 569, or MSB No. 569A.

(5) For engines identified in paragraphs (f), (g), (h), or (i) of this AD, owners or operators may make an entry in the AD status log required by 14 CFR 91.417(a)(2)(v) that this AD required no action for compliance.

(g) If Lycoming Engines manufactured new, rebuilt, overhauled, or repaired your engine, or replaced the crankshaft in your engine before March 1, 1997, and you have not had

the crankshaft replaced, no further action is required.

(h) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine serial number (SN), and Table 5 of MSB No. 569A, dated April 11, 2006, does not list your crankshaft SN, no further action is required.

(i) For engine model TIO-540-U2A, SN L-4641-61A, no action is required.

**Engines for Which Action Is Required**

(j) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, lists your engine SN, and Table 5 of MSB No. 569A, dated April 11, 2006, lists your crankshaft SN, replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at the earliest of the following:

(1) The time of the next engine overhaul as specified in Lycoming Engines Service Instruction No. 1009AS, dated May 25, 2006; or

(2) The next separation of the crankcase; or

(3) No later than 12 years from the time the crankshaft first entered service or was last overhauled, whichever is later.

(k) If Table 1, Table 2, Table 3, or Table 4 of Lycoming MSB No. 569A, dated April 11, 2006, does not list your engine SN, and Table 5 of MSB No. 569A does list your crankshaft SN (an affected crankshaft was installed as a replacement), replace the affected crankshaft with a crankshaft that is not listed in Table 5 of MSB No. 569A at the earliest of the following:

(1) The time of the next engine overhaul as specified in Lycoming Engines Service Instruction No. 1009AS, dated May 25, 2006; or

(2) The next separation of the crankcase; or

(3) No later than 12 years from the time the crankshaft first entered service or was last overhauled, whichever is later.

**Prohibition Against Installing Certain Crankshafts**

(l) After the effective date of this AD, do not install any crankshaft that has a SN listed in Table 5 of Lycoming MSB No. 569A, dated April 11, 2006, into any engine.

**Alternative Methods of Compliance**

(m) The Manager, New York Aircraft 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**

(n) You must use the service information specified in Table 1 of this AD to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Lycoming, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323-6181; fax (570) 327-7101, or on the internet at [www.Lycoming.Textron.com](http://www.Lycoming.Textron.com) for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html>.

TABLE 1.—INCORPORATION BY REFERENCE

Service information	Page	Revision	Date
Lycoming Engines Service Instruction No. 1009AS .....	All .....	AS .....	May 25, 2006.
Total Pages: 4 .....			
Lycoming Engines Mandatory Service Bulletin No. 569A .....	All .....	A .....	April 11, 2006.
Total Pages: 59 .....			

Issued in Burlington, Massachusetts, on September 20, 2006.

**Francis A. Favara,**

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6-15958 Filed 9-28-06; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2006-25008; Airspace Docket No. 06-ACE-6]

**Modification of Class E Airspace; Lake Ozark, MO**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule which revises Class E airspace at Lake Ozark, MO.

**DATES:** *Effective Date:* 0901 UTC, November 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 9011 Locust, Kansas City, MO 64106; telephone (816) 329-2522.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal**

**Register** on August 8, 2006 (71 FR 44885). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 23, 2006. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, Texas on September 12, 2006.

**Donald R. Smith,**

*Manager, System Support Group, ATO  
Central Service Area.*

[FR Doc. 06-8315 Filed 9-28-06; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2006-24449; Airspace  
Docket No. 06-AGL-03]

#### Modification of Class E Airspace; Pierre, SD

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Pierre, SD. Standard Instrument Approach Procedures have been developed for Pierre Regional Airport, Pierre, SD. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Pierre, SD.

**EFFECTIVE DATE:** 0901 UTC, January 18, 2007. The Director of the Federal Register approves this incorporation by reference action under 7 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Steve Davis, FAA, Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7131.

**SUPPLEMENTARY INFORMATION:**

#### History

On Wednesday, June 28, 2006, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Pierre, SD (71 FR 36724). The proposal was to modify controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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 for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, and airspace areas extending upward from the surface in paragraph 6002, of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, 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 modifies Class E airspace at Pierre, SD, to accommodate aircraft executing instrument flight procedures into and out of Pierre Regional Airport. The area will be depicted on appropriate aeronautical charts.

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 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

\* \* \* \* \*

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

\* \* \* \* \*

#### **AGL SD E5 Pierre, SD [Revised]**

Pierre Regional Airport, SD  
(Lat. 44°22'58" N., long. 100°17'09" W.)  
Pierre VORTAC  
(Lat. 44°23'40" N., long. 100°09'46" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Pierre Regional Airport, and within 4.4 miles each side of the Pierre VORTAC 087° radial extending from the 6.9-mile radius to 6.1 miles east of the VORTAC and within 4.4 miles each side of the Pierre VORTAC 265° radial extending from the 6.9-mile radius to 16.1 miles west of the VORTAC, and that airspace extending upward from 1,200 feet above the surface within a 30.5-mile radius of the Pierre VORTAC.

\* \* \* \* \*

*Paragraph 6002 Class E airspace designated  
as surface areas.*

\* \* \* \* \*

#### **AGL SD E2 Pierre, SD [Revised]**

Pierre Regional Airport, SD  
(Lat. 44°22'58" N., long. 100°17'09" W.)

Within a 4.4-mile radius of the Pierre Regional Airport.

Issued in Ft. Worth, Texas on September 14, 2006.

**Donald R. Smith,**

*Manager, System Support Group, ATO  
Central Service Area.*

[FR Doc. 06-8311 Filed 9-28-06; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2006-24450; Airspace  
Docket No. 06-AGL-04]

**Modification of Class E Airspace;  
Chamberlain, SD**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Chamberlain, SD. Standard Instrument Approach Procedures have been developed for Chamberlain Municipal Airport, Chamberlain, SD. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Chamberlain, SD. **EFFECTIVE DATE:** 0901 UTC, January 18, 2007. The Director of the Federal Register approves this incorporation by reference action under 7 CFR Part 51, subject to the annual version of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Steve Davis, FAA, Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7131.

**SUPPLEMENTARY INFORMATION:****History**

On Wednesday, June 28, 2006, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Chamberlain, SD (71 FR 36725). The proposal was to modify controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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 for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, 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 modifies Class E airspace at Chamberlain, SD, to accommodate aircraft executing instrument flight procedures into and out of Chamberlain Municipal Airport. The area will be depicted on appropriate aeronautical charts.

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 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 follow:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95664, 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 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

\* \* \* \* \*

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

\* \* \* \* \*

**AGL SD E5 Chamberlain, SD [Revised]**

Chamberlain Municipal Airport, SD  
(Lat. 43°45'58" N., long. 99°19'17" W.)

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

\* \* \* \* \*

Issued in Fort Worth, Texas on September 14, 2006.

**Donald R. Smith,**

*Manager, System Support Group, ATO  
Central Service Area.*

[FR Doc. 06-8312 Filed 9-28-06; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2006-25392; Airspace  
Docket No. 06-ASO-10]

**Establishment of Class E Airspace;  
Butler, GA**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Butler, GA. Area Navigation (RNAV) Global Positioning System (GPS) and Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedures (SIAP) Runway (RWY) 18 and RWY 36 have been developed for Butler Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAPs and for Instrument Flight Rules (IFR) operations at Butler Municipal Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

**EFFECTIVE DATE:** 0901 UTC, November 23, 2006. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51. Subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5586.

**SUPPLEMENTARY INFORMATION:****History**

On August 2, 2006, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by

establishing Class E airspace at Butler, GA (71 FR 43679). This action provides adequate Class E airspace for IFR operations at Butler Municipal Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

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.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Butler, GA.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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, when promulgated, 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 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 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

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

\* \* \* \* \*

### ASO GA E5 Butler, GA [NEW]

Butler Municipal Airport, GA  
(Lat. 32°34'03" N., long. 84°15'03" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Butler Municipal Airport.

\* \* \* \* \*

Issued in College Park, Georgia, on September 6, 2006.

**Barry A. Knight,**

*Acting Manager, System Support Group,  
Eastern Service Center.*

[FR Doc. 06–8313 Filed 9–28–06; 8:45 am]

**BILLING CODE 4910–13–M**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

RIN 0960–AG31

### Administrative Review Process for Adjudicating Initial Disability Claims; Correction

**AGENCY:** Social Security Administration.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document contains a correction to the final regulations that were published in the **Federal Register** on March 31, 2006 (71 FR 16424). The regulations amended our administrative review process for applications for benefits that are based on whether you are disabled under title II of the Social Security Act (the Act), or applications for supplemental security income (SSI) payments that are based on whether you are disabled or blind under title XVI of the Act.

**DATES:** Effective on August 1, 2006.

### FOR FURTHER INFORMATION CONTACT:

Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY (410) 966–5609 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site,

Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** The final rule published on March 31, 2006 and effective on August 1, 2006 included an amendment to the first sentence of §§ 404.1526(c) and 416.926(c). However, before that rule was published, another rule published on March 1, 2006 (71 FR 10419) added a new paragraph (c) to each section and redesignated each former paragraph (c) as paragraph (d). We inadvertently failed to change the designation of paragraph (c) in § 404.1526 in the rule published on March 31, 2006. (We correctly changed § 416.926.) Thus, in the Code of Federal Regulations, this resulted in a change in § 404.1526 to the first sentence of the new paragraph (c), not paragraph (d), as intended. (The first sentence of § 416.926(d) was changed correctly.) To be sure that there is no confusion as to the intended content of either paragraph, we are printing paragraphs (c) and (d) in their entirety in this correcting amendment.

### List of Subjects in 20 CFR Part 404

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

■ Accordingly, 20 CFR part 404 is corrected by making the following correcting amendment:

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

#### Subpart P—[Amended]

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

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

■ 2. Amend § 404.1526 by revising paragraphs (c) and (d) to read as follows:

### § 404.1526 Medical Equivalence

\* \* \* \* \*

(c) *What evidence do we consider when we determine if your impairment(s) medically equals a listing? When we determine if your impairment medically equals a listing, we consider all evidence in your case record about your impairment(s) and its effects on you that is relevant to this finding. We do not consider your vocational factors of age, education, and work experience (see, for example,*



§ 404.1560(c)(1)). We also consider the opinion given by one or more medical or psychological consultants designated by the Commissioner. (See § 404.1616.)

(d) *Who is a designated medical or psychological consultant?* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations, and includes a medical or psychological expert (as defined in § 405.5 of this chapter) in claims adjudicated under the procedures in part 405 of this chapter. A medical consultant must be an acceptable medical source identified in § 404.1513(a)(1) or (a)(3) through (a)(5). A psychological consultant used in cases where there is evidence of a mental impairment must be a qualified psychologist. (See § 404.1616 for limitations on what medical consultants who are not physicians can evaluate and the qualifications we consider necessary for a psychologist to be a consultant.)

\* \* \* \* \*

**Gregory Zwitich,**

*Social Security Regulations Officer.*

[FR Doc. E6-16074 Filed 9-28-06; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 522

#### Implantation or Injectable Dosage Form New Animal Drugs; Tulathromycin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for the addition of a pathogen to the indication for use of tulathromycin in cattle, by injection, for the treatment of respiratory disease.

**DATES:** This rule is effective September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Gotthardt, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 301-827-7571, e-mail: [joan.gotthardt@fda.hhs.gov](mailto:joan.gotthardt@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 141-244 for DRAXXIN (tulathromycin) Injectable Solution. The supplemental NADA provides for the addition of a pathogen, *Mycoplasma bovis*, to the indication for use of tulathromycin solution in cattle, by subcutaneous injection, for the treatment of bovine respiratory disease. The application is approved as of August 18, 2006, and the regulations are amended in 21 CFR 522.2630 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning August 18, 2006.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

#### List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

#### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

#### § 522.2630 [Amended]

■ 2. In § 522.2630, in paragraph (d)(1)(ii), remove "and *Histophilus somni* (*Haemophilus somnus*)" and add in its place "*Histophilus somni* (*Haemophilus somnus*), and *Mycoplasma bovis*".

Dated: September 15, 2006.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. E6-15965 Filed 9-28-06; 8:45 am]

BILLING CODE 4160-01-S

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2400

#### Regulations Implementing the Privacy Act of 1974

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Review Commission (OSHRC) is amending its regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. The Privacy Act has been amended multiple times since OSHRC first promulgated its regulations in 1979. The amendments to OSHRC's regulations at 29 CFR Part 2400 will assist the agency in complying with the requirements of the Privacy Act.

**DATES:** Effective September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ron Bailey, Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606-5410, or via e-mail at [rbailey@oshrc.gov](mailto:rbailey@oshrc.gov).

**SUPPLEMENTARY INFORMATION:** OSHRC published a notice of proposed rulemaking on July 28, 2006, 71 FR 42785, which would revise 29 CFR Part 2400. Interested persons were afforded an opportunity to participate in the rulemaking process through submission of written comments on the proposed rule. OSHRC received no public comments. We have reviewed the proposed rule and now adopt it as the agency's final rule.

OSHRC's regulations at Part 2400 implementing the Privacy Act of 1974 were first promulgated on January 19, 1979, 44 FR 3968. These regulations had not been revised, except for changes made to the office address referenced in §§ 2400.6 and 2400.7, 58 FR 26065, April 30, 1993. Since 1979, however, the Privacy Act has been amended on numerous occasions. These statutory changes, along with intervening case law, compel OSHRC to amend its

regulations at Part 2400. Because OSHRC is making extensive revisions to these regulations, OSHRC has reproduced them in their entirety for the convenience of the reader at the end of this document. OSHRC's specific amendments to Part 2400 are discussed below in regulatory sequence.

OSHRC is first amending its authority citation to exclude all references to popular names and statutes at large. The Office of the Federal Register has expressed a preference for citing only to the United States Code when referencing a Federal statute.

In § 2400.1 (Purpose and scope), OSHRC is making several changes to clarify what Part 2400 covers. In accordance with the amendments to the Privacy Act contained in section 2(b), Pub. L. 97-365 (5 U.S.C. 552a(m)(2)), OSHRC is amending § 2400.1 to reflect that Part 2400 no longer covers systems of records "that are disclosed to consumer reporting agencies under [section] 3711(e) of title 31, United States Code." Additionally, OSHRC is amending § 2400.1 to reflect that Part 2400 applies only to "records that are maintained by [OSHRC]." The prior version of § 2400.1 states that OSHRC's Privacy Act regulations "are applicable only to such items of information as relate to the agency or are within its custody." However, the term "record" is defined in the Privacy Act at 5 U.S.C. 552a(a)(4) while the term "items of information" is not. Therefore, amending § 2400.1 to substitute "record" for "items of information" more appropriately limits the purpose and scope of the regulations in accordance with the statute. OSHRC is also deleting the last sentence of § 2400.1, which states "[t]his part is intended to protect individual privacy, and affects all personal information collection and usage activity of the agency," because it is overly broad. Based on these amendments, revised § 2400.1 reads as follows:

The purpose of the provisions of this part is to provide procedures to implement the Privacy Act of 1974 (5 U.S.C. 552a). This part is applicable only to records that are maintained by the Occupational Safety and Health Review Commission (OSHRC or the Commission), which includes all systems of records operated on behalf of OSHRC, pursuant to a contract, to accomplish an agency function, except for records that are disclosed to consumer reporting agencies under section 3711(e) of title 31, United States Code. This part is not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure, which are published at 29 CFR 2200.1 *et seq.*

Revising § 2400.1 in this manner incorporates a statutory change to the Privacy Act, as well as clarifies the proper scope of the agency's regulations under Part 2400.

In § 2400.2 (Description of agency), OSHRC is adding a sentence to the end of the section that provides additional details about the designation of one of the Commissioners as the Chairman and his responsibilities for the administrative operations of the Commission, consistent with section 12(e) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 661(e). OSHRC is also making a simple change in nomenclature by deleting "Occupational Safety and Health Review Commission" and replacing it with "The Commission." The agency's full name is first noted in revised § 2400.1 based on the amendments to that section discussed above.

OSHRC is amending several items in § 2400.3 (Delegation of authority). In paragraph (a) of § 2400.3, OSHRC is revising the paragraph's language to provide that "[t]he Chairman shall designate an OSHRC employee as the Privacy Officer, and shall delegate to the Privacy Officer the authority to ensure agency-wide compliance with this part." In the prior version of paragraph (a), this authority was delegated to the Executive Director. In recent years, the Office of Management and Budget (OMB) has issued various guidance memoranda regarding the responsibilities of executive departments and agencies on privacy matters, including *Safeguarding Personally Identifiable Information*, OMB-06-15 (May 22, 2006); *Designation of Senior Agency Officials for Privacy*, OMB Memorandum M-05-08 (Feb. 11, 2005); and *OMB Guidance for Implementing the Privacy Provision of the E-Government Act of 2002*, OMB Memorandum M-03-22 (Sept. 30, 2003). By creating the position of Privacy Officer and providing this individual with the authority to handle Privacy Act matters, OSHRC will be better able to respond to future changes in requirements and subsequent guidance in the privacy arena.

In paragraph (b) of § 2400.3, OSHRC is replacing the term "[c]ustodians" with the more specific term "[c]ustodians of the systems of records" in order to better define those persons covered by paragraph (b). In accordance with the amendments to § 2400.3(a), OSHRC is also replacing the term "Executive Director" with "Privacy Officer." Additionally, OSHRC is dividing existing paragraph (b) into paragraphs (b)(1) and (b)(2) and adding a new paragraph (b)(3) in order to

highlight the various duties of the custodians of the systems of records. Specifically, OSHRC is reformatting paragraph (b) by turning its first and second sentences into new paragraphs (b)(1) and (b)(2), respectively. OSHRC is making several grammatical changes in new paragraph (b)(1) by transforming the words "adherence," "collection," "use," and "disclosure" into present participles. OSHRC is replacing (1) the word "information" and the phrase "personal information" with the word "records," and (2) the phrase "personal records systems" with the phrase "systems of records." Because the terms "record" and "system of records" are defined in the Privacy Act at 5 U.S.C. 552a(a)(4) and (5), use of these terms better delineates the scope of revised paragraph (b). OSHRC is adding a new paragraph (b)(3), which makes the custodians of the systems of records responsible for maintaining an accurate accounting of each disclosure in conformance with old § 2400.4(d) (new § 2400.4(c)) and its statutory counterpart in the Privacy Act at 5 U.S.C. 552a(c). Custodians of the systems of records are best suited to maintain an accounting of each disclosure because they have the most interaction with the systems of records and are usually involved in processing the requests for records.

With regard to § 2400.4 (Collection and disclosure of personal information), OSHRC is making several structural and substantive changes, as well as some minor changes in wording. In paragraph (a)(1)(i) of § 2400.4, OSHRC is adding the phrase "in its records" after "[s]olicit, collect and maintain" to clarify that OSHRC's responsibilities under this provision only extend to information that is maintained in a record. OSHRC is also adding a new paragraph (a)(1)(ii) that lists the responsibilities set forth in 5 U.S.C. 552a(e)(5), which requires each agency to—

Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

With the addition of new paragraph (a)(1)(ii), § 2400.4(a)(1) better reflects OSHRC's responsibilities under the Privacy Act. OSHRC is renumbering old paragraphs (a)(1)(ii) and (iii) as new paragraphs (a)(1)(iii) and (iv). In order to better track the statutory language of 5 U.S.C. 552a(e)(2), OSHRC is adding the phrase "under Federal programs" after "benefits or privileges" in the newly renumbered paragraph (a)(1)(iii). Finally, OSHRC is making a minor

change by deleting “the” before “OSHC” in new paragraph (a)(1)(iv).

OSHC is not making any changes to paragraph (a)(2). In paragraph (a)(3) of § 2400.4, however, OSHRC is replacing the word “information” with “record” because the term “record” is defined in the Privacy Act at 5 U.S.C. 552a(a)(4) while the term “information” is not, and thus amending paragraph (a)(3) in this manner better defines this paragraph’s scope. OSHRC is also adding the phrase “or maintenance of the record” after “collection” to clarify that all of the requirements and exceptions in the paragraph apply to both the collection and maintenance of records. Finally, OSHRC is amending paragraph (a)(3) to include language that excludes records “pertinent to and within the scope of an authorized law enforcement activity,” in accordance with 5 U.S.C. 552a(e)(7). OSHRC is making no changes to § 2400.4(a)(4).

OSHC is making structural and substantive changes to paragraphs (b)(1) and (b)(2) of § 2400.4. Specifically, OSHRC is amending paragraph (b)(1) to incorporate the opening statutory language contained in 5 U.S.C. 552a(b). Paragraph (b)(1) now reads:

OSHC shall not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

The prior version of the regulation at § 2400.4(b)(1)—which, in part, prevented OSHRC from disseminating records “unless reasonable efforts have been made to assure that the information is accurate, complete, timely and relevant”—could have been construed as applying to Freedom of Information Act (FOIA) requests. Under 5 U.S.C. 552a(e)(6), however, agency responses to FOIA requests are specifically exempted from the Privacy Act requirement that agencies must make reasonable efforts to ensure, when disclosing records about an individual to any person, that such records are accurate, complete, timely, and relevant. This exemption makes sense because the purpose of a FOIA request may be, for example, to gather information that reflects an agency’s propensity for maintaining inaccurate records. Consequently, it is not appropriate to require that such records requested under the FOIA be examined in this manner under the Privacy Act. Thus, in order to eliminate such an interpretation, OSHRC is amending paragraph (b)(1) in the aforementioned manner, amending paragraph (b)(2) to list exceptions to revised paragraph

(b)(1), and adding new paragraph (b)(5) which defines when records should be “accurate, complete, timely and relevant.”

As to paragraph (b)(2) of § 2400.4, OSHRC is making the following changes. First, in order to reflect that revised paragraph (b)(2) lists exceptions to the rule set forth in revised paragraph (b)(1), OSHRC is revising the opening clause to read, “Exceptions: A record may be disseminated without satisfying the requirements of paragraph (b)(1) of this section if disclosure is made: \* \* \*.” Second, OSHRC is replacing the word “information” with “record” in paragraphs (b)(2)(ii) and (b)(2)(iv), because the term “record” is defined in the Privacy Act at 5 U.S.C. 552a(a)(4), while the term “information” is not. Third, in paragraph (b)(2)(iv), OSHRC is adding the words “OSHC with” between “provided” and “adequate advance written assurance” in order to clarify that notice must be provided to OSHRC. In that paragraph, OSHRC is also replacing the phrase “individually identifiable” with “personally identifiable” because this is a term of art used by Privacy Act practitioners. Fourth, OSHRC is making a change in nomenclature by spelling out “United States” in paragraph (b)(2)(v) and deleting “the” before “OSHC” in paragraph (b)(2)(viii). Fifth, in accordance with the amendments to the Privacy Act contained in section 107(g)(1), Pub. L. 98–497 (5 U.S.C. 552a(b)(6)), OSHRC is modifying, in paragraph (b)(2)(vi), “National Archives of the United States” to read “National Archives and Records Administration,” and “Administrator of General Services” to read “Archivist of the United States or the designee of the Archivist.” Sixth, OSHRC is modifying, in paragraph (b)(2)(viii), “Federal agency” to read “another agency.” This revision better tracks the statutory language at 5 U.S.C. 552a(b)(7) and makes clear that the records can be disclosed to federal, state, or local agencies. In this regard, OMB states in its guidelines, 40 FR 28948, 28955, July 9, 1975, that in addition to providing for disclosures to federal law enforcement agencies, section 552a(b)(7) allows an agency, “upon receipt of a written request, [to] disclose a record to another agency or unit of State or local government for a civil or criminal law enforcement activity.” Seventh, in order to better track the language of 5 U.S.C. 552a(b)(9), OSHRC is modifying paragraph (b)(2)(ix) of § 2400.4 to read, “To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof,

or any joint committee of Congress or subcommittee of any such joint committee.” Eighth, in accordance with the GAO Human Capital Reform Act of 2004, Pub. L. 108–271, 118 Stat. 811, OSHRC is modifying, in paragraph (b)(2)(x), “General Accounting Office” to read “Government Accountability Office.” Finally, OSHRC is adding a new paragraph (b)(2)(xii) which, in accordance with the amendments to the Privacy Act contained in section 2(a), Pub. L. 97–365 (5 U.S.C. 552a(b)(12)), permits disclosure “[t]o a consumer reporting agency in accordance with section 3711(e) of title 31, United States Code.”

OSHC is making some minor changes, such as capitalizing “Service” in paragraph (b)(3) and revising “§ 2400.4(b)(3) above” to read “paragraph (b)(3) of this section” in paragraph (b)(4). In paragraph (b)(3), OSHRC is also changing “The Personnel Office” to “OSHC’s Office of Administration” based on the agency’s recent reorganization.

OSHC is adding new paragraphs (b)(5) and (b)(6) to § 2400.4, which essentially incorporate the statutory language of 5 U.S.C. 552a(e)(6) and (d)(5), respectively. Paragraph (b)(5) is changed slightly from that stated in the NPRM, which initially stated: “OSHC shall not disseminate any record about an individual to any person other than an agency unless the record is disseminated pursuant to paragraph (b)(2)(i) of this section, or reasonable efforts have been made to ensure that the record is accurate, complete, timely and relevant.” Upon further review of 5 U.S.C. 552a(e)(6), OSHRC makes a minor edit to paragraph (b)(5) so it more clearly tracks the statute as follows:

*Disclosures to third parties.* Prior to disseminating any record about an individual to any person other than an agency, unless the record is disseminated pursuant to paragraph (b)(2)(i) of this section, OSHRC shall make reasonable efforts to ensure that the record is accurate, complete, timely and relevant.

Paragraph (b)(6) reads:

*Anticipated legal action.* Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

OSHC is adding these provisions to § 2400.4 in order to track the statute and make the regulations comprehensive.

OSHC is re-designating old § 2400.4(c) as new § 2400.5(c). The old § 2400.4(c), which pertains to notifying certain persons and agencies about corrections made to a record, is a better fit for new § 2400.5(c), which pertains to “[n]otification of amendment.”

Modifications to the language in the re-designated § 2400.5(c) are discussed below in that section.

In response to the change above, OSHRC is re-designating old paragraph (d) of § 2400.4, which sets forth the procedures for maintaining an accounting of disclosures, as new paragraph (c) of § 2400.4. OSHRC is streamlining the language of new paragraph (c)(1). Rather than spelling out that the accounting requirements do not pertain to instances “in which disclosure is made to OSHRC employees in the performance of their duties or is required by the Freedom of Information Act (5 U.S.C. 552), in conformance with section 552a(c) of the Privacy Act,” OSHRC is amending the paragraph to read that “any disclosure made pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section” is excepted. Also, OSHRC is inserting the phrase “OSHRC shall maintain” at the beginning of paragraph (c)(1) to emphasize that it is, in fact, OSHRC’s responsibility to maintain an accurate accounting of certain disclosures. OSHRC is adding a new paragraph (c)(2) that lists the information required, in accordance with 5 U.S.C. 552a(c)(1), for a proper accounting of each disclosure. New paragraph (c)(2) reads as follows:

When an accounting is required under paragraph (c)(1) of this section, the following information shall be recorded: the date, nature, and purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

OSHRC is renumbering old paragraph (d)(2) as new paragraph (c)(3), and modifying the language “for at least five (5) years or the life of the record” to read “for at least five (5) years after disclosure or for the life of the record” in order to clearly define the length of time that an accounting must be maintained. Finally, OSHRC is renumbering old paragraph (d)(3) as new paragraph (c)(4), adding a cross-reference to “§ 2400.6 for suggested form of request,” and deleting the word “provision” because it adds nothing to the sentence.

With regard to § 2400.5 (Notification), OSHRC is making various changes in substance and nomenclature. In the opening sentence of paragraph (a) of § 2400.5, OSHRC is modifying the phrase “personal records systems” to read “systems of records” because only the latter phrase is defined in the Privacy Act at 5 U.S.C. 552a(a)(5).

In paragraph (a)(2) of § 2400.5, OSHRC is deleting the word “personal” because the definitions of “record” and “system of records” in the Privacy Act at 5 U.S.C. 552a(a)(4) and (5),

respectively, already reflect that personally identifiable information is at issue. In accordance with the amendments to the Privacy Act contained in section 201(a), Pub. L. 97–375 (5 U.S.C. 552a(e)(4)), OSHRC is also deleting the word “annually” from paragraph (a)(2) and adding the phrase “[u]pon establishing or revising a system of records.” Additionally, OSHRC is modifying paragraph (a)(2) to reflect the data elements for Privacy Act notices that are required by the Office of the Federal Register. These fields include: (i) System name and location; (ii) security classification; (iii) categories of individuals covered by the system; (iv) categories of records in the system; (v) authority for maintenance of the system; (vi) purpose(s) of the system; (vii) routine uses of records maintained in the system, including categories of users and the purpose(s) of such uses; (viii) disclosures to consumer reporting agencies; (ix) policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; (x) system manager(s) and address; (xi) procedures by which an individual can be informed whether a system contains a record pertaining to himself, gain access to such record, and contest the content, accuracy, completeness, timeliness, relevance, and necessity for retention of the record; (xii) record source categories; and (xiii) exemptions claimed for the system. Finally, in the opening sentence of paragraph (a)(2) of § 2400.5, OSHRC is making minor grammatical changes, such as inserting “the” before the words “existence” and “systems.”

In accordance with the amendments to the Privacy Act contained in section 3(b), Pub. L. 100–503 (5 U.S.C. 552a(r)), OSHRC is adding a new paragraph (a)(3) to § 2400.5 that sets forth the reporting requirements for system-of-records notices. New paragraph (a)(3) reads as follows:

OSHRC shall submit a report, in accordance with guidelines provided by the Office of Management and Budget (OMB), in order to give advance notice to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB of any proposal to establish a new system of records or to significantly change an existing system of records.

It is necessary to add new paragraph (a)(3) to § 2400.5 in order to provide a comprehensive explanation of the notification requirements.

In paragraph (b) of § 2400.5, OSHRC is replacing the phrase “personal information” with “record pertaining to the individual” because the term “record” is defined in the Privacy Act

at 5 U.S.C. 552a(a)(4), while the term “information” is not.

OSHRC is also making substantial changes to paragraph (c) of § 2400.5. The prior version of paragraph (c) stated as follows: “*Notification of amendment.* (See § 2400.7 relating to amendment of records upon request.)” OSHRC is deleting this language, inserting the text of old § 2400.4(c) (as discussed earlier), and designating it as new paragraph (c)(1) in § 2400.5. OSHRC is modifying the text to read as follows:

OSHRC shall inform any person or other agency about any correction or notation of dispute made by OSHRC to any record that has been disclosed to the person or agency, if the correction or notation was made pursuant to § 2400.8, and an accounting of the disclosure was made pursuant to § 2400.4(c).

The prior version of this paragraph states that its requirements apply where a “personal record has been or is to be disclosed.” However, the phrase “is to be disclosed” is not included in 5 U.S.C. 552a(c)(4), the regulation’s statutory counterpart. Moreover, from a practical standpoint, it would be difficult to notify a person or an agency of a correction if the record has not yet been disclosed to that person or agency. The remaining changes to new paragraph (c)(1), shown above, are based on the statutory text at section 552a(c)(4).

OSHRC is adding a new paragraph (c)(2) to § 2400.5 setting forth the requirements of 5 U.S.C. 552a(d)(4), which explains how agencies are to treat disputed portions of the record. New paragraph (c)(2) reads as follows:

In any disclosure to a person or other agency containing information about which the individual has filed a statement of disagreement and occurring after the statement was filed, OSHRC shall clearly note any portion of the record which is disputed and provide copies of the statement and, if OSHRC deems appropriate, copies of a concise statement of OSHRC’s reasons for not making the requested amendments.

Adding this statutory requirement to § 2400.5 will help ensure that the rights of those covered by the Privacy Act are preserved.

In accordance with 5 U.S.C. 552a(e)(11), OSHRC is amending paragraph (d) of § 2400.5 to allow interested persons to “submit written data, views, or arguments to OSHRC” after a system-of-records notice has been published in the **Federal Register**. OSHRC is also adding the word “routine” before “use,” and replacing “personal information” with “a system of records” because, under section 552a(e)(11), notification is required only for new and revised routine uses of

systems of records. OSHRC is making no changes to paragraph (e) of § 2400.5.

With regard to § 2400.6 (Procedures for requesting records), OSHRC is making various substantive and structural changes, as well some changes in nomenclature. Throughout § 2400.6, OSHRC is replacing “personal information” with “record” because the term “record” is defined in the Privacy Act at 5 U.S.C. 552a(a)(4) and the term “information” is not. OSHRC is also making a change in nomenclature by replacing “Executive Director,” “responsible official,” and “disclosure officer” with “Privacy Officer” in accordance with the amendments to § 2400.3(a).

In the opening sentence of § 2400.6, OSHRC is replacing the word “have” with “gain.” OSHRC is also deleting the phrase “within a comprehensive format” as unnecessary.

In paragraph (a)(1) of § 2400.6, OSHRC is deleting the last sentence which read as follows:

Access to OSHRC records maintained in National Archives and Records Service Centers may be obtained in accordance with the regulations issued by the General Services Administration.

According to section 107(g)(2), Pub. L. 98–497 (5 U.S.C. 552a(l)(1)), the records that OSHRC sends to the Federal processing center are still considered to be under OSHRC’s control. Thus, disclosure of such records must be in accordance with OSHRC’s regulations implementing the Privacy Act. OSHRC is also amending the agency’s mailing address to include the last four digits of the ZIP code and to spell out “Ninth Floor.”

OSHRC is deleting the last sentence in paragraph (a)(2) of § 2400.6, which read, “Upon request, OSHRC also shall disclose to the individual an accounting of any disclosures made from the individual’s records.” This sentence was redundant because new § 2400.4(c)(4) (old § 2400.4(d)(3)) already covers an individual’s request for an accounting.

In paragraph (a)(3) of § 2400.6, OSHRC is revising the Privacy Officer’s period for response to read “10 working days” rather than “10 days,” because 5 U.S.C. 552a(d)(2)(A) states that Saturdays, Sundays, and legal holidays are excluded from the 10-day requirement.

Paragraphs (b)(1) and (b)(2) of § 2400.6 remain unchanged. However, OSHRC is amending paragraph (b)(3) of § 2400.6 to reflect that a declaration made in accordance with 28 U.S.C. 1746 may serve as an alternative to a notarized statement, in accordance with

section 1(a), Pub. L. 94–550 (28 U.S.C. 1746), and *Summers v. United States Dep’t of Justice*, 999 F.2d 570, 573 (D.C. Cir. 1993).

While paragraph (c) on verification of guardianship remains unchanged, OSHRC is modifying paragraph (d) of § 2400.6 to indicate that the authorization form discussed in that paragraph must be provided by OSHRC. Because the form is intended, in part, to protect OSHRC from liability that may arise when records are disseminated to a third party accompanying the individual whose records are being accessed, OSHRC must make certain that the form is legally adequate.

OSHRC is deleting old paragraph (e) of § 2400.6, which sets forth special rules for requesting medical records, and adding a new § 2400.7 that provides a more legally sound procedure for requesting such records. OSHRC is also re-designating old paragraph (f) as new paragraph (e).

OSHRC is re-designating old paragraph (g) of § 2400.6 as new paragraph (f) and amending its language to require that the Privacy Officer, upon denying an individual’s request for personal records, notify the individual of his or her right to an administrative appeal. The paragraph previously required that the requester be advised only of his right to judicial review in a district court of the United States. However, the administrative appeal is an equally important aspect of the review process and, therefore, is also included in the Privacy Officer’s statement. OSHRC is deleting the phrase “or other appropriate official,” thereby requiring that the Privacy Officer sign any reply denying an individual’s written request to review a record. Placing clear limits on who has authority to deny such a request is necessary to maintain the integrity of the administrative appeal process.

As discussed above, OSHRC is creating a new § 2400.7 by carving out old paragraph (e) of § 2400.6 and revising it to comport with new case law regarding special procedures for medical records. Under 5 U.S.C. 552a(f)(3), OSHRC must—

establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him[.]

The previous version of paragraph (e) of § 2400.6 read as follows:

Medical records shall be disclosed to the requester to whom they pertain unless the Executive Director, in consultation with a

medical doctor named by the requesting individual, determines that access to such record could have an adverse effect upon such individual. In such a case, the Executive Director shall transmit such information to the named medical doctor.

In light of *Benavides v. United States Bureau of Prisons*, 995 F.2d 269 (D.C. Cir. 1993), this may not be a valid procedure. In *Benavides*, the United States Court of Appeals for the District of Columbia Circuit found that, while an agency is authorized to devise a “special” methodology for disclosing medical records under section 552a(f)(3), the devised methodology must lead to disclosure of the medical records to the requesting individual. *Id.* at 272. Thus, the court held that a regulation which expressly contemplates that the requesting individual may never see certain medical records is not a permissible special procedure. *Id.* The court, however, rejected the argument that the Privacy Act requires direct disclosure of medical records to the requesting individual. *Id.* at 273. Recognizing the “potential harm that could result from unfettered access to medical and psychological records,” the court provided that an agency should have the freedom to craft special procedures to limit such harm, as long as the agency guarantees “the ultimate disclosure of the medical records to the requesting individual.” *Id.* New § 2400.7 addresses the concerns expressed in *Benavides* by setting forth a procedure that guarantees “the ultimate disclosure of medical records to the requesting individual,” but still requires the intervention of a physician in order “to limit the potential harm.” *Id.*

OSHRC is re-designating old § 2400.7 (Procedures for requesting amendment) as new § 2400.8. Throughout new § 2400.8, OSHRC is replacing “Executive Director” with “Privacy Officer” in accordance with the amendments to § 2400.3(a) discussed above. OSHRC is revising paragraph (b)(4) to reflect that the Privacy Officer will “[n]otify the requester of a determination not to amend the record, of the reasons for the refusal, and of the requester’s right to appeal in accordance with [new] § 2400.9.” Inexplicably, the prior version of paragraph (b)(4) did not require OSHRC to explain its decision to deny a person’s request for amendment. OSHRC is severing paragraphs (c) and (d) of old § 2400.7 and renumbering them to create a new § 2400.9 pertaining to appeal procedures. Creating new § 2400.9 by separating the appeal procedures from old § 2400.7, which pertains to “procedures for requesting amendment,” is necessary because

individuals should be permitted to appeal the agency's denial of inspection and copy requests, not just the denial of amendment requests.

In new § 2400.9 (old § 2400.7(c) and (d)), OSHRC is changing "Executive Director" to "Privacy Officer." OSHRC is also making the following formatting changes. New paragraphs (a)(1) and (a)(2) of § 2400.9 coincide with old § 2400.7(c)(1) and (c)(2), new paragraph (b) coincides with old § 2400.7(c)(3), new paragraph (c) coincides with old § 2400.7(c)(4), and new paragraph (d) coincides with old § 2400.7(d). In new paragraph (a)(1) (old § 2400.7(c)(1)), OSHRC is amending the last four digits of the ZIP code in its mailing address, spelling out "Ninth Floor," and adding "Attn: Privacy Appeal" as the second line in the address. In new paragraph (b) of § 2400.9 (old § 2400.7(c)(3)), OSHRC is: (1) Adding the word "working" after the first mention of "30" because 5 U.S.C. 552a(d)(3) states that Saturdays, Sundays, and legal holidays are excluded from the 30-day requirement; (2) replacing the word "determination" with "decision" in order to make new paragraph (b) consistent with paragraph (c) (old § 2400.7(c)(4)); and (3) for the sake of readability, modifying "not complete, accurate, relevant, or timely," to read "incomplete, inaccurate, irrelevant, or untimely." In new paragraph (c) (old § 2400.7(c)(4)), OSHRC is titling the paragraph "Decision requirements" and adding the phrase "of the United States" after "district court." Finally, in new paragraph (d) (old § 2400.7(d)), OSHRC is adding "then" after "the requester," and deleting the word "personal" because the definition of "record" in the Privacy Act at 5 U.S.C. 552a(a)(4) already reflects that personally identifiable information is at issue.

OSHR is deleting old § 2400.7(e), which states that the Executive Director "is available to provide an individual with assistance in exercising rights pursuant to this part." This language creates no affirmative duty and is therefore unnecessary. Moreover, other OSHRC regulations already adequately ensure that an individual requesting records or amendment to records will be provided with the information necessary to exercise his or her rights.

OSHR is re-designating old § 2400.8 (Schedule of fees) as new § 2400.10. OSHRC is amending the schedule of fees to reflect the change in costs since the original promulgation of the current regulations in 1979. Rather than specifying a specific copying fee, OSHRC is incorporating by reference Appendix A to 29 CFR Part 2201—Schedule of Fees in the agency's final

FOIA rules at 71 FR 56347, September 27, 2006. OSHRC is making this revision for purposes of administrative ease and to ensure that the fees charged for FOIA and Privacy Act requests are consistent. Lastly, in accordance with 5 U.S.C. 552a(f)(5), OSHRC is amending paragraph (c) to reflect that no fee will be charged for reviewing records.

OSHR is deleting old § 2400.9 (Exemptions), which states that "[s]ubsections 552a(j) and (k) of title 5 \* \* \* empower the Chairman to exempt systems of records meeting certain criteria from various other subsections of section 552a." Under 5 U.S.C. 552a(j) and (k), the head of an agency may promulgate rules, in some circumstances, to exempt various systems of records from certain Privacy Act requirements. A system of records cannot be exempted, however, unless a specific rule regarding it has been published. If ever there is a system of records that the head of the agency wants to exempt, he or she can simply publish a regulation at that time to exempt the system. Thus, deleting § 2400.9 in no way deprives the Chairman of this authority.

#### Executive Order 12866

The Commission is an independent regulatory agency, and, as such, is not subject to the requirements of E.O. 12866.

#### Paperwork Reduction Act

The Commission has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

#### Executive Order 13132

The Commission is an independent regulatory agency, and, as such, is not subject to the requirements of E.O. 13132.

#### Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has certified to the Chief Counsel for Advocacy of the Small Business Administration, that these rules will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission maintains relatively few systems of records, as defined by 5 U.S.C. 552a(a)(5). Moreover, the bulk of the Commission's record—*i.e.*, its case

files—are already open to public review under section 12(g) of the OSH Act, 29 U.S.C. § 661(g). Despite the requirements of the Privacy Act, the public may access much of the information that the Commission maintains. Finally, the Privacy Act permits agencies to charge requesters for duplication costs, but not for costs associated with searching for and reviewing requested records. The Commission's final rule is fully consistent with these requirements.

#### Unfunded Mandates Reform Act of 1995

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

#### Congressional Review Act

Consistent with the Congressional Review Act (Section 804 of the Small Business Regulatory Enforcement Fairness Act), 5 U.S.C. 804 *et seq.*, the Commission will submit to Congress and to the Comptroller General of the United States, a report regarding the issues of this Final Rule prior to the effective date set forth at the outset of this document. This rule is not a major rule under the Congressional Review Act. The rule will not result in an annual effect on the economy of more than \$100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based companies in domestic and export markets.

#### List of Subjects in 29 CFR Part 2400

Administrative practice and procedure, Archives and records, Government employees, Privacy.

Signed at Washington, DC, on September 27, 2006.

**W. Scott Railton,**  
Chairman.

■ For the reasons set forth in the preamble, OSHRC amends Chapter XX of Title 29, Code of Federal Regulations, by revising part 2400 to read as follows:

#### PART 2400—REGULATIONS IMPLEMENTING THE PRIVACY ACT

Sec.	
2400.1	Purpose and scope.
2400.2	Description of agency.
2400.3	Delegation of authority.
2400.4	Collection and disclosure of personal information.

- 2400.5 Notification.  
 2400.6 Procedures for requesting records.  
 2400.7 Special procedures for requesting medical records.  
 2400.8 Procedures for requesting amendment.  
 2400.9 Procedures for appealing.  
 2400.10 Schedule of fees.

**Authority:** 5 U.S.C. 552a(f); 5 U.S.C. 553.

#### **§ 2400.1 Purpose and scope.**

The purpose of the provisions of this part is to provide procedures to implement the Privacy Act of 1974 (5 U.S.C. 552a). This part is applicable only to records that are maintained by the Occupational Safety and Health Review Commission (OSHRC or the Commission), which includes all systems of records operated on behalf of OSHRC, pursuant to a contract, to accomplish an agency function, except for records that are disclosed to consumer reporting agencies under section 3711(e) of title 31, United States Code. This part is not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure, which are published at 29 CFR 2200.1 *et seq.*

#### **§ 2400.2 Description of agency.**

The Commission adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651–677). Decisions of the Commission on such actions are issued only after the parties to the case are afforded an opportunity for a hearing in accordance with section 554 of title 5, United States Code. All such hearings are conducted by an OSHRC Administrative Law Judge at a place convenient to the parties and are open to the public. Each Commission member has the authority to direct that a decision of a Judge be reviewed by the full Commission before becoming a final order. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

#### **§ 2400.3 Delegation of authority.**

(a) The Chairman shall designate an OSHRC employee as the Privacy Officer, and shall delegate to the Privacy Officer the authority to ensure agency-wide compliance with this part.

(b) Custodians of the systems of records are responsible for the following:

(1) Adhering to this part within their respective units and, in particular, collecting, using and disclosing records, and affording individuals the right to

inspect, obtain copies of and correct records concerning them;

(2) Reporting the existence of systems of records, changes to the contents of those systems and changes of routine use to the Privacy Officer, and also establishing the relevancy of records within those systems; and

(3) Maintaining an accurate accounting of each disclosure in conformance with § 2400.4(c) of this part.

#### **§ 2400.4 Collection and disclosure of personal information.**

(a) The following rules govern the collection of personal information throughout OSHRC operations:

(1) OSHRC shall:

(i) Solicit, collect and maintain in its records only such personal information as is relevant and necessary to accomplish a purpose required by statute or executive order;

(ii) Maintain all records which are used by OSHRC in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(iii) Collect information, to the greatest extent practicable, directly from the subject individual when such information may result in adverse determinations about an individual's rights, benefits or privileges under Federal programs; and

(iv) Inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what authority it is solicited, the principal purposes for which it is intended to be used, the routine uses which may be made of it, and any penalties or consequences known to OSHRC which shall result to the individual from such non-disclosure.

(2) OSHRC shall not discriminate against any individual who fails to provide personal information unless that information is required or necessary for the conduct of the system or program in which the individual desires to participate. See § 2400.4(a)(1)(i).

(3) No record shall be collected or maintained which describes how any individual exercises rights guaranteed by the First Amendment unless the Commission specifically determines that such information is relevant and necessary to carry out a statutory purpose of OSHRC, and the collection or maintenance of the record is expressly authorized by statute or by the individual about whom the record is maintained, or unless the record is

pertinent to and within the scope of an authorized law enforcement activity.

(4) OSHRC shall not require disclosure of any individual's Social Security account number or deny a right, privilege or benefit because of the individual's refusal to disclose the number unless disclosure is required by Federal law.

(b) *Disclosures*—(1) *Limitations.* OSHRC shall not disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(2) *Exceptions.* A record may be disseminated without satisfying the requirements of paragraph (b)(1) of this section if disclosure is made:

(i) To a person pursuant to a requirement of the Freedom of Information Act (5 U.S.C. 552);

(ii) To those officers and employees of OSHRC who have a need for the record in the performance of their duties;

(iii) For a routine use as contained in the system notices published in the **Federal Register**;

(iv) To a recipient who has provided OSHRC with adequate advance written assurance that the record shall be used solely as a statistical reporting or research record, and the record is to be transferred in a form that is not personally identifiable;

(v) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(vi) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual;

(viii) To another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if such activity is authorized by law and if the head of the agency or instrumentality has made a written request to OSHRC specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the Government Accountability Office;

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with section 3711(e) of title 31, United States Code.

(3) *Employee credit references.* OSHRC's Office of Administration shall verify the following information provided by an employee to a credit bureau or commercial firm from which an employee is seeking credit: Length of service, job title, grade, salary, tenure of employment, and Civil Service status.

(4) *Employee job references.* Prospective employers of an OSHRC employee or a former OSHRC employee may be furnished with the information in paragraph (b)(3) of this section in addition to the date and reason for separation, if applicable, upon the request of the employee or former employee.

(5) *Disclosures to third parties.* Prior to disseminating any record about an individual to any person other than an agency, unless the record is disseminated pursuant to paragraph (b)(2)(i) of this section, OSHRC shall make reasonable efforts to ensure that the record is accurate, complete, timely and relevant.

(6) *Anticipated legal action.* Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(c) *Accounting of disclosures—(1)* OSHRC shall maintain an accurate accounting of each disclosure, except for any disclosure made pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(2) When an accounting is required under paragraph (c)(1) of this section, the following information shall be recorded: The date, nature, and purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

(3) The accounting shall be maintained for at least five (5) years after disclosure or for the life of the record, whichever is longer.

(4) The accounting shall be made available to the individual named in the record upon inquiry, except for disclosures made pursuant to paragraph

(b)(2)(viii) of this section relating to law enforcement activities. See § 2400.6 for suggested form of request.

#### § 2400.5 Notification.

(a) *Notification of systems.* The following procedures permit individuals to determine the types of systems of records maintained by OSHRC.

(1) Upon written request, OSHRC shall notify any individual whether a specific system named by him contains a record pertaining to him. See § 2400.6 for suggested form of request.

(2) Upon establishing or revising a system of records, OSHRC shall publish in the **Federal Register** a notice of the existence and character of the system of records. This notice shall contain the following information:

- (i) System name and location;
- (ii) Security classification;
- (iii) Categories of individuals covered by the system;
- (iv) Categories of records in the system;
- (v) Authority for maintenance of the system;
- (vi) Purpose(s) of the system;
- (vii) Routine uses of records maintained in the system, including categories of users and the purpose(s) of such uses;
- (viii) Disclosures to consumer reporting agencies;
- (ix) Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system;
- (x) System manager(s) and address;
- (xi) Procedures by which an individual can be informed whether a system contains a record pertaining to himself, gain access to such record, and contest the content, accuracy, completeness, timeliness, relevance and necessity for retention of the record;
- (xii) Record source categories; and
- (xiii) Exemptions claimed for the system.

(3) OSHRC shall submit a report, in accordance with guidelines provided by the Office of Management and Budget (OMB), in order to give advance notice to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB of any proposal to establish a new system of records or to significantly change an existing system of records.

(b) *Notification of disclosure.* OSHRC shall make reasonable efforts to serve notice on an individual before any record pertaining to the individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(c) *Notification of amendment—(1)* OSHRC shall inform any person or other

agency about any correction or notation of dispute made by OSHRC to any record that has been disclosed to the person or agency, if the correction or notation was made pursuant to § 2400.8, and an accounting of the disclosure was made pursuant to § 2400.4(c).

(2) In any disclosure to a person or other agency containing information about which the individual has filed a statement of disagreement and occurring after the statement was filed, OSHRC shall clearly note any portion of the record which is disputed and provide copies of the statement and, if OSHRC deems appropriate, copies of a concise statement of OSHRC's reasons for not making the requested amendments.

(d) *Notification of new routine use.* Any new or revised routine use of a system of records maintained by OSHRC shall be published in the **Federal Register** thirty (30) days before such use becomes operational. Interested persons may then submit written data, views, or arguments to OSHRC.

(e) *Notification of exemptions.* OSHRC shall publish in the **Federal Register** its intent to exempt any system of records and shall specify the nature and purpose of that system.

#### § 2400.6 Procedures for requesting records.

The purpose of this section is to provide procedures by which an individual may gain access to his records.

(a) *Submission of requests for access—(1) Manner.* An individual seeking information regarding the contents of records systems or access to records about himself in a system of records should present a written request to that effect either in person or by mail to the Privacy Officer, OSHRC, One Lafayette Centre, 1120-20th Street, NW., Ninth Floor, Washington, DC 20036-3457.

(2) *Specification of records sought.* Requests for access to records shall describe the nature of the record sought, the approximate dates covered by the record, and the system in which the record is thought to be included as described in the "Notification" for that system as published in the **Federal Register**. The requester should also indicate whether he wishes to review the record in person or obtain a copy by mail. If the information supplied is insufficient to locate or identify the record, the requester shall be notified promptly and, if necessary, informed of additional information required.

(3) *Period for response.* Upon receipt of an inquiry the Privacy Officer shall respond promptly to the request and no



later than 10 working days from receipt of such inquiry.

(b) *Verification of identity.* The following standards are applicable to any individual who requests records concerning himself:

(1) An individual seeking access to records about himself in person may establish his identity by the presentation of a single document bearing a photograph (such as a passport, employee identification card, or valid driver's license) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a valid driver's license, or credit card).

(2) An individual seeking access to records about himself by mail shall establish his identity by a signature, address, date of birth, place of birth, employee identification number, if any, and one other identifier such as a photocopy of an identifying document.

(3) An individual seeking access to records about himself by mail or in person who cannot provide the necessary documentation of identification may provide a notarized statement, or a declaration in accordance with 28 U.S.C. 1746, swearing or affirming to his identity and to the fact that he understands the penalties for false statements pursuant to 18 U.S.C. 1001. Forms for notarized statements may be obtained on request from the Privacy Officer.

(c) *Verification of guardianship.* The parent or guardian of a minor or a person judicially determined to be incompetent and seeking to act on behalf of such minor or incompetent shall, in addition to establishing his own identity, establish the identity of the minor or other person he represents as required in paragraph (b) of this section and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records about himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign a form provided by OSHRC indicating that OSHRC is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *When compliance is possible*—(1) The Privacy Officer shall inform the requester of the determination to grant the request and shall make the record available to the individual in the

manner requested, that is, either by forwarding a copy of the information to him or by making it available for review, unless:

(i) It is impracticable to provide the requester with a copy of a record, in which case the requester shall be so notified, and, in addition, be informed of the procedures set forth in paragraph (b) of this section, or

(ii) The Privacy Officer has reason to believe that the cost of a copy of a record is considerably more expensive than anticipated by the requester, in which case he shall notify the requester of the estimated cost, and ascertain whether the requester still wishes to be provided with a copy of the information.

(2) Where a record is to be reviewed by the requester in person, the Privacy Officer shall inform the requester in writing of:

(i) The date on which the record shall become available for review, the location at which it may be reviewed, and the hours for inspection;

(ii) The type of identification that shall be required in order for him to review the record;

(iii) Such person's right to have a person of his own choosing accompany him to review the record; and

(iv) Such person's right to have a person other than himself review the record.

(3) If the requester seeks to inspect the record without receiving a copy, he shall not leave OSHRC premises with the record and shall sign a statement indicating he has reviewed a specific record or category of record.

(f) *Response when compliance is not possible.* A reply denying a written request to review a record shall be in writing signed by the Privacy Officer and shall be made only if such a record does not exist or does not contain personal information relating to the requester, or is exempt. This reply shall include a statement regarding the determining factors of denial, and the requester's rights to administrative appeal and thereafter judicial review in a district court of the United States.

#### **§ 2400.7 Special procedures for requesting medical records.**

(a) Upon an individual's request for access to his medical records, including psychological records, the Privacy Officer shall make a preliminary determination on whether access to such records could have an adverse effect upon the requester. If the Privacy Officer determines that access could have an adverse effect on the requester, OSHRC shall notify the requester in writing and advise that the records at

issue can be made available only to a physician of the requester's designation. Upon receipt of such designation, verification of the identity of the physician, and agreement by the physician to review the documents with the requesting individual, to explain the meaning of the documents, and to offer counseling designed to temper any adverse reaction, OSHRC shall forward such records to the designated physician.

(b) If, within sixty (60) days of OSHRC's written request for a designation, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, then OSHRC shall hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. OSHRC shall also advise the requester of his rights to administrative appeal and thereafter judicial review in a district court of the United States.

#### **§ 2400.8 Procedures for requesting amendment.**

(a) *Submission of requests for amendment.* Upon review of an individual's personal record, that individual may submit a request to amend such record. This request shall be submitted in writing to the Privacy Officer and shall include a statement of the amendment requested and the reasons for such amendment, e.g., relevance, accuracy, timeliness or completeness of the record.

(b) *Action to be taken by the Privacy Officer.* Upon receiving an amendment request, the Privacy Officer shall promptly:

(1) Acknowledge in writing within ten (10) working days the receipt of the request;

(2) Make such inquiry as is necessary to determine whether the amendment is appropriate; and

(3) Correct or eliminate any information that is found to be incomplete, inaccurate, irrelevant to a statutory purpose of OSHRC, or untimely and notify the requester when this action is complete; or

(4) Notify the requester of a determination not to amend the record, of the reasons for the refusal, and of the requester's right to appeal in accordance with § 2400.9.

#### **§ 2400.9 Procedures for appealing.**

(a) *Submission of appeal*—(1) If a request to inspect, copy or amend a record is denied, in whole or in part, or if no determination is made within the period prescribed by this part, then the requester may appeal to the Chairman, Attn: Privacy Appeal, OSHRC, One

Lafayette Centre, 1120–20th Street, NW., Ninth Floor, Washington, DC 20036–3457.

(2) The requester shall submit his appeal in writing within thirty (30) days of the date of denial, or within ninety (90) days of such request if the appeal is from a failure of the Privacy Officer to make a determination. The letter of appeal should include, as applicable:

(i) Reasonable identification of the record to which access was sought or the amendment of which was requested.

(ii) A statement of the OSHRC action or failure to act being appealed and the relief sought.

(iii) A copy of the request, the notification of denial and any other related correspondence.

(b) *Final decisions.* The Chairman shall make his final decision not later than thirty (30) working days from the date of the request, unless he extends the time for good cause to be shown by him but not to exceed ninety (90) days from the date of the request. Any record found on appeal to be incomplete, inaccurate, irrelevant, or untimely, shall within thirty (30) working days of the date of such findings be appropriately amended.

(c) *Decision requirements.* The decision of the Chairman constitutes the final decision of OSHRC on the right of the requester to inspect, copy, change or update a record. The decision on the appeal shall be in writing and, in the event of a denial, shall set forth the reasons for such denial and state the individual's right to obtain judicial review in a district court of the United States. An indexed file of the agency's decisions on appeal shall be maintained by the Privacy Officer.

(d) *Submission of statement of disagreement.* If the final decision does not satisfy the requester, then any statement of reasonable length, provided by that individual, setting forth a position regarding the disputed information, shall be accepted and included in the relevant record.

#### **§ 2400.10 Schedule of fees.**

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit reproduction of records for concerned individuals.

(b) *Reproduction*—(1) For the fees associated with reproduction of records, refer to Appendix A to part 2201, Schedule of Fees.

(2) OSHRC shall not normally furnish more than one copy of any record.

(c) *Limitations.* No fee shall be charged to any individual for the

process of retrieving, reviewing, or amending records.

[FR Doc. 06–8399 Filed 9–27–06; 1:19 pm]

BILLING CODE 7600–01–P

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **32 CFR Part 281**

[DOD–2006–OS–132]

RIN 0790–AG47

#### **Settling Personnel and General Claims and Processing Advance Decision Requests**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies policy and assigns responsibilities for settling personnel and general claims and for processing requests for an advance decision. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding \$1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

On Thursday, November 14, 2002, the Department of Defense published appropriate proposed rules with request for public comments. Formatting and editorial changes were made to create this final document, including acknowledging that the Coast Guard is now part of the Department of Homeland Security rather than the Department of Transportation. Although these changes were made in 2003, the request for publication of these regulations was inadvertently misplaced until now.

*Effective Date:* September 29, 2006.

#### **FOR FURTHER INFORMATION CONTACT:**

Michael Hipple, 703–696–8510.

**SUPPLEMENTARY INFORMATION:** On Thursday, November 14, 2002, (67 FR 68964), the Department of Defense published 32 CFR part 281 along with parts 282, 283, and 284 as proposed rules with request for public comments. No public comments were received on part 281. Formatting and editorial changes were made to create this final document. A decision was made in 2003 to publish the final rules for parts 281 and 282 at the same time. Addressing internal comments and coordinating editorial changes throughout the Department of Defense on part 282 took until June 2004. In the interim, the request for final publication of part 281 was inadvertently misplaced.

#### **Executive Order 12866, “Regulatory Planning and Review”**

It has been determined that 32 CFR part 281 is not economically significant regulatory actions and will not significantly affect a substantial number of small entities.

#### **Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)**

It has been certified that 32 CFR part 281 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### **Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

It has been certified that 32 CFR part 281 is not subject to the “Regulatory Flexibility Act” (5 U.S.C. 601) because, if promulgated, they would not have a significant economic impact on a substantial number of small entities. These rules affect members of the Uniformed Services, Federal employees and transportation carriers. 32 CFR part 281 establishes policies and assigns responsibilities for settling these claims. The same minimal requirements for submitting a claim are applicable to members and transportation carriers.

#### **Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been certified that these parts do not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### **Executive Order 13132, “Federalism”**

It has been certified that these parts do not have federalism implications, as set forth in Executive Order 13132. These parts do not have substantial direct effects on: The States; the relationship between the National

Government and the States; or the distribution of power and responsibilities among various levels of government.

#### List of Subjects in 32 CFR Part 281

Administrative practice and procedure, Armed Forces, Claims.

■ Accordingly, 32 CFR chapter 1, subchapter M is amended to add part 281 to read as follows:

#### PART 281—SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Sec.

281.1 Purpose.

281.2 Applicability and scope.

281.3 Definitions.

281.4 Policy.

281.5 Responsibilities.

Appendix to Part 281—Claims Description.

**Authority:** 10 U.S.C. 2575, 2771, 4712, 9712; 24 U.S.C. 420; 31 U.S.C. 3529, 3702; 32 U.S.C. 714; 37 U.S.C. 554.

##### § 281.1 Purpose.

This part establishes policy and assigns responsibilities for settling personnel and general claims (under 31 U.S.C. 3702; 10 U.S.C. 2575, 2771, 4712, and 9712; 24 U.S.C. 420; 37 U.S.C. 554, and 32 U.S.C. 714) and for processing requests for an advance decision under 31 U.S.C. 3529.

##### § 281.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as “the DoD Components”).

(b) The Coast Guard, when it is not operating as a Service in the Navy under agreement with the Department of Homeland Security, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), under agreements with the Departments of Health and Human Services and Commerce (hereafter referred to collectively as “the non-DoD Components”).

##### § 281.3 Definitions.

**Armed Forces.** The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

**Claim.** A demand for money or property under 31 U.S.C. 3702; 10

U.S.C. 2575, 2771, 4712, and 9712; 24 U.S.C. 420; 37 U.S.C. 554, and 32 U.S.C. 714.

**Secretary concerned.** The Secretary of the Army, addressing matters concerning the Army. The Secretary of the Navy, addressing matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a Service in the Navy. The Secretary of the Air Force, addressing matters concerning the Air Force. The Secretary of Homeland Security, addressing matters concerning the Coast Guard when it is not operating as a Service in the Navy. The Secretary of Health and Human Services, addressing matters concerning the PHS. The Secretary of Commerce, addressing matters concerning the NOAA.

**Settlement.** A claim and the amount due that is administratively determined to be valid.

**Uniformed Services.** The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

##### § 281.4 Policy.

It is DoD policy that:

(a) The claim settlement and advance decision authorities that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense shall be exercised by the officials designated in this part. The appendix to this part describes the claims included under these functional authorities.

(b) Claims shall be settled and advance decisions shall be rendered in accordance with pertinent statutes and regulations, and after consideration of other relevant authorities.

##### § 281.5 Responsibilities.

(a) The *General Counsel of the Department of Defense* shall:

(1) Settle claims that the Secretary of Defense is authorized to settle under 31 U.S.C. 3702; 10 U.S.C. 2575, 2771, 4712, and 9712; 24 U.S.C. 420; 37 U.S.C. 554, and 32 U.S.C. 714.

(2) Consider, and grant or deny, a request under 31 U.S.C. 3702 to waive the time limit for submitting certain claims.

(3) Render advance decisions under 31 U.S.C. 3529 that the Secretary of Defense is authorized to render, and oversee the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside the Department of Defense.

(4) Develop overall claim settlement and advance decision policies; and promulgate procedures for settling claims, processing requests for an advance decision (including overseeing

the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside the Department of Defense), and rendering advance decisions. Procedures for settling claims shall include an initial determination process and a process to appeal an initial determination.

(b) The *Heads of the DoD Components* shall:

(1) Establish procedures within their organization for processing claims and for submitting requests for an advance decision arising from its activity in accordance with this part and responsibilities promulgated under paragraph (a)(4) of this section.

(2) Pay claims under 10 U.S.C. 2771 and 32 U.S.C. 714, if applicable.

(3) Ensure compliance with this part and policies and responsibilities promulgated under (a)(4) of this section.

(c) The *Heads of the Non-DoD Components*, concerning claims arising from that Component's activity under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771 or 37 U.S.C. 554, shall:

(1) Establish procedures within their organization for processing claims and for submitting requests for an advance decision in accordance with this part and responsibilities promulgated under paragraph (a)(4) of this section.

(2) Pay claims under 10 U.S.C. 2771, if applicable.

Appendix to Part 281—Claims Description

The Secretary of Defense is authorized to perform the claim settlement and advance decision functions for claims under the following statutes:

(a) 31 U.S.C. 3702, concerning claims in general when there is no other settlement authority specifically provided for by law.<sup>1</sup>

(b) 10 U.S.C. 2575, concerning the disposition of unclaimed personal property on a military installation.

(c) 10 U.S.C. 2771, concerning the final settlement of accounts of deceased members of the armed forces (but not the National Guard).<sup>2</sup>

<sup>1</sup> This includes claims involving Uniformed Services members' pay, allowances, travel, transportation, payment for unused accrued leave, retired pay, and survivor benefits, and claims for refunds by carriers for amounts collected from them for loss or damage to property they transported at Government expense; also included are other claims arising from the activity of a DoD Component. However, the Director of the Office of Personnel Management performs these functions for claims involving civilian employees' compensation and leave; and the Administrator of General Services performs these functions for claims involving civilian employees' travel, transportation, and relocation expenses.

<sup>2</sup> Claims under this statute are actually settled under the authority in 31 U.S.C. 3702 because there is no specific settlement authority in the statute.

(d) 24 U.S.C. 420, 10 U.S.C. 4712, and 10 U.S.C. 9712, concerning the disposition of the effects of a deceased person who was subject to military law at a place or command under the jurisdiction of the Army or Air Force or of deceased residents of the Armed Forces Retirement Home.

(e) 37 U.S.C. 554, concerning the sale of personal property of members of the Uniformed Services who are in a missing status.

(f) 32 U.S.C. 714, concerning the final settlement of accounts of deceased members of the National Guard.<sup>2</sup>

Dated: September 25, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, DOD.*

[FR Doc. E6-16034 Filed 9-28-06; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 283

[DOD-2006-OS-133]

RIN 0790-AG90

#### Waiver of Debts Resulting From Erroneous Payments of Pay and Allowances

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding \$1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement

and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

On Thursday, November 14, 2002, the Department of Defense published appropriate proposed rules with request for public comments. Formatting and editorial changes were made to create this final document, including acknowledging that the Coast Guard is now part of the Department of Homeland Security rather than the Department of Transportation. Although these changes were made in 2003, a decision was made at that time to hold publication of these regulations so accompanying rules would be published at the same time. Addressing internal comments and coordinating numerous editorial changes throughout the Department of Defense on the accompanying rulemaking took until 2006.

**DATES:** *Effective Date:* September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Michael Hipple, 703-696-8510.

**SUPPLEMENTARY INFORMATION:** On Thursday, November 14, 2002 (67 FR 68964), the Department of Defense (DoD) published 32 CFR part 283 along with parts 281, 282, and 284 as proposed rules with request for public comments. No public comments were received on part 283. Formatting and editorial changes were made to create this final document. A decision was made in 2003 to publish the final rules for parts 283 and 284 at the same time. Addressing internal comments and coordinating numerous editorial changes throughout the Department of Defense on part 284 took until 2006.

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

It has been determined that 32 CFR part 283 is not economically significant regulatory actions and will not significantly affect a substantial number of small entities.

#### Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been certified that 32 CFR part 283 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 283 is not subject to the "Regulatory

Flexibility Act" (5 U.S.C. 601) because, if promulgated, they would not have a significant economic impact on a substantial number of small entities. These rules affect members of the Uniformed Services, Federal employees and transportation carriers. 32 CFR part 283 establishes policies and provide procedures for considering applications for waiver of debts resulting from erroneous pay and allowances to or on behalf of members and civilian DoD employees.

#### Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that these parts do not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### Executive Order 13132, "Federalism"

It has been certified that these parts do not have federalism implications, as set forth in Executive Order 13132. These parts do not have substantial direct effects on: the States; The relationship between the National Government and the States; or the distribution of power and responsibilities among various levels of government.

#### List of Subjects in 32 CFR Part 283

Administrative practice and procedure, Armed Forces, Waivers.

■ Accordingly, 32 CFR part 283 is added to read as follows:

#### PART 283—WAIVER OF DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES

Sec.

283.1 Purpose.

283.2 Applicability and scope.

283.3 Definitions.

283.4 Policy.

283.5 Responsibilities.

#### § 283.1 Purpose.

This part establishes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian DoD employees under 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 5584.

#### § 283.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of Inspector General of the Department of

Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) The Coast Guard, when it is not operating as a Service in the Navy under the agreement with the Department of Homeland Security, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA) under agreements with the Departments of Health and Human Services and Commerce (hereafter referred to collectively as the "non-DoD Components").

### § 283.3 Definitions.

*Debt.* An amount an individual owes the Government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services or civilian DoD employees.

*Erroneous Payment.* A payment that is not in strict conformity with applicable laws or regulations.

*Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

*Waiver Application.* A request that the United States relinquishes its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584.

### § 283.4 Policy.

It is DoD policy that:

(a) The officials designated in this part exercise waiver authority that, by statute or delegation, is vested in the Department of Defense.

(b) Waiver applications shall be processed in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

### § 283.5 Responsibilities.

(a) The *General Counsel of the Department of Defense* shall:

(1) If the aggregate amount of the debt is more than \$1,500, deny or grant all or part of a waiver application.

(2) Decide appeals in accordance with procedures promulgated under paragraph (a)(3) of this section.

(3) Develop overall waiver policies and promulgate procedures for considering waiver applications, including an initial determination

process and a process to appeal an initial determination.

(b) *The Heads of the DoD Components* shall:

(1) Consistent with responsibilities promulgated under paragraph (a)(3) of this section, establish procedures within the DoD Component for the submission of waiver applications relating to debts resulting from the DoD Component's activity, which shall be referred to the appropriate official for consideration as set forth in paragraphs (a), (d), (e), or (f) of this section.

(3) Ensure compliance with this part and policies and procedures promulgated under paragraph (a)(3) of this section.

(c) *The Heads of the Non-DoD Components* concerning debts resulting from that Component's activity shall:

(1) If the aggregate amount of the debt is \$1,500 or less, deny or grant all or part of a waiver application pursuant to 10 U.S.C. 2774.

(2) If the aggregate amount of the debt is more than \$1,500:

(i) Deny a waiver application in its entirety; or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (a)(3) of this section.

(d) *The Under Secretary of Defense (Comptroller)/Chief Financial Officer* concerning debts (except those described in paragraphs (e) and (f) of this section) resulting from DoD Component activity shall:

(1) If the aggregate amount of the debt is \$1,500 or less, deny or grant all or part of a waiver application pursuant to enclosure 2 of DoD Directive 5118.3.<sup>1</sup>

(2) If the aggregate amount of the debt is more than \$1,500:

(i) Deny a waiver application in its entirety; or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (a)(3) of this section.

(e) *The Director, Department of Defense Education Activity*, under the *Under Secretary of Defense for Personnel and Readiness* concerning debts of civilian employees resulting from that Component's activity shall:

(1) If the aggregate amount of the debt is \$1,500 or less, deny or grant all or part of a waiver application pursuant to enclosure 2 of DoD Directive 1342.6.<sup>2</sup>

<sup>1</sup> Available at <http://www.dtic.mil/whs/directives/>

<sup>2</sup> Available at <http://www.dtic.mil/whs/directives/>

(2) If the aggregate amount of the debt is more than \$1,500:

(i) Deny a waiver application in its entirety; or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (a)(3) of this section.

(f) *The Director, National Security Agency*, under the *Under Secretary of Defense for Intelligence* concerning debts resulting from that Component's activity shall:

(1) If the aggregate amount of the debt is \$1,500 or less, deny or grant all or part of a waiver application.

(2) If the aggregate amount of the debt is more than \$1,500:

(i) Deny a waiver application in its entirety; or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (a)(3) of this section.

September 25, 2006.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, DoD.*

[FR Doc. E6-16040 Filed 9-28-06; 8:45 am]

**BILLING CODE 5001-06-P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2005-0549; FRL-8224-9]

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Additional NO<sub>x</sub> Emission Reductions To Support the Philadelphia-Trenton-Wilmington One-Hour Ozone Nonattainment Area, and Remaining NO<sub>x</sub> SIP Call Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions pertain to nitrogen oxides (NO<sub>x</sub>) reductions that are required for the Commonwealth to support its approved attainment demonstration for the Philadelphia-Trenton-Wilmington one-hour ozone nonattainment area (the Philadelphia Area); NO<sub>x</sub> reductions from stationary internal combustion (IC) engines to meet the NO<sub>x</sub> SIP Call Phase II (Phase II); and NO<sub>x</sub> reductions from cement kilns to meet the NO<sub>x</sub> SIP Call. The revisions

also include provisions for emission credits for sources that generate zero-emission renewable energy. The intended effect of this action is to approve these revisions into the Pennsylvania SIP. This action is being taken under the Clean Air Act (CAA or the Act).

*Effective Date:* This final rule is effective on October 30, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2005-0549. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection 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 Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 14, 2006 (71 FR 40048), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of SIP revisions submitted by the Commonwealth on March 29, 2005, with a supplemental submittal on February 6, 2006.

### II. Summary of SIP Revision

The SIP revisions establish ozone season NO<sub>x</sub> emission limits for certain existing and new boilers, turbines, and stationary internal combustion engines that are small sources of NO<sub>x</sub> located in the Philadelphia portion of the Philadelphia Area. This revision also establishes ozone season NO<sub>x</sub> emission limits for large stationary internal combustion engines and Portland cement kilns throughout the State. Other specific requirements of the SIP revisions and the rationale for EPA's proposed action are explained in the

NPR and will not be restated here. No public comments were received on the NPR.

### III. Final Action

EPA is approving the SIP revisions submitted by the Commonwealth of Pennsylvania on March 29, 2005, with a supplemental submission on February 6, 2006. The revisions support the State's attainment demonstration for the Philadelphia Area SIP and satisfy its remaining obligations under the NO<sub>x</sub> SIP Call.

### 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 requirement, 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.*).

#### 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. 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### 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 November 28, 2006. 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 to approve ozone season NO<sub>x</sub> emission limits for small sources of NO<sub>x</sub> in the Philadelphia Area and for large stationary internal combustion engines and Portland cement kilns throughout the State 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 20, 2006.  
**Donald S. Welsh,**  
*Regional Administrator, Region III.*

■ 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 NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by revising entries for

Title 25, Chapter 121, Section 1 and Chapter 145, Section 42; and by adding a new heading and entries for Chapter 129, Sections 201 through 205, a new heading and entries for Chapter 145, Sections 111 through 113, and a new heading and entries for Chapter 145, Sections 141 through 143. The amendments read as follows:

**§ 52.2020 Identification of plan.**

*	*	*	*	*
(c)	*	*	*	
(1)	*	*	*	

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
<b>Title 25. Environmental Protection</b>				
<b>Article Iii. Air Resources</b>				
*	*	*	*	*
<b>Chapter 121. General Provisions</b>				
Section 121.1 .....	Definitions .....	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	
*	*	*	*	*
<b>Chapter 129. Standards for Sources</b>				
*	*	*	*	*
<b>Additional NO<sub>x</sub> Requirements</b>				
Section 129.201 .....	Boilers .....	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	
Section 129.202 .....	Stationary combustion turbines.	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	
Section 129.203 .....	Stationary internal combustion engines.	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	
Section 129.204 .....	Emission accountability .....	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	
Section 129.205 .....	Zero emission renewable energy production credit.	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	
*	*	*	*	*
<b>Chapter 145. Interstate Pollution Transport Reduction</b>				
<b>Subchapter A.—NO<sub>x</sub> Budget Trading Program</b>				
*	*	*	*	*
<b>NO<sub>x</sub> Allowance Allocations</b>				
*	*	*	*	*
Section 145.42 .....	NO <sub>x</sub> allowance allocations .....	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
*	*	*	*	*
<b>Subchapter B.—Emissions of NO<sub>x</sub> From Stationary Internal Combustion Engines</b>				
Section 145.111	Applicability	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	New Section.
Section 145.112	Definitions	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	New Section.
Section 145.113	Standard Requirements	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	New Section.
<b>Subchapter C.—Emissions of NO<sub>x</sub> From Cement Manufacturing</b>				
Section 145.141	Applicability	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	New Section.
Section 145.142	Definitions	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	New Section.
Section 145.143	Standard requirements	12/11/04	September 29, 2006. <i>[Insert page number where the document begins].</i>	New Section.
*	*	*	*	*

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[FR Doc. E6-15988 Filed 9-28-06; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2005-0543; FRL-8092-3]

**Flufenoxuron; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of flufenoxuron in or on apple, grape, pear, orange, and livestock commodities. BASF Corporation requested this tolerance 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 September 29, 2006. Objections and requests for hearings must be received on or before November 28, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2005-0543. All documents in the

docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The 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:** Mark Suarez, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0120; e-mail address: [suarez.mark@epa.gov](mailto:suarez.mark@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; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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?*

In addition to accessing an electronic copy of this **Federal Register** document



through the electronic docket at <http://www.regulations.gov>, you may access this **Federal Register** document electronically through the EPA Internet under the “**Federal Register**” listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office’s pilot e-CFR site 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.gov/opptsfrs/home/guidelin.htm>

### C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the 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. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2005-0543 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 November 28, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2005-0543, by one of the following methods:

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

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket’s normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The

Docket telephone number is (703) 305-5805.

## II. Background and Statutory Findings

In the **Federal Register** of April 19, 2006 (71 FR 20097) (FRL-7769-5), 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 8E4943) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528. The petition requested that 40 CFR 180.623 be amended by establishing tolerances for residues of the insecticide flufenoxuron, 1-[4-(2-chloro- $\alpha,\alpha,\alpha$ -trifluoro-p-tolyloxy)-2-fluorophenyl]-3-(2,6-difluorobenzoyl)urea, in or on apple at 1 parts per million (ppm), pear at 1 ppm, orange at 0.3 ppm, orange oil at 60 ppm, grape at 0.2 ppm, raisin at 0.8 ppm, meat at 0.3 ppm, cattle, meat byproducts at 1.5 ppm, cattle, fat at 6 ppm, milk at 0.6 ppm, and milk, fat at 3 ppm. That notice included a summary of the petition prepared by BASF Corporation, the registrant. Comments were received on the notice of filing. EPA’s response to these comments is discussed in Unit IV.C.

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 the FFDCA and a complete description of the risk assessment process, see <http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm>.

## 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, for tolerances for residues of flufenoxuron, in or on apple (0.50 ppm); grape (0.70 ppm); grape, raisin (2.0 ppm); cattle, meat (0.10 ppm); cattle, fat (4.5 ppm); cattle, meat byproducts (0.50 ppm); goat, meat (0.10 ppm); goat, fat (4.5 ppm); goat, meat byproducts (0.50 ppm); horse, meat (0.10 ppm); horse, fat (4.5 ppm); horse, meat byproducts (0.50 ppm); sheep, meat (0.10 ppm); sheep, fat (4.5 ppm); sheep, meat byproducts (0.50 ppm); milk (0.20 ppm); milk, fat (4.0 ppm); orange (0.30 ppm); orange, oil (60 ppm); and pear (0.50 ppm). EPA’s assessment of exposures and risks associated with establishing the tolerance 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. Specific information on the studies received and the nature of the toxic effects caused by flufenoxuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.epa.gov/opprd001/factsheets>.

### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, 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.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q\* approach assumes that any amount of exposure will lead to some degree of

cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk

characterization at <http://www.epa.gov/oppfead1/trac/science>.

A summary of the toxicological endpoints for flufenoxuron used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUFENOXURON FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13-50 years of age)	An end point of concern attributed to single dose effect was not identified in the database.		
Acute Dietary (General population including infants and children)	An end point of concern attributed to single dose effect was not identified in the database.		
Chronic Dietary (All populations)	NOAEL= 3.75 mg/kg/day ..... UF = 100 Chronic RfD = 0.0375 mg/kg/day	FQPA SF = 1X ..... cPAD = chronic RfD/FQPA SF = 0.0375 mg/kg/day	2-Generation Reproduction Toxicity—Rat LOAEL = 14.33/16.0 (M/F) mg/kg/day based on decreased body weights during lactation during days 4-21
Oral—All Durations (Residential)	NOAEL= 3.75 mg/kg/day .....	LOC for MOE = 100 .....	2-Generation Reproduction Toxicity—Rat LOAEL = 14.33/16.0 (M/F) mg/kg/day based on decreased body weights during lactation during days 4-21
Dermal—All Durations (Occupational/Residential)	Oral study ..... NOAEL= 3.75 mg/kg/day (dermal absorption rate = 100%)	LOC for MOE = 100 (Occupational). LOC for MOE = 100 (Residential)	2-Generation Reproduction Toxicity—Rat LOAEL = 14.33/16.0 (M/F) mg/kg/day based on decreased body weights during lactation during days 4-21
Inhalation—All Durations (Occupational/Residential)	Oral study ..... NOAEL= 3.75 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational). LOC for MOE = 100 (Residential)	2-Generation Reproduction Toxicity —Rat LOAEL = 14.33/16.0 (M/F) mg/kg/day based on decreased body weights during lactation during days 4-21
Cancer (oral, dermal, inhalation)	“Not likely to be carcinogenic to humans”		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* There are currently no tolerances established (40 CFR 180) for the residues of flufenoxuron. Risk assessments were conducted by EPA to assess dietary exposures from flufenoxuron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and 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.

No such effects were identified in the toxicological studies for flufenoxuron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported 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. The following assumptions were made for the chronic exposure assessments: Tolerance level residues and 100% crop treated were assumed for all commodities.

iii. *Cancer.* Flufenoxuron is classified as “Not Likely to be Carcinogenic to Humans” based on lack of evidence of carcinogenicity in both rats and mice carcinogenicity studies and thus an exposure assessment pertaining to cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* There is no expectation that residues from flufenoxuron use on imported commodities would occur in surface or ground water sources of drinking water. No drinking water assessment was conducted.

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).

Flufenoxuron is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCFA 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 flufenoxuron and any other substances and flufenoxuron does not appear to

produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that flufenoxuron 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 website 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 database 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 evidence of increased susceptibility for flufenoxuron in the developmental toxicity study in rats. No adverse effects were observed in either dams or offspring at the limit dose. Although fetal external examination data were not provided in the study report and have been requested, their absence does not affect the current risk assessment. Evidence of increased susceptibility was observed in the developmental toxicity study in rabbits. Specifically, decreased fetal weight was observed in the absence of maternal toxicity; however, fetal effects were observed at the limit dose, and the NOAEL, which is one order of magnitude lower, is considered well characterized and protective of this high-dose effect. In the 2-generation reproduction study, increased susceptibility of offspring was observed

in the form of decreased body weight, since this effect was observed at a lower dose than the maternal NOAEL. However, a NOAEL for this effect in offspring was also observed, and it is considered protective of any effects at the offspring LOAEL. Based on this analysis, there is no concern for increased susceptibility of offspring following exposure to flufenoxuron. If adverse effects are observed after submission of fetal external examination data for the developmental toxicity study in rats, this conclusion may be revised.

3. *Conclusion.* There is a complete toxicity database for flufenoxuron and exposure data are complete or are estimated based on data that reasonably account for potential exposures.

The establishment of tolerances for flufenoxuron on imported commodities include consideration of the fact that: There are no residual uncertainties concerning pre- and post-natal toxicity and no neurotoxicity concerns; the chronic dietary (food + drinking water) exposure assessment is a conservative assessment that is based on reliable data and will not underestimate exposure/risk; there is no potential for drinking water exposure from the proposed use on imported commodities; there is no potential for residential exposure. Additionally, the EPA evaluated the quality of the toxicology and exposure data; and, based on these data, concluded that the FQPA SF be reduced to 1x. The recommendation was based on the following:

- i. There is no evidence of increased susceptibility in the developmental study in rats.
- ii. In the rabbit developmental study, there is evidence of increased susceptibility; however, the effects are well characterized and clear NOAELs and LOAELs are established. Since the effects occurred at the limit dose, the delayed fetal growth may be considered a high dose effect.
- iii. In the 2-generation reproduction study in rat, there is evidence for the increased susceptibility; however, the effects were well characterized, clear NOAELs and LOAELs were established for offspring toxicities, and the endpoints were used for risk assessment. Therefore, there is no residual uncertainty for pre- and/or post-natal susceptibility.

iv. The toxicological database is complete for FQPA assessment.

v. The chronic dietary food exposure assessment utilizes proposed tolerance level residues and assumes 100% CT information for all commodities. By using these screening-level assessments,

actual exposures/risks will not be underestimated.

#### E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Because an endpoint of concern attributable to a single dose was not identified for flufenoxuron, it is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to flufenoxuron from food will utilize 14% of the cPAD for the U.S. population, 23% of the cPAD for all infants (<1 year), and 63% of the cPAD for children 1-2 years. There are no residential uses for flufenoxuron that result in chronic residential exposure to flufenoxuron. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk, Intermediate-term risk.* Flufenoxuron is not registered for use on any sites that would result in residential or drinking water exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Based on lack of evidence of carcinogenicity in both rats and mice carcinogenicity studies, the chemical is considered as "not likely to be carcinogenic to humans."

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to flufenoxuron residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

An adequate HPLC/ultraviolet (UV) method (SAMS 432-3) and liquid chromatography (LC)/mass spectrometry (MS)/MS method (BASF Method 544/0) are available for collecting data on flufenoxuron residues in/on plant commodities. The limit of quantification (LOQ) for flufenoxuron in/on plant commodities is 0.05 ppm for the HPLC/UV method and 0.01 ppm for the LC/MS/MS method. Method SAMS 432-3, which is also the proposed enforcement method for plant commodities, has been radio-validated and undergone a successful independent laboratory validation (ILV) trial. As a successful ILV trial has already been conducted, the method has been forwarded to the Analytical Chemistry Branch of the Biological and Economics Analysis Division (ACB/BEAD) for a petition method validation (PMV) (Memo, J. Tyler, 8/10/05; DP# 320112).

Adequate HPLC/UV methods are also available for collecting data on flufenoxuron residues in milk (Method SAMS 486-1) and livestock tissues (Method SAMS 457-2). The validated LOQ for flufenoxuron is 0.01 ppm in milk, 0.3 ppm in fat, and 0.1 ppm in other tissues. Method SAMS 486-1, which is the proposed enforcement method for milk, does not require radio-validation (due to the similarity between the extraction procedures in the proposed method and the extraction procedures used in the metabolism studies) and has undergone a successful ILV. This method has been forwarded to ACB/BEAD for a PMV trial (Memo, J. Tyler, 8/10/05; DP# 320112).

#### B. International Residue Limits

There are currently no established or proposed Canadian, Mexican or Codex maximum residue limits (MRLs) for flufenoxuron.

#### C. Response to Comments

A private citizen responded to PP 8E4943. Comments were received on April 19, 2006 objecting to the allowance of any residues of flufenoxuron on food commodities. One comment was received from a private citizen who opposed the authorization to sell to any pesticide that leaves a residue on food. The Agency has received this same comment from this commenter on numerous previous occasions and rejects it for the reasons previously stated. (January 7, 2005, 70 FR 1349, 1354; FRL-7691-4).

#### V. Conclusion

Therefore, the tolerances are established for residues of flufenoxuron, 1-[4-(2-chloro- $\alpha,\alpha,\alpha$ -trifluoro-p-tolyloxy)-2-fluorophenyl]-3-(2,6-difluorobenzoyl)urea, in or on apple (0.50 ppm); grape (0.70 ppm); grape, raisin (2.0 ppm); cattle, meat (0.10 ppm); cattle, fat (4.5 ppm); cattle, meat byproducts (0.50 ppm); goat, meat (0.10 ppm); goat, fat (4.5 ppm); goat, meat byproducts (0.50 ppm); horse, meat (0.10 ppm); horse, fat (4.5 ppm); horse, meat byproducts (0.50 ppm); sheep, meat (0.10 ppm); sheep, fat (4.5 ppm); sheep, meat byproducts (0.50 ppm); milk (0.20 ppm); milk, fat (4.0 ppm); orange (0.30 ppm); orange, oil (60 ppm); and pear (0.50 ppm).

The petitioner is to provide an amended analytical method, as the current method is not adequate for tolerance enforcement in/on plant commodities because confirmatory HPLC/UV analysis is not sufficiently distinct from the primary analytical method. The petitioner should revise the method to include a confirmatory

analysis using LC/MS/MS, which has been shown to adequately detect and quantify flufenoxuron in BASF Method 544/0. In addition, although a successful ILV trial was conducted on HPLC/UV method SAMS 458-1 using fat samples, this method is distinct from SAMS 457-2 and is only for the analysis of fat. Therefore, a separate ILV trial should be conducted on Method SAMS 457-2 using samples of liver and muscle. Any proposed HPLC/UV method must also be revised to include directions for a confirmatory analysis using an analytical method that is distinct from the primary analytical method. In addition, radio-labeled method validation data are required for the proposed enforcement method using tissue samples from the goat metabolism study to ensure that the method will adequately extract endogenous flufenoxuron residues.

#### VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance 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 tolerance 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.

**VII. 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: August 20, 2006.

**James Jones,**

*Director, 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 180.623 is added to read as follows:

**§ 180.623 Flufenoxuron; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the insecticide, flufenoxuron, 1-[4-(2-chloro- $\alpha,\alpha,\alpha$ -trifluoro-p-tolyloxy)-2-fluorophenyl]-3-(2,6-difluorobenzoyl)urea, in or on the following food commodities.

Commodity	Parts per million
Apple <sup>1</sup> .....	0.50
Cattle, fat <sup>1</sup> .....	4.5
Cattle, meat <sup>1</sup> .....	0.10
Cattle, meat byproducts <sup>1</sup> .....	0.50
Goat, fat <sup>1</sup> .....	4.5
Goat, meat <sup>1</sup> .....	0.10
Goat, meat byproducts <sup>1</sup> .....	0.50
Grape <sup>1</sup> .....	0.70
Grape, raisin <sup>1</sup> .....	2.0
Horse, fat <sup>1</sup> .....	4.5
Horse, meat <sup>1</sup> .....	0.10
Horse, meat byproducts <sup>1</sup> .....	0.50
Milk .....	0.20

Commodity	Parts per million
Milk, fat <sup>1</sup> .....	4.0
Orange <sup>1</sup> .....	0.30
Orange, oil <sup>1</sup> .....	60
Pear <sup>1</sup> .....	0.50
Sheep, fat <sup>1</sup> .....	4.5
Sheep, meat <sup>1</sup> .....	0.10
Sheep, meat byproducts <sup>1</sup> .....	0.50

<sup>1</sup>There are no U.S. registrations as of September 30, 2006.

(b) *Section 18 emergency exemptions.*

[Reserved]

(c) *Tolerances with regional restrictions.* [Reserved]

(b) *Indirect or inadvertent residues.*

[Reserved]

[FR Doc. E6-15931 Filed 9-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2006-0480; FRL-8092-4]

**Soybean Oil, Ethoxylated; Tolerance Exemption**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of soybean oil, ethoxylated; when used as an inert ingredient in a pesticide chemical formulation. Cognis Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of soybean oil, ethoxylated.

**DATES:** This regulation is effective September 29, 2006. Objections and requests for hearings must be received on or before November 28, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0480. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The 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:** Bipin Gandhi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8380; e-mail address: [gandhi.bipin@epa.gov](mailto:gandhi.bipin@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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?*

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this "**Federal Register**" document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing

Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

### C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCFA, as amended by the 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. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2006-0480 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 November 28, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2006-0480, by one of the following methods.

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

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

## II. Background and Statutory Findings

In the **Federal Register** of June 7, 2006 (71 FR 32953) (FRL-8071-3), EPA issued a notice pursuant to section 408 of the FFDCFA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104-170), announcing the filing of a pesticide petition (PP) 6E7067 by Cognis Corporation, 4900 Este Ave., Cincinnati, OH 45232. The petition requested that

40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of soybean oil, ethoxylated; CAS Reg. No. 61791-23-9. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCFA allows EPA to establish an exemption from the requirement for 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(c)(2)(A)(ii) of the FFDCFA 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 the FFDCFA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of 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..." and specifies factors EPA is to consider in establishing an exemption.

### III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

### IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the

risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of the FFDCFA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information 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. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The polymer, soybean oil, ethoxylated, is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does not contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, soybean oil, ethoxylated, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average molecular weight (MW) of 1,290 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, soybean oil, ethoxylated meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to soybean oil, ethoxylated.

#### V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that soybean oil, ethoxylated could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of soybean oil, ethoxylated is 1,290 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since soybean oil, ethoxylated conform to the criteria that identify a low risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

#### VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." EPA does not have, at this time, available data to determine whether soybean oil, ethoxylated has a common mechanism of toxicity with other substances. 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 soybean oil, ethoxylated and any other substances and soybean oil, ethoxylated does not appear to produce a toxic metabolite produced by other substances. For the purposes of

this tolerance action, therefore, EPA has not assumed that soybean oil, ethoxylated 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 website at <http://www.epa.gov/pesticides/cumulative>.

#### VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the 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 unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of soybean oil, ethoxylated, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

#### VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of soybean oil, ethoxylated.

#### IX. Other Considerations

##### A. Endocrine Disruptors

There is no available evidence that soybean oil, ethoxylated is an endocrine disruptor.

##### B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

##### C. International Tolerances

The Agency is not aware of any country requiring a tolerance for soybean oil, ethoxylated nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

#### X. Conclusion

Accordingly, EPA finds that exempting residues of soybean oil, ethoxylated from the requirement of a tolerance will be safe.

#### XI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the 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 the FFDCA, such as the exemption 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 the 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.

## XII. 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 rule in the **Federal Register**. This 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 25, 2006.

**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. In § 180.960 the table is amended by adding the following entry, alphabetically, under "polymers" to read as follows:

#### § 180.960 Polymers; exemptions from the requirement of a tolerance.

Polymer	CAS No.
* * * Soybean oil, ethoxylated; the poly(oxyethylene) content averages 10 moles or greater. * * *	* * * 61791-23-9 * * *

[FR Doc. 06-8384 Filed 9-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 712 and 716

[EPA-HQ-OPPT-2005-0014 and EPA-HQ-OPPT-2005-0055; FRL-8096-5]

RIN 2070-AB08 and 2070-AB11

### Withdrawal of Certain Chemical Substances from Preliminary Assessment Information Reporting and Health and Safety Data Reporting Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule, issued pursuant to sections 8(a) and 8(d) of the Toxic Substances Control Act (TSCA), withdraws certain chemical substances from the category of voluntary High Production Volume (HPV) Challenge Program orphan (un-sponsored) chemical substances that would be

subject to reporting requirements under TSCA section 8(a) and 8(d). On August 16, 2006, EPA published two final rules both effective September 15, 2006, with certain exceptions: A Preliminary Assessment Information Reporting (PAIR) rule under TSCA section 8(a) (40 CFR part 712), which requires manufacturers (including importers) of chemical substances in the category of voluntary HPV Challenge Program orphan (un-sponsored) chemical substances on the Interagency Testing Committee's (ITC) TSCA section 4(e) *Priority Testing List* to submit a one-time report on general production/importation volume, end use, and exposure-related information to EPA, and a Health and Safety Data Reporting rule under TSCA section 8(d) (40 CFR part 716), which requires manufacturers (including importers) of chemical substances in this category of HPV Challenge Program orphan (un-sponsored) chemical substances to submit certain unpublished health and safety data to EPA. On September 15, 2006, EPA published a final rule that delayed the effective date of the rules published August 16, 2006, until September 29, 2006. The chemical substances listed in this final rule are being withdrawn from 40 CFR parts 712 and 716 for good cause as specified in 40 CFR 712.30(c) and 40 CFR 716.105(c) and, consequently, these listed chemical substances will not be subject to the reporting requirements imposed by the TSCA section 8(a) and 8(d) rules published on August 16, 2006.

**DATES:** This final rule is effective September 29, 2006.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) numbers EPA-HQ-OPPT-2005-0014 and EPA-HQ-OPPT-2005-0055. All documents in the dockets are listed on the regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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. The EPA Docket Center (EPA/DC) suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in EPA West, located at 1301



Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA website at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Joe Nash, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8886; fax number: (202) 564-4765; e-mail address: [ccd.citb@epa.gov](mailto:ccd.citb@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) any of the chemical substances listed in this rule. Entities potentially affected by this action may include, but are not limited to:

- Chemical manufacturers (including importers), (NAICS codes 325, 32411), e.g., persons who manufacture (defined by statute to include import) one or more of the subject chemical substances.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this "**Federal Register**" document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. Frequently updated electronic versions of 40 CFR parts 712 and 716 are available through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

##### II. Background

###### A. What Action is the Agency Taking?

EPA is withdrawing certain chemical substances that would be subject to the reporting requirements under TSCA section 8(a) and 8(d). On August 16, 2006, EPA published a final PAIR rule under TSCA section 8(a) (40 CFR part 712), which requires manufacturers (including importers) of chemical substances in the category of voluntary HPV Challenge Program orphan (un-sponsored) chemical substances on the ITC's TSCA section 4(e) *Priority Testing List* to submit a one-time report on general production/importation volume, end use, and exposure-related information to EPA (71 FR 47122) (FRL-7764-9). Also on August 16, 2006, EPA published a final Health and Safety Data Reporting rule under TSCA section 8(d) (40 CFR part 716), which requires manufacturers (including importers) of chemical substances in this category of voluntary HPV Challenge Program orphan (un-sponsored) chemical substances to submit certain unpublished health and safety data to EPA (71 FR 47130) (FRL-7764-7). On September 15, 2006, EPA published a final rule that revised the effective date of the two rules published on August 16, 2006 (71 FR 54434) (FRL-8094-8). The effect of this withdrawal is that the listed chemical substances will not be subject to the reporting requirements imposed by the final TSCA section 8(a) and 8(d) rules published on August 16, 2006, and the rule published on September 15, 2006, that changed the effective date for these two rules.

###### B. What is the Agency's Authority for Taking This Action?

EPA promulgated the PAIR rule under TSCA section 8(a) (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. EPA uses this model TSCA section 8(a)

rule to quickly gather current information on chemical substances. This model TSCA section 8(a) rule establishes standard reporting requirements for certain manufacturers (including importers) of the chemical substances listed in the rule at 40 CFR 712.30. This model rule provides for the addition of TSCA section 4(e) ITC-recommended/designated *Priority Testing List* chemical substances to the list of chemical substances subject to reporting under 40 CFR part 712. EPA amends, unless otherwise instructed by the ITC, the model TSCA section 8(a) rule by adding the ITC-recommended (or designated) chemical substances. The final rule published by EPA on August 16, 2006, amended the model TSCA section 8(a) rule by adding the ITC category of certain voluntary HPV Challenge Program orphan (un-sponsored) chemical substances (Ref. 1).

Under 40 CFR part 712.30(c), the Agency may withdraw, for good cause, a listed substance, mixture, or category from the rule's reporting requirements prior to the effective date of the rule. Any information submitted showing why a substance, mixture, or category should be removed from the rule must be received by EPA within 14 days after the date of publication of the rule. If a substance, mixture, or category is removed, a **Federal Register** document announcing this decision will be published no later than the effective date of the amendment. This **Federal Register** document announces EPA's decision to withdraw certain chemical substances from 40 CFR part 712 that were added by the Agency on August 16, 2006 (Ref. 1).

EPA promulgated the model Health and Safety Data Reporting rule under TSCA section 8(d) (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. EPA uses this TSCA section 8(d) model rule to quickly gather current information on chemical substances. The TSCA section 8(d) model rule requires past, current, and prospective manufacturers, importers, and (if specified by EPA in a particular notice or rule under TSCA section 8(d)) processors of listed chemical substances to submit to EPA copies and lists of unpublished health and safety studies on the listed chemical substances that they manufacture, import, or (if specified by EPA in a particular notice or rule under TSCA section 8(d)) process. This model rule provides for the addition of TSCA section 4(e) ITC-recommended/designated *Priority Testing List* chemical substances to the list of chemical substances subject to reporting under 40 CFR part 716. EPA

amends, unless otherwise instructed by the ITC, the model TSCA section 8(d) rule by adding the ITC-recommended (or designated) chemical substances. The final rule published by EPA on August 16, 2006, amended the model TSCA section 8(d) rule by adding the ITC category of certain voluntary HPV Challenge Program orphan (un-sponsored) chemical substances (Ref. 2).

Under 40 CFR 716.105(c), the Agency may withdraw, for good cause, a listed substance, mixture, or category from the rule's reporting requirements prior to the effective date of the rule. Any information submitted showing why a chemical substance, mixture, or category of chemical substances should be withdrawn from the amendment must be received by EPA within 14 days after the date of publication of the rule. If a chemical substance, mixture, or category of chemical substances is withdrawn, a **Federal Register** document announcing this decision will be published no later than the effective date of the amendment. This **Federal Register** document announces EPA's decision to withdraw certain chemical substances from 40 CFR part 716 that were added by the Agency on August 16, 2006 (Ref. 2).

These withdrawal actions do not preclude potential future listing under the TSCA section 8(a) PAIR rule or the TSCA section 8(d) Health and Safety Data Reporting rule should the information be reasonably required.

### C. Why is this Action Being Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and an opportunity for comment pursuant to the procedures set forth in 40 CFR 712.30(c) and 716.105(c). EPA finds that there is good cause under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these amendments without prior notice and comment. EPA believes notice and an opportunity for comment on this action are unnecessary.

TSCA directs the ITC to add chemical substances to the *Priority Testing List* for which EPA should give priority consideration. Pursuant to 40 CFR 716.105(b) and (c), once the ITC adds a chemical substance to the *Priority Testing List*, EPA in turn is obliged to add that chemical substance to the list of chemical substances subject to the Health and Safety Data Reporting rule reporting requirements, unless requested not to do so by the ITC. EPA also has the discretion, under 40 CFR 716.105(c), to withdraw a listed substance, mixture, or category from the

list of subject chemical substances based on information submitted to EPA that shows why a chemical substance should be removed from the rule. EPA promulgated this procedure in 1985 after having solicited public comment on the need for and mechanics of this procedure. (See the **Federal Register** of August 28, 1985 (50 FR 34809)). Because that document established the procedure for adding and withdrawing ITC chemical substances to the Health and Safety Data Reporting rule, it is unnecessary to request comment on the procedure in this action. EPA believes this action does not raise any relevant issues for comment. EPA is not changing the Health and Safety Data Reporting rule reporting requirements or the process set forth in 40 CFR 716.105(b) and (c). This action is also consistent with the EPA policy articulated in the August 16, 2006 rule that sponsorship of a chemical substance under the voluntary HPV Challenge Program is generally good cause for withdrawing a chemical substance from the Health and Safety Data Reporting rule.

Similarly, pursuant to 40 CFR 712.30(c), once the ITC adds a chemical substance to the *Priority Testing List*, EPA in turn is obliged to add that chemical substance to the list of chemical substances subject to PAIR reporting requirements, unless requested not to do so by the ITC. EPA also has the discretion, under 40 CFR 716.30(c), to withdraw a listed substance, mixture, or category from the list of subject chemical substances based on information submitted to EPA that shows why a chemical substance should be removed from the rule. EPA promulgated this procedure in 1985 after having solicited public comment on the need for and mechanics of this procedure. (See the **Federal Register** of August 28, 1985 (50 FR 34805)). Because that rulemaking established the procedure for adding and withdrawing ITC chemical substances to the PAIR rule, it is unnecessary to request comment on the procedure in this action. EPA believes this action does not raise any relevant issues for comment. EPA is not changing the PAIR rule reporting requirements or the process set forth in 40 CFR 712.30(c). This action is also consistent with the EPA policy articulated in the August 16, 2006 rule that sponsorship of a chemical substance under the voluntary HPV Challenge Program is generally good cause for withdrawing a chemical substance from the PAIR rule.

### III. Final Rule

#### A. Why are These Chemical Substances Being Withdrawn?

Pursuant to TSCA section 8(a), EPA published a PAIR final rule on August 16, 2006 (Ref. 1), which requires manufacturers (including importers) of chemical substances in the category (as defined by the 55<sup>th</sup>, 56<sup>th</sup>, and 58<sup>th</sup> ITC Reports (Refs. 3, 4, and 5)) of voluntary HPV Challenge Program orphan (un-sponsored) chemical substances on the ITC's TSCA section 4(e) *Priority Testing List* to submit a report to EPA on general production/importation volume, end use, and exposure-related information to EPA.

Also on August 16, 2006, EPA published, pursuant to TSCA section 8(d), a Health and Safety Data Reporting final rule (Ref. 2), which requires manufacturers (including importers) of chemical substances in the category (as defined by the 55<sup>th</sup>, 56<sup>th</sup>, and 58<sup>th</sup> ITC Reports (Refs. 3, 4, and 5)) of voluntary HPV Challenge Program orphan (un-sponsored) chemical substances on the ITC's TSCA section 4(e) *Priority Testing List* to submit certain unpublished health and safety data to EPA.

As stated in these two rules that added the voluntary HPV Challenge Program orphan (un-sponsored) chemical substances category to 40 CFR parts 712 and 716 (Refs. 1 and 2), EPA has established a policy regarding acceptance of new commitments to sponsor chemical substances under the voluntary HPV Challenge Program (Ref. 6). Under this policy, EPA stated that it would accept new commitments to sponsor chemical substances under the voluntary HPV Challenge Program for any of the voluntary HPV Challenge Program orphan (un-sponsored) chemical substances listed in the regulatory texts of the TSCA section 8(a) PAIR rule (Ref. 1) and the TSCA section 8(d) Health and Safety Data Reporting rule (Ref. 2) provided that these new commitments to the voluntary HPV Challenge Program were received by EPA within 14 days after the date of publication of these two rules in the **Federal Register**. EPA generally believes that a timely commitment to sponsor chemical substances under the voluntary HPV Challenge Program establishes good cause for withdrawing a chemical substance from the TSCA section 8(a) PAIR rule (Ref. 1) and TSCA section 8(d) Health and Safety Data Reporting rule (Ref. 2). EPA also stated in the August 16, 2006 rules that it would remove chemical substances from the TSCA section 8(a) PAIR rule (Ref. 1) and the TSCA section 8(d)

Health and Safety Data Reporting rule (Ref. 2), in accordance with the procedures described in 40 CFR 712.30(c) and 40 CFR 716.105(c), if withdrawal requests submitted to EPA in conjunction with these new commitments to the voluntary HPV Challenge Program were received on or before 14 days after date of publication of the two rules in the **Federal Register**.

For 22 of the chemical substances listed in this document, EPA received commitments to the voluntary HPV Challenge Program prior to or within 14 days after the date of publication of the TSCA section 8(a) PAIR rule (Ref. 1) and the TSCA section 8(d) Health and Safety Data Reporting rule (Ref. 2) in the **Federal Register**. These commitments to the voluntary HPV Challenge Program are accepted and, based on EPA's commitment policy (Ref. 6), EPA is removing these chemical substances from the TSCA section 8(a) PAIR rule (Ref. 1) and from the TSCA section 8(d) Health and Safety Data Reporting rule (Ref. 2).

In addition, EPA is removing four chemical substances from the TSCA section 8(a) PAIR rule (Ref. 1) and from the TSCA section 8(d) Health and Safety Data Reporting rule (Ref. 2) because of commitments made to sponsor chemical substances under the OECD HPV Screening Information Data Set (SIDS) Program and/or the ICCA HPV Initiative. The OECD SIDS program and

the ICCA HPV Initiative are complementary programs to the HPV Challenge, and EPA believes its policy regarding commitments to sponsor chemical substances under the HPV Challenge should also generally apply to the OECD SIDS program and ICCA HPV Initiative. Thus, EPA believes that a commitment to sponsor chemical substances under the OECD SIDS Program or the ICCA HPV Initiative generally establishes good cause for withdrawing a chemical substance from the TSCA section 8(a) PAIR rule (Ref. 1) and TSCA section 8(d) Health and Safety Data Reporting rule (Ref. 2).

EPA is also removing seven chemical substances from the TSCA section 8(a) PAIR rule (Ref. 1) and from the TSCA section 8(d) Health and Safety Data Reporting rule (Ref. 2) because EPA has received written requests for removal of these chemical substances from the voluntary HPV Challenge Program on the basis that the chemical substances are "no longer" HPV. EPA has determined that the substantiation provided in these written requests, which was based on reporting under EPA's Inventory Update Rule (IUR), is consistent with EPA's guidance for removing chemical substances that are no longer HPV (Ref. 9) and, consequently, EPA believes that this determination establishes good cause for withdrawing these chemical substances

from the TSCA section 8(a) PAIR rule (Ref. 1) and TSCA section 8(d) Health and Safety Data Reporting rule (Ref. 2). Because this determination was based on data obtained under the IUR, EPA does not believe comment is necessary on whether these chemical substances meet the volume threshold for HPV status.

EPA has also determined that good cause does not exist to remove several other chemical substances that were the subject of withdrawal requests. The rationales for these determinations are in the docket for this action.

The net result of these removals is that 210 chemical substances remain subject to the reporting requirements imposed by the TSCA section 8(a) and 8(d) rules published on August 16, 2006.

#### *B. What Chemical Substances are Being Withdrawn and the Rationale for Withdrawal?*

Under EPA's authority, 15 U.S.C. 2607(a), the chemical substances in the table in this unit are being removed from the table in 40 CFR 712.30(e) of the TSCA section 8(a) PAIR rule published in the **Federal Register** of August 16, 2006 (Ref. 1), and the table in 40 CFR 716.120(d) of the TSCA section 8(d) Health and Safety Data Reporting rule published in the **Federal Register** of August 16, 2006 (Ref. 2).

CAS No.	Substance	Rationale for withdrawal	CFR citation	Reference
74-97-5	Methane, bromochloro-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 10
75-46-7	Methane, trifluoro-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 11
77-86-1	1,3-Propanediol, 2-amino-2-(hydroxymethyl)-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 12
99-51-4	Benzene, 1,2-dimethyl-4-nitro-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 13
100-64-1	Cyclohexanone, oxime	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 14
107-45-9	2-Pentanamine, 2,4,4-trimethyl-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 15
579-66-8	Benzenamine, 2,6-diethyl-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 10
693-07-2	Ethane, 1-chloro-2-(ethylthio)-	No longer HPV <sup>b</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Refs. 16 and 17
1115-20-4	Propanoic acid, 3-hydroxy-2,2-dimethyl-, 3-hydroxy-2,2-dimethylpropyl ester	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 13
1459-93-4	1,3-Benzenedicarboxylic acid, dimethyl ester	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 18
1558-33-4	Silane, dichloro(chloromethyl)methyl-	OECD HPV SIDS Program Sponsorship <sup>c</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 19

CAS No.	Substance	Rationale for withdrawal	CFR citation	Reference
2611-00-9	3-Cyclohexene-1-carboxylic acid, 3-cyclohexen-1-ylmethyl ester	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 30
3088-31-1	Ethanol, 2-[2-(dodecyloxy)ethoxy]-, hydrogen sulfate, sodium salt	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 20
3710-84-7	Ethanamine, N-ethyl-N-hydroxy-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 21
6863-58-7	Butane, 2,2-oxybis-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 22
6865-35-6	Octadecanoic acid, barium salt	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 23
7320-37-8	Oxirane, tetradecyl-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 24
14666-94-5	9-Octadecenoic acid (9Z)-, cobalt salt	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 22
20469-71-0	Hydrazinecarbodithioic acid, compd. with hydrazine (1:1)	No longer HPV <sup>b</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Refs. 16 and 17
28777-98-2	2,5-Furandione, dihydro-3-(octadecenyl)-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 10
32072-96-1	2,5-Furandione, dihydro-3-(hexadecenyl)-	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 10
33509-43-2	1,2,4-Triazin-5(2H)-one, 4-amino-6-(1,1-dimethylethyl)-3,4-dihydro-3-thioxo-	No longer HPV <sup>b</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Refs. 16 and 17
61789-32-0	Fatty acids, coco, 2-sulfoethyl esters, sodium salts	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Refs. 25 and 33
65996-80-7	Ammonia liquor (coal)	No longer HPV <sup>b</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Refs. 26 and 32
65996-81-8	Fuel gases, coke-oven	No longer HPV <sup>b</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 34
66071-94-1	Corn, steep liquor	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 13
68476-80-2	Fats and glyceridic oils, vegetable, deodorizer distillates	No longer HPV <sup>b</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 35
68478-20-6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free	No longer HPV <sup>b</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 27
68514-41-0	Ketones, C12-branched	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 22
68603-84-9	Carboxylic acids, C5-9	ICCA HPV Initiative Sponsorship <sup>d</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Refs. 29 and 31
68937-70-2	Carboxylic acids, C6-18 and C8-15-di-	ICCA HPV Initiative Sponsorship <sup>d</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Refs. 29 and 31
68937-72-4	Carboxylic acids, di-, C4-11	ICCA HPV Initiative Sponsorship <sup>d</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Refs. 29 and 31
72162-28-8	2-Propanone, reaction products with phenol	HPV Challenge Program Sponsorship <sup>a</sup>	40 CFR 712.30(e) 40 CFR 716.120(d)	Ref. 28

<sup>a</sup>HPV Challenge Program Sponsorship—EPA has accepted a new commitment letter to sponsor this chemical substance under the voluntary HPV Challenge Program.

<sup>b</sup>No longer HPV—Recent updates to the TSCA Inventory Update Rule (IUR) reporting for the 1998 and 2002 reporting cycles indicate that this chemical substance was produced/imported in the United States at aggregate volumes less than 1 million pounds per year or the chemical substance is exempt from IUR reporting under 40 CFR 710.50(c) and 40 CFR 720.30(g).

<sup>c</sup>OECD SIDS Program Sponsorship—The chemical substance has been sponsored under the Organization for Economic Cooperation and Developments (OECD) HPV Screening Information Data Set (SIDS) Program.

<sup>d</sup>ICCA HPV Initiative Sponsorship—The chemical substance has been sponsored under the International Council of Chemical Associations (ICCA) HPV Initiative.

### C. Economic Analysis

In the economic analysis conducted for the final TSCA section 8(a) PAIR rule, the Agency estimated the total reporting cost to industry to be \$644,000 for all 243 chemical substances, or approximately \$2,650 per chemical substance (Ref. 7). The Agency is estimated to incur an additional \$248,000 or \$1,021 per chemical substance to provide public support for the TSCA section 8(a) PAIR rule and to process the data (Ref. 7). The total cost of the 8(a) rule, per chemical substance, is estimated to be approximately \$3,671. This final rule will withdraw 33 chemical substances from the TSCA section 8(a) PAIR rule. Therefore, costs are estimated to be reduced by \$121,143 (33 chemical substances x \$3,671 per chemical substance).

Furthermore, this final rule will also remove 33 chemical substances from the TSCA section 8(d) Health and Safety Data Reporting rule. The economic analysis conducted for the TSCA section 8(d) Health and Safety Data Reporting rule estimates that the total cost to industry is \$110,000 and to the Agency is \$79,000, or \$453 and \$325 per chemical substance, respectively, for a total of \$778 per chemical substance (Ref. 8). Because this final rule will withdraw 33 chemical substances from the TSCA section 8(d) Health and Safety Data Reporting rule, the costs of the TSCA section 8(d) Health and Safety Data Reporting rule are estimated to be reduced by \$25,674 (33 chemical substances x \$778).

Therefore, the withdrawal of 33 chemical substances from the TSCA section 8(a) and TSCA section 8(d) rules is estimated to result in a total reduction in costs of \$146,817.

### IV. References

The dockets for this rule are the dockets established for the TSCA section 8(a) PAIR rule (docket ID number EPA-HQ-OPPT-2005-0014) (Ref. 1) and the TSCA section 8(d) Health and Safety Data Reporting rule (docket ID number EPA-HQ-OPPT-2005-0055) (Ref. 2). These dockets are available for review as specified in **ADDRESSES**. The following is a listing of the materials referenced in this document that have been placed in the dockets:

1. EPA. 2006. Preliminary Assessment Information Reporting; Addition of Certain Chemicals. **Federal Register** (71 FR 47122, August 16, 2006) (FRL-7764-9). Available on-line at: <http://www.epa.gov/fedrgstr>.
2. EPA. 2006. Health and Safety Data Reporting; Addition of Certain

Chemicals. **Federal Register** (71 FR 47130, August 16, 2006) (FRL-7764-7). Available on-line at: <http://www.epa.gov/fedrgstr>.

3. ITC. 2005. Fifty-Fifth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency. **Federal Register** (70 FR 7364, February 11, 2005) (FRL-7692-1). Available on-line at: <http://www.epa.gov/fedrgstr>

4. ITC. 2005. Fifty-Sixth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency. **Federal Register** (70 FR 61519, October 24, 11, 2005) (FRL-7739-9). Available on-line at: <http://www.epa.gov/fedrgstr>.

5. ITC. 2005. Fifty-Eighth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency. **Federal Register** (71 FR 39188, July 11, 2006) (FRL-8073-7). Available on-line at: <http://www.epa.gov/fedrgstr>.

6. EPA. 2006. Policy Regarding Acceptance of New Commitments to the High Production Volume (HPV) Challenge Program. Available on-line at: <http://www.epa.gov/chemrtk/hvpolicy.htm>.

7. EPA. 2006. Economic Analysis of the Addition of Chemicals from the 55<sup>th</sup>, 56<sup>th</sup>, and 58<sup>th</sup> ITC Reports to the TSCA 8(a) PAIR Rule. July 10, 2006.

8. EPA. 2006. Economic Analysis of the Addition of Chemicals from the 55<sup>th</sup>, 56<sup>th</sup>, and 58<sup>th</sup> ITC Reports to the TSCA 8(d) Health and Safety Data Reporting Rule. July 10, 2006.

9. EPA. 1999. Procedures for removing chemicals that are no longer HPV and are not likely to become HPV again from the HPV Challenge Program chemical list. Available on-line at: <http://www.epa.gov/chemrtk/pubs/general/nolohpv8.htm>.

10. Albemarle Corporation. Commitment letter to the HPV Challenge Program for CAS Nos. 74-97-5, 579-66-8, 28777-98-2, and 32072-96-1 submitted to the EPA Docket Center. December 28, 2005.

11. DuPont. Commitment letter to the HPV Challenge Program for CAS No. 75-46-7 submitted to the EPA Docket Center. December 9, 2005.

12. The Dow Chemical Company. Commitment letter to the HPV Challenge Program for CAS No. 77-86-1 submitted to the EPA Docket Center. August 29, 2006.

13. Corn Refiners Association. Commitment letter to the HPV Challenge Program for CAS No. 66071-94-1 submitted to the EPA Docket Center. August 29, 2006.

14. DSM Chemicals North America, Inc. Commitment letter to the HPV

Challenge Program for CAS No. 100-64-1 submitted to the the EPA Docket Center. June 28, 2005.

15. Rohm and Haas Company. Commitment letter to the HPV Challenge Program for CAS No. 107-45-9 submitted to the EPA Docket Center. December 16, 2005.

16. Bayer CropScience. Amended IUR Report 2002—HPV Challenge Program for CAS Nos. 693-07-2, 20469-71-0, and 33509-43-2 submitted to the EPA Docket Center. November 22, 2005.

17. Bayer CropScience. Amended IUR Report 2002—HPV Challenge Program for CAS Nos. 693-07-2, 20469-71-0, and 33509-43-2 submitted to the EPA Docket Center. December 15, 2005.

18. Vertellus. Commitment letter to the HPV Challenge Program for CAS No. 3088-31-1 submitted to the EPA Docket Center. August 29, 2006.

19. OECD SIDS Program Sponsorship for CAS No. 1558-33-4. <http://cs3-hq.oecd.org/scripts/hpv/>.

20. Stepan. Commitment letter to the HPV Challenge Program for CAS No. 3088-31-1 submitted to the EPA Docket Center. March 24, 2006.

21. Arkema, Inc. Commitment Letter to the HPV Challenge Program for CAS No. 3710-84-7 submitted to the EPA Docket Center. August 11, 2005.

22. ExxonMobil Chemical Company. Commitment letter to the HPV Challenge Program for CAS Nos. 6863-58-7, 14666-94-5, and 68514-41-0 submitted to the EPA Docket Center. June 27, 2005.

23. Chemtura Corporation. Commitment letter to the HPV Challenge Program for CAS No. 6865-35-6 submitted to the EPA Docket Center. December 21, 2005.

24. Arkema Inc. Commitment letter to the HPV Challenge Program for CAS No. 7320-37-8 submitted to the EPA Docket Center. October 21, 2005.

25. Sodium Ethyl Sulfonates Coalition. Letter requesting withdrawal of CAS No. 61789-32-0 from the PAIR rule. Submitted to the EPA Docket Center. August 29, 2006.

26. EPA. Response to a letter dated December 15, 2005, from the American Coke and Coal Chemicals Institute requesting removal of CAS No. 65996-80-7 from the HPV Challenge Program chemical list. January 17, 2006.

27. Velsicol Chemical Corporation. Letter requesting removal of CAS No. 68476-80-2 from the HPV Challenge Program chemical list. Submitted to the EPA Docket Center. August 25, 2006.

28. General Electric Company. Commitment letter to the HPV Challenge Program for CAS No. 72162-28-8 submitted to the EPA Docket Center. August 28, 2006.

29. The Soap and Detergent Association. Commitment letter to the ICCA HPV Initiative for CAS Nos. 68603-84-9, 68937-70-2, and 68937-72-4 submitted to the EPA Docket Center. August 30, 2006.

30. The Dow Chemical Company. Letter confirming commitment to the HPV Challenge Program for CAS No. 2611-00-9 submitted to the EPA Docket Center. August 29, 2006.

31. Cognis Corporation. Commitment letter to the ICCA HPV Initiative for CAS Nos. 68603-84-9, 68937-70-2, and 68937-72-4 submitted to the EPA Docket Center. August 23, 2006.

32. American Coke and Coal Chemicals Institute. Withdrawal request for ammonia liquor (coal), CAS No. 65996-80-7. Submitted to EPA Docket Center. August 30, 2006.

33. Sodium Ethyl Sulfonates Coalition. Letter requesting withdrawal of CAS No. 61789-32-0 from the TSCA 8(d) Health and Safety Data Reporting rule. Submitted to the EPA Docket Center. August 29, 2006.

34. American Coke and Coal Chemicals Institute. Withdrawal request for fuel gases, coke-oven, CAS No. 65996-81-8. Submitted to EPA Docket Center. August 30, 2006.

35. Pillsbury, Winthrop, Shaw, Pittman. Withdrawal request for fats and glycidic oils, vegetable, deodorizer distillates, CAS No. 68476-80-2. Submitted to EPA Docket Center. August 30, 2006.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted actions under TSCA sections 8(a) and (d) related to the PAIR and Health and Safety Data Reporting rules from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this rule does not impose any new requirements and will result in a burden and cost reduction; therefore it is not subject to OMB review under the Executive order.

### B. Paperwork Reduction Act

The information collection requirements contained in TSCA sections 8(a) PAIR and 8(d) Health and Safety Data Reporting rules have already been approved by OMB under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and OMB control numbers 2070-0054 (EPA ICR No. 0586) and 2070-0004 (EPA ICR No. 0575). The collection activities in

this rule are captured by the existing approval and do not require additional review and/or approval by OMB.

### C. Regulatory Flexibility Act

Because this rule eliminates reporting requirements, the Agency certifies pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, that this revocation of certain requirements under TSCA sections 8(a) and 8(d) will not have a significant adverse economic impact on a substantial number of small entities.

### D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

### E. Executive Order 13132: Federalism

This rule has no Federalism implications, because it will not have substantial direct effects 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).

### F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This rule has no tribal implications because it will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, nor 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 Risks and Safety Risks

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this rule because this is not an economically significant regulatory

action as defined under Executive Order 12866, and it does not concern an environmental health or safety risk that may have a disproportionate effect on children.

### H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, entitled *Actions that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

### I. National Technology Transfer and Advancement Act

Because this action does not involve any technical standards, 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), does not apply to this action.

### J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

## VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: September 25, 2006.

**Charles M. Auer,**

*Director, Office of Pollution Prevention and Toxics.*

■ Therefore, 40 CFR chapter I as amended in the **Federal Register** of August 16, 2006 at 71 FR 47122 and 71 FR 47130 is further amended by the following withdrawals:

**PART 712—[AMENDED]**

■ 1. The authority citation for part 712 continues to read as follows:

**Authority:** 15 U.S.C. 2607(a).

**§ 712.30 [Amended]**

■ 2. In § 712.30, the table in paragraph (e) is amended by removing the chemical substances listed in the table below:

CAS No.	Substance
74-97-5	Methane, bromochloro-
75-46-7	Methane, trifluoro-
77-86-1	1,3-Propanediol, 2-amino-2-(hydroxymethyl)-
99-51-4	Benzene, 1,2-dimethyl-4-nitro-
100-64-1	Cyclohexanone, oxime
107-45-9	2-Pentanamine, 2,4,4-trimethyl-
579-66-8	Benzenamine, 2,6-diethyl-
693-07-2	Ethane, 1-chloro-2-(ethylthio)-
1115-20-4	Propanoic acid, 3-hydroxy-2,2-dimethyl-, 3-hydroxy-2,2-dimethylpropyl ester
1459-93-4	1,3-Benzenedicarboxylic acid, dimethyl ester
1558-33-4	Silane, dichloro(chloromethyl)methyl-
2611-00-9	3-Cyclohexene-1-carboxylic acid, 3-cyclohexen-1-ylmethyl ester
3088-31-1	Ethanol, 2-[2-(dodecyloxy)ethoxy]-, hydrogen sulfate, sodium salt
3710-84-7	Ethanamine, N-ethyl-N-hydroxy-
6863-58-7	Butane, 2,2-oxybis-
6865-35-6	Octadecanoic acid, barium salt

CAS No.	Substance
7320-37-8	Oxirane, tetradecyl-
14666-94-5	9-Octadecenoic acid (9Z)-, cobalt salt
20469-71-0	Hydrazinecarbodithioic acid, compd. with hydrazine (1:1)
28777-98-2	2,5-Furandione, dihydro-3-(octadecenyl)-
32072-96-1	2,5-Furandione, 3-(hexadecenyl)dihydro-
33509-43-2	1,2,4-Triazin-5(2H)-one, 4-amino-6-(1,1-dimethylethyl)-3,4-dihydro-3-thioxo-
61789-32-0	Fatty acids, coco, 2-sulfoethyl esters, sodium salts
65996-80-7	Ammonia liquor (coal)
65996-81-8	Fuel gases, coke-oven
66071-94-1	Corn, steep liquor
68476-80-2	Fats and glyceridic oils, vegetable, deodorizer distillates
68478-20-6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free
68514-41-0	Ketones, C12-branched
68603-84-9	Carboxylic acids, C5-9
68937-70-2	Carboxylic acids, C6-18 and C8-15-di-
68937-72-4	Carboxylic acids, di-, C4-11
72162-28-8	2-Propanone, reaction products with phenol

**PART 716—[AMENDED]**

■ 3. The authority citation for part 716 continues to read as follows:

**Authority:** 15 U.S.C. 2607(d).

**§ 716.120 [Amended]**

■ 4. In § 716.120, the table in paragraph (d) is amended by removing the chemical substances listed in the table below:

CAS No.	Substance
74-97-5	Methane, bromochloro-
75-46-7	Methane, trifluoro-

CAS No.	Substance
77-86-1	1,3-Propanediol, 2-amino-2-(hydroxymethyl)-
99-51-4	Benzene, 1,2-dimethyl-4-nitro-
100-64-1	Cyclohexanone, oxime
107-45-9	2-Pentanamine, 2,4,4-trimethyl-
579-66-8	Benzenamine, 2,6-diethyl-
693-07-2	Ethane, 1-chloro-2-(ethylthio)-
1115-20-4	Propanoic acid, 3-hydroxy-2,2-dimethyl-, 3-hydroxy-2,2-dimethylpropyl ester
1459-93-4	1,3-Benzenedicarboxylic acid, dimethyl ester
1558-33-4	Silane, dichloro(chloromethyl)methyl-
2611-00-9	3-Cyclohexene-1-carboxylic acid, 3-cyclohexen-1-ylmethyl ester
3088-31-1	Ethanol, 2-[2-(dodecyloxy)ethoxy]-, hydrogen sulfate, sodium salt
3710-84-7	Ethanamine, N-ethyl-N-hydroxy-
6863-58-7	Butane, 2,2-oxybis-
6865-35-6	Octadecanoic acid, barium salt
7320-37-8	Oxirane, tetradecyl-
14666-94-5	9-Octadecenoic acid (9Z)-, cobalt salt
20469-71-0	Hydrazinecarbodithioic acid, compd. with hydrazine (1:1)
28777-98-2	2,5-Furandione, dihydro-3-(octadecenyl)-
32072-96-1	2,5-Furandione, 3-(hexadecenyl)dihydro-
33509-43-2	1,2,4-Triazin-5(2H)-one, 4-amino-6-(1,1-dimethylethyl)-3,4-dihydro-3-thioxo-
61789-32-0	Fatty acids, coco, 2-sulfoethyl esters, sodium salts
65996-80-7	Ammonia liquor (coal)

CAS No.	Substance
65996-81-8	Fuel gases, coke-oven
66071-94-1	Corn, steep liquor
68476-80-2	Fats and glyceridic oils, vegetable, deodorizer distillates
68478-20-6	Residues (petroleum), steam-cracked petroleum distillates cyclopentadiene conc., C4-cyclopentadiene-free
68514-41-0	Ketones, C12-branched
68603-84-9	Carboxylic acids, C5-9
68937-70-2	Carboxylic acids, C6-18 and C8-15-di-
68937-72-4	Carboxylic acids, di-, C4-11
72162-28-8	2-Propanone, reaction products with phenol

[FR Doc. E6-15959 Filed 9-28-06; 8:45 am]

BILLING CODE 6560-50-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 412, 414, and 424

[CMS-1540-CN]

RIN 0938-AO16

#### Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2007; Certain Provisions Concerning Competitive Acquisition for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Accreditation of DMEPOS Suppliers; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction.

**SUMMARY:** This document corrects technical errors that appeared in the final rule published in the **Federal Register** on August 18, 2006, titled "Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2007; Certain Provisions Concerning Competitive Acquisition for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Accreditation of DMEPOS Suppliers" (71 FR 48354).

**DATES: Effective Dates:** The regulatory changes to part 412 of 42 CFR are effective October 1, 2006. The regulatory changes to part 414 of 42 CFR, other than § 414.406(e), are effective August 31, 2006. The effective date for § 414.406(e) is October 1, 2006. The regulatory changes to part 424 of 42 CFR are effective October 2, 2006. The updated IRF prospective payment rates are effective October 1, 2006, for discharges occurring on or after October 1, 2006, and on or before September 30, 2007 (that is, during FY 2007).

**FOR FURTHER INFORMATION CONTACT:** Zinnia Ng, (410) 786-4587.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 06-6694 of August 18, 2006 (71 FR 48354), there were several technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document published on August 18, 2006.

##### II. Summary of Errors

The first of the technical errors identified and corrected in the Correction of Errors section below occurred in the "Effective Dates" paragraph of the final rule (71 FR 48354). We inadvertently neglected to identify the effective date for 42 Code of Federal Regulations (CFR) 414.406(e). We will identify the effective date for § 414.406(e) as October 1, 2006.

In addition, two typographical errors occurred that resulted in duplicate descriptions of the Addendum that appears on page 48412 of the final rule, as well as a misspelled word that appears in a footnote on page 48434. We will delete the duplicate description of the Addendum and correct the spelling of the misspelled word.

A typesetting error also occurred on page 48415 in the final rule. The wage index value for Canton-Massillon, Ohio (CBSA 15940) displays an incorrect wage index value of 0.8735. We will replace the incorrect wage index value with the correct wage index value of 0.8935, as published in the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS) proposed rule (71 FR 28106, 28145, May 15, 2006).

##### III. Correction of Errors

In FR Doc. 06-6694 of August 18, 2006 (71 FR 48354), make the following corrections:

1. On page 48354, in the first column, the paragraph entitled "*Effective Dates*" is deleted and replaced with, "*Effective Dates*: The regulatory changes to part

412 of 42 CFR are effective October 1, 2006. The regulatory changes to part 414 of 42 CFR, other than § 414.406(e), are effective August 31, 2006. The effective date for § 414.406(e) is October 1, 2006. The regulatory changes to part 424 of 42 CFR are effective October 2, 2006. The updated IRF prospective payment rates are effective October 1, 2006, for discharges occurring on or after October 1, 2006, and on or before September 30, 2007 (that is, during FY 2007)."

2. On page 48412, portions of the first and second columns will be deleted. The text to be deleted begins in the first column with the word "Addendum" through the end of the second full paragraph in the second column.

3. On page 48415, the Canton-Massillon, OH (CBSA 15940) wage index value of "0.8735" is corrected to read "0.8935".

4. On page 48434, in the third column, second footnote, line 2, "shrot" is corrected to read "short".

##### IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, for good cause found by the agency, if the agency incorporates a statement of the finding and its reasons in the rule issued.

The policies and payment methodology expressed in the FY 2007 final rule (71 FR 48354) have previously been subjected to notice and comment procedures. This correction notice merely provides technical corrections to the FY 2007 final rule that was promulgated through notice and comment rulemaking, and does not make substantive changes to the policies or payment methodology that were expressed in the final rule. For example, this notice corrects typographical and typesetting errors. In addition, we inadvertently neglected to identify the effective date for 42 CFR 414.406(e). Therefore, we find it unnecessary to undertake further notice and comment



procedures with respect to this correction notice. We also believe it is in the public interest to waive notice and comment procedures and the 30-day delay in effective date for this notice. This correction notice is intended to ensure that the FY 2007 final rule accurately reflects the policies expressed in the final rule, and the correct information is made available to the public prior to October 1, 2006.

For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this correction notice are unnecessary and impracticable. We also find that it is in the public interest to make this notice effective in conjunction with the final rule to which the corrections apply, and that it would be contrary to the public interest to do otherwise. Therefore, we find good cause to waive notice and comment procedures and the 30-day

delay in effective date for this correction notice.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 22, 2006.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. E6-15980 Filed 9-28-06; 8:45 am]

**BILLING CODE 4120-01-P**

# Proposed Rules

Federal Register

Vol. 71, No. 189

Friday, September 29, 2006

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-24325; Directorate Identifier 2006-NE-10-AD]

RIN 2120-AA64

#### Airworthiness Directives; Rolls-Royce plc RB211-524 and -535 Series Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Rolls-Royce plc (RR) RB211-524 and -535 series turbofan engines. This proposed AD would require initial and repetitive fluorescent penetrant inspections (FPI) and borescope inspections of the high pressure (HP) compressor stage 1 and 2 rotor discs for cracks. This proposed AD results from reports of low-cycle-fatigue cracks found at overhaul in the interface weld between the HP compressor stage 1 and 2 rotor disc. We are proposing this AD to prevent uncontained engine failure and damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by November 28, 2006.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *Fax:* (202) 493-2251.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011-44-1332-242424; fax: 011-44-1332-249936 for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine And Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; telephone (781) 238-7178; fax (781) 238-7199.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2006-24325; Directorate Identifier 2006-NE-10-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. This includes the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

##### Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Office between 9 a.m. and 5 p.m., Monday

through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5227) is 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

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified us that an unsafe condition might exist on certain RR RB211-524 and -535 series turbofan engines. The CAA advises that during overhaul inspections of HP compressor stage 1 and 2 rotors, low-cycle-fatigue cracks were identified. The cracks ran in an axial direction in the region of the interface weld between the HP compressor stage 1 and 2 rotor discs. If allowed to spread, the cracks could result in uncontained engine failure and damage to the airplane.

##### Relevant Service Information

We have reviewed and approved the technical contents of RR Alert Service Bulletin (ASB) No. RB.211-72-AE359, dated November 17, 2005. That ASB describes FPI and borescope inspections for cracks in HP compressor stage 1 and 2 rotor discs. The CAA classified this ASB as mandatory and issued airworthiness directive G-2005-0028 R1, dated October 18, 2005, in order to ensure the airworthiness of these engines in the United Kingdom.

##### FAA's Determination and Requirements of the Proposed AD

These RR RB211-524 and -535 series turbofan engines are manufactured in the United Kingdom. They are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the CAA kept us informed of the situation described above. We have examined the CAA's findings, 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. For this reason, we are proposing this AD, which would require starting at the next engine shop visit, initial and repetitive FPI and borescope inspections of the HP

compressor stage 1 and 2 rotor discs for cracks. The proposed AD would require you to use the service information described previously to perform these actions.

**Interim Action**

These actions are interim actions and we may take further rulemaking actions in the future.

**Costs of Compliance**

We estimate that this proposed AD would affect 884 RB211-524 and -535 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per engine to perform the proposed inspections, and that the average labor rate is \$80 per work-hour. Based on these figures, we estimate the total cost to U.S. operators of performing one inspection on all of the engines, to be \$141,440.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**Rolls-Royce plc:** Docket No. FAA-2006-24325; Directorate Identifier 2006-NE-10-AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 28, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the following Rolls-Royce plc (RR) RB211-524 and -535 series turbofan engines:

-524B2-19	-524D4-19	-524D4X-19	-535E4-37
-524B-02	-524D4-39	-524D4X-B-19	-535E4-B-37
-524B3-02	-524B-B-02	-524G2-19	-535E4-C-37
-524C2-19	-524B2-B-19	-524G3-19	-535E4-B-75
-524B4-02	-524D4-B-39	-524H-36	-535C-37
-524B4-D-02	-524C2-B-19	-524H2-19	

These engines are installed on, but not limited to, Boeing 747, 757, 767, Lockheed L-1011, and Tupolev Tu204 airplanes.

**Unsafe Condition**

(d) This AD results from reports of low-cycle fatigue cracks found at overhaul in the interface weld between the high pressure (HP) compressor stage 1 and 2 rotor discs. We are issuing this AD to prevent uncontained engine failure and damage to the airplane.

**Compliance**

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

**Initial and Repetitive Inspections**

(f) At the next engine shop visit, but no later than 30 days after the effective date of this AD, perform an initial fluorescent penetrant inspection (FPI) and borescope

inspection of the HP compressor stage 1 and 2 rotor discs for cracks.

(g) Thereafter, at every engine shop visit, perform repetitive FPIs and borescope inspections of HP compressor stage 1 and 2 rotor discs for cracks.

(h) Use paragraphs 3.A.(1) through 3.A.(4)(o) of the Accomplishment Instructions of RR Alert Service Bulletin (ASB) No. RB.211-72-AE359, Revision 1, dated November 17, 2005, to do the inspections.

(i) Accept or reject as necessary, HP compressor stage 1 and 2 rotor discs using inspection criteria paragraphs 3.A.(5)(a) through 3.A.(5)(f) of the Accomplishment Instructions of RR ASB No. RB.211-72-AE359, Revision 1, dated November 17, 2005.

**Definition**

(j) For the purpose of this AD, an engine shop visit is defined as anytime the HP compressor stage 1 and 2 rotor discs are

removed from the HP compressor stage 3 disc.

**Reporting Requirements**

(k) Within 10 days, report inspection findings of cracks to the RR local field service office representative. The Office of Management and Budget has approved the reporting requirements specified in paragraph 3.A.(6)(b) of the Accomplishment Instructions of RR ASB No. RB.211-72-AE359, Revision 1, dated November 17, 2005, and assigned OMB control number 2120-0056.

**Alternative Methods of Compliance**

(l) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(m) Civil Aviation Authority airworthiness directive No. G-2005-0028 R1, dated October 18, 2005, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on September 25, 2006.

**Peter A. White,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E6-16047 Filed 9-28-06; 8:45 am]

BILLING CODE 4910-13-P

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**COMMODITY FUTURES TRADING COMMISSION**
**17 CFR Part 1**

**RIN 3038-AC27**

**Limitations on Withdrawals of Equity Capital**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to amend its regulations to provide that the Commission may, by written order, temporarily prohibit a futures commission merchant (“FCM”) from carrying out equity withdrawal transactions that would reduce excess adjusted net capital by 30 percent or more. The proposed orders would be based on the Commission’s determination that such withdrawal transactions could be detrimental to the financial integrity of FCMs or could adversely affect their ability to meet customer obligations. The proposed amendments also would provide that an FCM may file with the Commission a petition for rescission of an order temporarily prohibiting equity withdrawals from the FCM.

**DATES:** Comments must be received on or before November 28, 2006.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AC27, by any of the following methods:

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

- *E-mail:* [secretary@cftc.gov](mailto:secretary@cftc.gov). Include “Proposed Amendment to Rule 1.17” in the subject line of the message.

- *Fax:* (202) 418-5521.

- *Mail:* Send to Eileen A. Donovan, Acting Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

- *Courier:* Same as Mail above.

All comments received will be posted without change to <http://www.cftc.gov>,

including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Smith, Deputy Director and Chief Accountant, at (202) 418-5430, or Thelma Diaz, Special Counsel, at (202) 418-5137, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: ([tsmith@cftc.gov](mailto:tsmith@cftc.gov)) or ([tdiaz@cftc.gov](mailto:tdiaz@cftc.gov)).

**SUPPLEMENTARY INFORMATION:****I. Commission Oversight of Equity Withdrawals**

Several Commission regulations place limitations on the ability of owners and other insiders of FCMs and introducing brokers (“IBs”) to withdraw equity from these regulated entities. In 1978 the Commission adopted Regulation 1.17(e), which prohibits all equity withdrawal transactions that would reduce the adjusted net capital of FCMs or IBs beyond the amounts permitted by the regulation.<sup>1</sup> In describing the transactions affected by the regulation, the Commission included any withdrawals made by the action of a stockholder or partner or redemption or repurchase of shares of stock by “consolidated entities”,<sup>2</sup> dividend payments or similar distributions, or through unsecured advances or loans made to stockholders, partners, sole proprietors, or employees. The regulation further clarifies that, when determining the effect of the proposed equity withdrawal transaction on the firm’s capital, the firm also must take into account other pending equity withdrawal transactions and scheduled liability payments that will reduce its capital within six months after the subject equity withdrawal transaction.<sup>3</sup>

<sup>1</sup> Commission regulations cited in this release may be found at 17 CFR Ch. I (2006). Generally speaking, Regulation 1.17(e) prohibits equity withdrawal transactions if such withdrawals would reduce the firm’s adjusted net capital to less than 120 percent of its minimum adjusted net capital requirement under Regulation 1.17(a)(1). Such transactions also are prohibited if they would result in less than the minimum amount of equity required under Regulation 1.17(d), which provides that FCMs and IBs must maintain a debt-equity ratio of at least 30 percent equity.

<sup>2</sup> Commission Regulation 1.17(f) requires, and in other circumstances permits, FCMs and IBs to consolidate the assets and liabilities of their subsidiaries and/or affiliates in a single computation of adjusted net capital for the FCM or IB and its consolidated entities.

<sup>3</sup> Regulation 1.17(e) specifically requires the firm to combine the amount of the subject equity withdrawal transaction with any of the following that are scheduled to occur within six months after the subject withdrawal: Any other proposed equity withdrawal; any payments under satisfactory subordination agreements under Regulation 1.17(h); and any payments of the liabilities identified in Regulation 1.17(c)(4)(vi).

The proposed equity withdrawal transaction is prohibited if, when added together with such other planned capital reductions, it would result in capital levels that are less than required by Regulation 1.17(e).<sup>4</sup>

The purpose of these equity withdrawal restrictions is to help preserve and enhance the required compliance by FCMs and IBs with the minimum financial requirements set forth in the Commission’s regulations.<sup>5</sup> As the Commission has explained elsewhere, the Commission’s minimum financial requirements protect customers and other market participants by requiring FCMs and IBs to maintain minimum levels of liquid assets in excess of their liabilities to finance their business activities.<sup>6</sup> Moreover, pursuant to Section 4d of the Act,<sup>7</sup> FCMs are required to segregate from their own assets all money, securities, and other property held for customers as margin for their commodity futures and option contracts, as well as any gains accruing to customers from their open futures and option positions. Part 30 of the Commission’s regulations also call for FCMs to set aside funds, called the “foreign futures and foreign options secured amount”, to help protect the funds of U.S. customers trading on non-U.S. futures markets.<sup>8</sup> In the event of a shortfall in the Section 4d segregated funds or the Part 30 secured funds that an FCM must hold, the Commission’s minimum net capital requirements provide protection to customers by requiring each FCM to maintain a minimum level of assets that are readily available to be contributed in the event of a shortfall in the customer funds. The minimum capital requirements also protect customers and market participants by ensuring that an FCM remains solvent while waiting for margin calls to be met.

Because FCM capital requirements contribute to the security of customer

<sup>4</sup> Pursuant to a proviso included in the regulation, required tax payments and the payment to partners of reasonable compensation are not precluded. Also, Regulation 1.17(e) provides that, upon application, the Commission may grant relief if it deems it to be in the public interest or for the protection of nonproprietary accounts.

<sup>5</sup> Section 4f(b) of the Commodity Exchange Act (“Act”) authorizes the Commission, by regulation, to impose minimum financial and related reporting requirements on FCMs and IBs. The Act is codified at 7 U.S.C. 1 *et seq.* (2000), and Section 4f(b) of the Act is codified at 7 U.S.C. § 6f(b).

<sup>6</sup> 68 FR 40835, 40836 (July 9, 2003) (Minimum Financial and Related Reporting Requirements for Futures Commission Merchants and Introducing Brokers).

<sup>7</sup> Section 4d of the Act is codified at 7 U.S.C. § 6d (2000).

<sup>8</sup> The term “foreign futures and foreign options secured amount” is defined in Regulation 1.3(rr).

funds and the overall financial integrity of the futures markets, the Commission also adopted provisions in Commission Regulation 1.12(g)(2) that require notice of certain equity withdrawal transactions by FCMs.<sup>9</sup> The provisions in Regulation 1.12(g)(2) originally were included among several proposals made by the Commission in 1994 in response to the financial difficulties experienced by certain FCMs operating within holding company structures.<sup>10</sup> These proposals were intended to provide the Commission with access to information concerning the activities of FCM affiliates whose activities were reasonably likely to have a material impact on the financial or operational condition of the FCM. The Commission subsequently determined, in response to the recommendations of several commenters, that the notice requirements in Regulation 1.12(g) should be applied broadly to all FCMs, and not just to those subject to reporting requirements with respect to their material affiliates.<sup>11</sup>

In particular, Regulation 1.12(g)(2) requires that an FCM provide notice at least two business days prior to an action to withdraw equity from an FCM, or a subsidiary or affiliate consolidated pursuant to Regulation 1.17(f), if the equity withdrawal transaction would cause, on a net basis, a reduction in the FCM's excess adjusted net capital of 30 percent or more. In response to the receipt of such a notice, Regulation 1.12(g)(3) provides that the Director of the Commission's Division of Clearing and Intermediary Oversight, or the Director's designee, may require that the FCM provide, within three business days from the date of the request or such shorter period as the Division Director or designee may specify, such other information as the Division Director or designee determines to be necessary based upon market conditions, reports provided by the FCM, or other available information.<sup>12</sup>

<sup>9</sup> The notification requirements in Regulation 1.12(g) were made applicable to all FCMs effective May 31, 1996. 61 FR 19177 (May 1, 1996). Regulation 1.12(g) does not apply to IBs.

<sup>10</sup> 59 FR 9689, 9690-9691 (March 1, 1994) (Risk Assessment for Holding Company Systems). The preamble for this proposed rulemaking identifies three FCMs within holding company structures that had experienced financial difficulties.

<sup>11</sup> 61 FR at 19179.

<sup>12</sup> Regulation 1.12(g)(2) also provides that the Commission may require the FCM to cause a Material Affiliated Person, as that term is defined in Commission Regulation 1.14(a)(2), to respond to requests for information from the Division Director.

## II. Equity Withdrawal Transactions That Could Be Temporarily Delayed Under the Proposed Rule

When first proposing the notification provision eventually adopted as Regulation 1.12(g)(2), the Commission noted that it could serve as "early warning" of impending financial difficulties at an FCM or at its holding company.<sup>13</sup> The only consequence that the regulation expressly contemplates as a result of the warning is that the Commission may require additional information from the FCM, with the response to be provided in a period of three days or less, as directed by the Commission. At the time that Regulation 1.2(g)(2) was adopted, the Commission determined that it was not necessary to adopt additional limitations within the Commission's regulations on equity withdrawal transactions.<sup>14</sup>

However, the recent precipitous decline of a large FCM holding company has confirmed that expedited action may be necessary to protect FCM capital in the face of increasing financial pressures experienced by its parent and/or affiliated entities. In this recent example, the FCM registrant was part of a complex organizational group consisting of several layers of holding companies and their subsidiaries. In October of 2005, the parent company for the group announced that its chief executive officer had been placed on leave, and that its financial statements for the years 2002 through 2005 should not be relied upon. The next day, Federal authorities charged the chief executive officer with securities fraud, and on the following day the holding company declared that certain liquidity difficulties were causing it to impose a 15-day moratorium for the activities of a nonregulated subsidiary. According to prior financial filings of the holding company, this nonregulated subsidiary had been responsible for a material portion of the holding company's business.

In response to these foregoing events, the Securities and Exchange Commission ("SEC") issued an order to temporarily restrict withdrawals of capital from two other subsidiaries of the holding company, which were registered as securities broker-dealers.<sup>15</sup> In issuing the order, the SEC cited to its regulation, 17 CFR § 240.15c3-1(e)(3)(i), which provides that the SEC may by order restrict, for a period up to twenty

business days, any withdrawal by the broker or dealer of equity capital or unsecured loan or advance to a stockholder, partner, sole proprietor, employee or affiliate, if (1) such withdrawal, advance or loan when aggregated with all other withdrawals, advances or loans on a net basis during a 30 calendar day period, exceeds 30 percent of the broker or dealer's excess net capital; and (2) the SEC, based on the facts and information available, concludes that the withdrawal, advance or loan may be detrimental to the financial integrity of the broker or dealer, or may unduly jeopardize the broker or dealer's ability to repay its customer claims or other liabilities that may cause a significant impact on the markets or expose the customers or creditors of the broker or dealer to loss without taking into account the application of the Securities Investor Protection Act.<sup>16</sup> As described by the SEC, § 240.15c3-1(e)(3)(i) enables the SEC and its staff to examine further the financial condition of the broker-dealer, so as to determine whether, and under what circumstances, to permit the withdrawal, entirely or partially, or to prohibit the withdrawal for additional periods by issuing subsequent orders, with terms that are no longer than twenty business days.<sup>17</sup>

The Commission is proposing rule amendments in this release that share many aspects in common with the SEC's regulation for temporary delays of equity withdrawals. The proposed amendments to its regulations would provide the Commission with the ability to impose further restrictions on the flow of capital from an FCM to its holding company and other affiliated entities, as appropriate, in the face of fast-developing events that pose potential threats to the capital of FCMs. The Commission would impose such restrictions by way of an order that would be effective for a twenty-day time period, and the Commission could continue to make the restrictions effective against the FCM by issuing subsequent orders, each with a term of no more than twenty business days. During the periods when such orders would be effective, Commission staff could evaluate the effect of the proposed withdrawals on the continuing

<sup>16</sup> This SEC regulation also provides that an order temporarily prohibiting the withdrawal of capital shall be rescinded if, sometime after a hearing that is to be held within two business days from the date of the request in writing by the broker or dealer, the SEC determines that the restriction on capital withdrawal should not remain in effect. 17 CFR 240.15c3-1(e)(3)(ii).

<sup>17</sup> 55 FR 34027, 34030 (August 15, 1990) (proposing amendments to SEC Regulation 15c3-1 regarding withdrawals of equity capital).

<sup>13</sup> 59 FR at 9698-99.

<sup>14</sup> 61 FR at 19180.

<sup>15</sup> A copy of the SEC order, dated October 13, 2005, may be accessed electronically at <http://www.sec.gov/rules/other/34-52606.pdf>.

adequacy of customer safeguards at the firm, including the continuing adequacy of the firm's liquid assets, in light of the most current information available from the FCM concerning its operations and those of its holding company and affiliates. As such, the proposed regulation would serve to further enhance the security of customer funds and the overall financial integrity of the futures markets.<sup>18</sup> It is imperative that the Commission have the option to consider requiring such temporary delays of equity withdrawals whenever urgent circumstances so require.

The Commission also has been advised by staff that Commission Regulations 1.12 and 1.17, which include references to FCMs and IBs that are organized as corporations, partnerships, or sole proprietorships, currently lack a specific reference to firms organized as "limited liability companies."<sup>19</sup> The Commission therefore is proposing other amendments in this release that would modernize the provisions of Regulations 1.12 and 1.17, by including references to limited liability companies.

### III. Proposed Amendments to Regulations 1.12 and 1.17

In view of the foregoing considerations, the Commission is proposing to add a new paragraph (g)(1) to Regulation 1.17, which would provide that the Commission may by order restrict, for a period up to twenty business days, any withdrawal by the FCM of equity capital or any unsecured advance or loan to a stockholder, partner, limited liability company member, sole proprietor, employee or affiliate, if:

(i) Such withdrawal, advance or loan, when aggregated with all other withdrawals, advances or loans during a 30 calendar day period from the FCM, or from a subsidiary or affiliate of the FCM consolidated pursuant to § 1.17(f), would cause a net reduction in the

FCM's excess adjusted net capital of 30 percent or more; and

(ii) The Commission has concluded, in light of available facts and circumstances, that such withdrawal, advance or loan may be detrimental to the financial integrity of the FCM, or may unduly jeopardize its ability to meet customer obligations or other liabilities that may cause a significant impact on the markets.<sup>20</sup>

Under a proposed paragraph (g)(2) for Regulation 1.17, the FCM would be permitted to file with the Secretary of the Commission a written petition to request that the Commission rescind the order issued under paragraph (g)(1). The Commission would notify the FCM in writing that its petition for rescission had been denied, or, if the Commission determined that the order issued under paragraph (g)(1) should not remain in effect, the order would be rescinded. The petition filed by the FCM must specify the facts and circumstances supporting its request for rescission.

Finally, the Commission also is proposing to add a reference to "limited liability company members" in Regulation 1.12(g), to reflect the ownership of FCMs that are organized as limited liability companies. The Commission also is proposing to add references to limited liability company members in Regulation 1.17(d)(1)<sup>21</sup> and Regulation 1.17(e).<sup>22</sup> Furthermore, the Commission proposes to add a new subparagraph (D) to Rule 1.17(d)(1)(ii), in order to include as equity, in the case of a limited liability company, the sum of the "capital accounts of limited liability company members, and unrealized profit and loss."

The Commission requests comment on each of the proposed amendments to Regulations 1.12 and 1.17 that have been described in this release.

### IV. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules,

<sup>20</sup> Paragraph (g) of Regulation 1.17 currently is reserved.

<sup>21</sup> Funds received under "satisfactory subordination agreements", as defined in Regulation 1.17(h), may be treated by the FCM as equity if the agreement meets certain additional criteria set forth in Regulation 1.17(d)(1), including that the lender under the agreement be a partner or stockholder. As proposed, Regulation 1.17(d)(1) would provide that the lender also may be a "limited liability company member."

<sup>22</sup> The proposed amendment to Regulation 1.17(e) would include unsecured advances or loans to limited liability company members as equity withdrawal transactions that are prohibited if they would exceed the amounts permitted by the regulation.

consider the impact of those rules on small businesses. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>23</sup> The Commission has not determined previously that FCMs are not small entities for the purpose of the RFA.<sup>24</sup> With respect to IBs, the Commission has determined to evaluate within the context of a particular rule proposal whether all or some IBs would be considered "small entities" for purposes of the RFA and, if so, to analyze at that time the economic impact on IBs of any such rule.<sup>25</sup>

The proposed amendments to Regulation 1.17(g) would apply to FCMs only and therefore would have no economic impact on IBs. The proposed amendments to Regulation 1.17(d) and (e) and Regulation 1.12(g) solely provide clarifying language to reflect new business organizations structures that were not prevalent when these rules were first adopted. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")<sup>26</sup> imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The amendments being proposed would not, if approved, require a new collection of information on the part of the entities that would be subject to the proposed regulations.

#### C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be

<sup>23</sup> 47 FR 18618 (April 30, 1982).

<sup>24</sup> 47 FR at 18619.

<sup>25</sup> 47 FR at 18618, 18620.

<sup>26</sup> 44 U.S.C. 3507(d).

<sup>18</sup> In the years since the Commission last adopted rule amendments addressing equity withdrawal transactions, the amount of funds that FCMs are required to hold as segregated funds has more than doubled. As of August 31, 1995, FCMs were required to hold approximately \$25 billion as segregated funds, and \$6 billion as secured funds. As of December 31, 2005, the amount that FCMs were required to hold as segregated funds had increased to over \$95 billion, and the amount required to be held as secured funds had grown to almost \$25 billion.

<sup>19</sup> The Commission recently has revised other regulations to reflect the development of limited liability companies ("LLCs"). See, e.g. 69 FR 49784, 49793-4 (August 12, 2004). The amendments adopted in 2004 related to the management of LLCs, in order to determine persons with appropriate signature authority to file financial reports for the FCM or IB.

evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act. The proposed amendments to Regulation 1.17(g) would permit the Commission to issue orders temporarily restricting certain equity withdrawal transactions in circumstances that pose significant concerns for the financial condition of FCMs. The Commission is considering the costs and benefits of these proposed amendments in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* Under the proposed Regulation 1.17(g), the Commission would be able, in exceptional circumstances, to temporarily delay certain withdrawals of FCM equity by their owners and other insiders, which would contribute to the benefit of ensuring that eligible FCMs can meet their financial obligations to customers and other market participants.

2. *Efficiency and competition.* The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the efficiency and competition of the futures markets.

3. *Financial integrity of futures markets and price discovery.* The proposed regulation contributes to the financial integrity of futures markets by helping to confirm and preserve the capital of FCM registrants. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the price discovery function of such markets.

4. *Sound risk management practices.* In order to avoid application of the proposed regulation, FCMs may enhance existing risk management practices relating to the risks that practices of FCM affiliates may pose to the ability of FCMs to meet their obligations to customers and other participants in the futures markets.

5. *Other public interest considerations.* The proposed amendments to Regulations 1.12(g), 1.17(d)(1) and 1.17(e), which would add references to limited liability company

members and their capital contributions, help modernize the Commission's regulations by taking into consideration new forms of business organizations used by FCMs and IBs.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

**List of Subjects in 17 CFR Part 1**

Brokers, Commodity futures, Reporting and recordkeeping requirements.

Accordingly, 17 CFR Chapter I is proposed to be amended as follows:

**PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT**

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

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub.L. 106-554, 114 Stat. 2763 (2000).

2. Section 1.12 is proposed to be amended by revising paragraph (g)(2) to read as follows:

**§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.**

\* \* \* \* \*

(g) \* \* \*

(2) If equity capital of the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to § 1.17(f) (or 17 CFR § 240.15c3-1e) would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, notice must be

provided at least two business days prior to the withdrawal, advance or loan that would cause the reduction:

Provided, however, That the provisions of paragraphs (g)(1) and (g)(2) of this section do not apply to any futures or securities transaction in the ordinary course of business between a futures commission merchant and any affiliate where the futures commission merchant makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

\* \* \* \* \*

3. Section 1.17 is proposed to be amended by revising paragraph (d)(1) introductory text; adding paragraph (d)(1)(ii)(D); revising paragraph (e) introductory text; and adding paragraph (g), to read as follows:

**§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.**

\* \* \* \* \*

(d) \* \* \*

(1) Equity capital means a satisfactory subordination agreement entered into by a partner or stockholder or limited liability company member which has an initial term of at least 3 years and has a remaining term of not less than 12 months if:

\* \* \* \* \*

(ii) \* \* \*

(D) in the case of a limited liability company, the sum of its capital accounts of limited liability company members, and unrealized profit and loss.

\* \* \* \* \*

(e) No equity capital of the applicant or registrant or a subsidiary's or affiliate's equity capital consolidated pursuant to paragraph (f) of this section, whether in the form of capital contributions by partners (including amounts in the commodities, options and securities trading accounts of partners which are treated as equity capital but excluding amounts in such trading accounts which are not equity capital and excluding balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par or stated value, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner or limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured

advance or loan be made to a stockholder, partner, sole proprietor, limited liability company member, or employee if, after giving effect thereto and to any other such withdrawals, advances, or loans and any payments of payment obligations (as defined in paragraph (h) of this section) under satisfactory subordination agreements and any payments of liabilities excluded pursuant to paragraph (c)(4)(vi) of this section which are scheduled to occur within six months following such withdrawal, advance or loan:

\* \* \* \* \*

(g)(1) The Commission may by order restrict, for a period up to twenty business days, any withdrawal by a futures commission merchant of equity capital, or any unsecured advance or loan to a stockholder, partner, limited liability company member, sole proprietor, employee or affiliate, if:

(i) Such withdrawal, advance or loan would cause, when aggregated with all other withdrawals, advances or loans during a 30 calendar day period from the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to § 1.17(f) (or § 17 CFR 240.15c3-1e), a net reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h), excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, and

(ii) The Commission, based on the facts and information available, concludes that any such withdrawal, advance or loan may be detrimental to the financial integrity of the futures commission merchant, or may unduly jeopardize its ability to meet customer obligations or other liabilities that may cause a significant impact on the markets.

(2) The futures commission merchant may file with the Secretary of the Commission a written petition to request rescission of the order issued under paragraph (g)(1) of this section. The petition filed by the futures commission merchant must specify the reasons supporting its request for rescission. The Commission shall respond in writing to deny the futures commission merchant's petition for rescission, or, if the Commission determines that the order issued under paragraph (g)(1) of this section should not remain in effect, the order shall be rescinded.

\* \* \* \* \*

Issued in Washington, DC, on September 25, 2006 by the Commission.

**Eileen Donovan,**

*Acting Secretary of the Commission.*

[FR Doc. E6-16035 Filed 9-28-06; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### 25 CFR Parts 502, 546, and 547

#### Class II Definitions and Gaming Standards and Technical Standards

**AGENCY:** National Indian Gaming Commission, Interior.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** This notice extends the period for comments on proposed Class II definitions and game classification standards published in the **Federal Register** on May 25, 2006 (71 FR 30232, 71 FR 30238). Additionally, this notice extends the period for comments on proposed Class II technical standards published in the **Federal Register** on August 11, 2006 (71 FR 46336).

**DATES:** The comment period for the proposed classification, definition, and technical regulations is extended from September 30, 2006, to November 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Penny Coleman or John Hay at 202/632-7003; fax 202/632-7066 (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** Congress established the National Indian Gaming Commission (NIGC or Commission) under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2701 *et seq.*) (IGRA) to regulate gaming on Indian lands. On May 25, 2006, proposed Class II definitions and game classification standards were published in the **Federal Register** (71 FR 30232, 71 FR 30238). On August 11, 2006, proposed Class II technical standards were published in the **Federal Register** (71 FR 46336).

Dated: September 25, 2006.

**Philip N. Hogen,**

*Chairman, National Indian Gaming Commission.*

[FR Doc. E6-15992 Filed 9-28-06; 8:45 am]

**BILLING CODE 7565-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 2, 6, 7, 9, 13, 20, 22, 24, 27, 68, 73, 74, 78, 80, 87, 90, 95, 97, and 101

[WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 06-169, WT Docket No. 96-86; DA 06-1880]

#### Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Hearing Aid-Compatible Telephones; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; the Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On August 10, 2006, the Federal Communications Commission released a document in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309, respectively, seeking comment on the possibility of revising a variety of licensing and service rules affecting both auctioned and unauctioned spectrum in the 698-746, 747-762, and 777-792 MHz bands. In this action, the Federal Communications Commission denies in part requests to extend the deadline for filing comments and reply comments in this rulemaking proceeding. Nevertheless, the Federal Communications Commission finds that a limited extension of time is warranted and grants the requests in part by adopting a nine-day extension of time for filing comments in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309.

**DATES:** Comments are due in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 (71 FR 48506, August 21, 2006) on or before September 29, 2006. Reply comments are due in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 on or before October 20, 2006.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Michael Rowan, Special Counsel,



Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6315, Washington, DC 20554; and Bill Stafford, Special Counsel, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Portals I, Room 6221, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order* in WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 06-169, and WT Docket No. 96-86 released September 15, 2006. The complete text of the *Order* is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Order* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number, DA 06-1880. The *Order* is also available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS): [http://hraunfoss.fcc.gov/edocs\\_public/SilverStream/Pages/edocs.html](http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html).

### I. Discussion

1. In this *Order*, we extend the deadline for filing comments in response to the Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making (*NPRM*) until September 29, 2006, but retain the reply comment deadline of October 20, 2006. (See 71 FR 48506, August 21, 2006). The *NPRM* seeks public comment on a variety of licensing and service rules affecting both auctioned and unauctioned spectrum in the 698-746, 747-762, and 777-792 MHz bands (700 MHz Band). Interested parties previously had until September 20, 2006, for filing comments and October 20, 2006, for filing reply comments.

2. The Federal Communications Commission (Commission) has received requests for an extension of time to submit comments and reply comments

in response to the *NPRM*. On September 8, 2006, CTIA—The Wireless Association (CTIA) filed a request seeking an extension of time until 14 and 28 days, respectively after the down payment deadline following the close of Auction 66. In its request, CTIA argues that the timing of the *NPRM* and Auction 66 may warrant a limited extension of time. On September 8, 2006, Access Spectrum, L.L.C. and Pegasus Communications Corporation (Access/Pegasus) filed a motion requesting that the Commission extend the comment period for the *NPRM* to a date no later than October 30, 2006, and the reply comment period to a date no later than November 30, 2006. As a part of its motion, Access/Pegasus requests that the Commission have the comment period for the *NPRM* coincide with the comment date for the Commission's proceeding concerning the Blocks A and B in the Upper 700 MHz Band. On September 11, 2006, Access/Pegasus filed a Supplemental Motion for Extension of Time, which modified its previous motion. In its supplemental motion, Access/Pegasus requests specific dates of October 16, 2006 and November 15, 2006 to file comments and reply comments, respectively, to the *NPRM* and in the Commission's proceeding in WT Docket No. 06-169 respecting Blocks A and B in the Upper 700 MHz Band, and also asks that interested parties be provided an opportunity to file supplemental comments by November 15, 2006 in the Public Safety 700 MHz proceeding in WT Docket No. 96-86. Aloha Partners, LP (Aloha), MetroPCS Communications, Inc. (MetroPCS), and the Rural Cellular Association (RCA) filed comments in support of the CTIA Request. Verizon Wireless has filed an opposition to the requests by CTIA and Access/Pegasus for an extension of the comment deadlines. Verizon Wireless argues that public safety needs and the auction deadline for the 700 MHz spectrum necessitates adhering to the existing comment schedule.

3. It is the general policy of the Commission that extensions of time shall not be routinely granted. 47 CFR 1.46(a). Nevertheless, in this instance a limited extension of time is warranted for filing comments in response to the *NPRM*. We find that a nine-day extension of time for comments will facilitate the development of a complete record on the various issues on which the Commission sought comment, including any need for additional small geographic service area licenses in the 700 MHz Band. We are mindful of our statutory obligations and find that

providing this limited additional time will not unduly delay this proceeding and future auction of the 700 MHz Band. Accordingly, we extend the deadline for filing comments in response to the *NPRM* until September 29, 2006, but retain the reply comment deadline of October 20, 2006. We also deny the request of Access/Pegasus to establish: (1) October 16, 2006 and November 15, 2006 as comment and reply comment dates in WT Docket No. 06-169, and (2) November 15, 2006 as a date for filing supplemental comments in WT Docket No. 96-86.

4. Instructions for filing pleadings are set forth in the *NPRM*, available on the Commission's Web site at <http://www.fcc.gov>. All comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 Twelfth Street SW., Washington, DC 20554.

### II. Ordering Clauses

5. Accordingly, *It is ordered* that, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j), and Sections 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR 0.131, 0.331, and 1.46, the deadline for filing comments in response to the *NPRM* is extended to September 29, 2006.

6. *It is further ordered* that, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j), and Sections 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR 0.131, 0.331, and 1.46, the Request for Extension of Comment Deadline of CTIA—The Wireless Association filed on September 8, 2006, and the Motion for Extension of Time and Supplemental Motion for Extension of Time filed by Access Spectrum, L.L.C. and Pegasus Communications Corporation on September 8 and 11, 2006, respectively, are *Granted in part* and *Denied in part*, as specified above.

Federal Communications Commission.

**Catherine W. Seidel,**

*Acting Chief, Wireless Telecommunications Bureau.*

[FR Doc. E6-16058 Filed 9-28-06; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF TRANSPORTATION****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 192**

[Docket No. PHMSA-2003-15852]

RIN 2137-AE17

**Pipeline Safety: Applicability of Public Awareness Regulations to Certain Gas Distribution Operators**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** PHMSA proposes to relax regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems. These operators typically manage property and incidentally provide gas service to customers located on the property. The proposed change provides a less burdensome means for these operators to satisfy public awareness needs.

**DATES:** Anyone interested in filing written comments on the rule proposed in this document must do so by November 28, 2006. PHMSA will consider late filed comments so far as practicable.

**ADDRESSES:** Comments should reference Docket No. PHMSA-2003-15852 and may be submitted in the following ways:

- *DOT Web site:* <http://dms.dot.gov>. To submit comments on the DOT electronic docket site, click "Comment/Submissions," click "Continue," fill in the requested information, click "Continue," enter your comment, then click "Submit."
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- *Hand Delivery:* DOT Docket Management System; 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.
- *E-Gov Web Site:* <http://www.Regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

*Instructions:* You should identify the docket number, PHMSA-2003-15852, at the beginning of your comments. If you submit your comments by mail, you

should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at <http://www.regulations.gov>, and may access all comments received by DOT at <http://dms.dot.gov> by performing a simple search for the docket number.

**Note:** All comments will be posted without changes or edits to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading in the Regulatory Analyses and Notices section of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** For information about this rulemaking contact Barbara Betsock by phone at (202) 366-4361, or by e-mail at [barbara.betsock@dot.gov](mailto:barbara.betsock@dot.gov). For information about public awareness programs, contact Blaine Keener by phone at (202) 366-0970 or e-mail at [blaine.keener@dot.gov](mailto:blaine.keener@dot.gov).

**SUPPLEMENTARY INFORMATION:****Background**

PHMSA published a final rule on public awareness programs on May 19, 2005 (70 FR 28833). The rule requires each pipeline operator to develop a written public awareness program following American Petroleum Institute Recommended Practice 1162 (API RP 1162) and to carry out that program on a continual basis. A public awareness program includes outreach to populations near the pipelines on safety and environmental issues involving pipelines and to emergency responders on identifying and responding to pipeline emergencies. The American Public Gas Association (APGA) filed a petition for reconsideration of the public awareness regulations on June 10, 2005, seeking to change the regulatory requirements for master meter systems. In a written response to the APGA and through public workshops and an advisory bulletin (71 FR 34998), PHMSA has indicated its intention to relieve operators of master meter and petroleum gas distribution systems from some of these requirements.

**Applicability to Operators of Master Meter Systems**

A master meter system is defined in 49 CFR 191.3. An operator of a master meter system receives gas through a meter as the customer of a local distribution company and then redistributes the gas on its own property. The operator of a master meter system distributes gas as an incidental part of a primary business. For example,

a typical master meter operator manages a trailer park or apartment complex and may charge residents for the gas service through the rent. The master meter system is typically located on the property of the master meter operator. Data received from forty-seven state pipeline safety agencies in 2005 shows over 6,500 master meter systems in operation. Because an operator of a master meter system does not file annual reports with PHMSA, we have no quantified data about the size of the systems, either by mileage or by number of customers.

The customers of a master meter operator live near pipelines operated by the gas distribution company supplying the master meter system. Because of this proximity, APGA notes, in its petition for reconsideration, the requirement for the gas distribution company to conduct outreach to these residents and to the local emergency responders. Messages from the master meter operator might differ from those of the gas distribution system serving the master meter. APGA, which represents distribution companies owned by municipalities, expresses concern these different messages might confuse both the public and emergency responders. We agree with this concern. However, we do not agree with APGA's suggested alternative approaches, complete relief from public awareness regulations or a requirement to pass along information received from the distribution company providing gas service to the master meter operator.

Given the proximity of the master meter system to the gas distribution company's pipeline, customers of the master meter operator may already receive information from the gas distribution company. The gas distribution company will provide information about recognizing and reporting a pipeline safety issue. However, this would not ordinarily include information about the master meter system or how to notify the master meter operator about pipeline events on the master meter system. The master meter operator needs to fill this information gap for its customers. We propose to require a master meter operator to conduct a limited public education program reaching (1) customers of the master meter system and (2) persons controlling other property, if any, the master meter system crosses.

Proposed 49 CFR 192.616(j) provides the alternative approach to public awareness programs just described. We based it on the communication requirements for customers described in API RP 1162. To make compliance

easier for these operators, we have spelled out the requirements in the language of the proposed rule rather than in cross-referencing API RP 1162.

We are proposing to relieve the master meter operators of the rest of the requirements of the more extensive API RP 1162 public awareness program. The damage prevention regulations have long excepted master meter operators from requirements to extend outreach activities to excavators and the public. (49 CFR 192.614(e)). In excepting master meter operators, we found their participation in the activities unnecessary for safety. These outreach activities are consistent with damage prevention outreach described for public awareness programs in API RP 1162. As a pipeline operator, the operator of a master meter has a continuing duty, under 49 CFR 192.615, to maintain liaison with local emergency responders. This liaison ensures communication and coordination if a pipeline emergency occurs. A pipeline emergency on a master meter system will likely be contained on the property owned by the operator of the master meter system. However, the operator of a master meter system lacks the expertise of the local gas distribution company in pipeline safety issues needed to effectively conduct the more extensive public awareness program described in API RP 1162 for outreach to the responders, local officials, excavators, and the general public.

#### *Applicability to Operators of Petroleum Gas Systems*

Many operators of petroleum gas systems are similar to operators of master meters because they distribute gas as an incidental part of their primary business. The operator of a petroleum gas system receives a supply of propane (or similar petroleum product), frequently by truck; vaporizes it; and supplies its customers with petroleum gas. A petroleum gas system may be in a remote area without gas distribution service, for example a ski lodge. Data received from forty-eight state pipeline safety agencies in 2005 shows over 1,000 petroleum gas systems in operation. Operators of petroleum gas systems with more than 100 customers file annual reports with PHMSA along with other gas distribution operators. However, because these reports do not identify the type of gas distributed, we have no quantified data about the size of petroleum gas systems, either in terms of mileage or of number of customers.

Some operators of a petroleum gas system distribute gas as a major part of

their business. These operators have pipeline safety expertise equivalent to other gas distribution companies and should develop and implement public awareness programs. Others, like operators of master meter systems, distribute gas incidentally to a primary business, such as property management. These petroleum gas operators need to communicate with their customers and those persons controlling property they cross. They also need to maintain liaison required by 49 CFR 192.615 with emergency responders. However, they will be less effective in the remaining outreach activities required for public awareness. We propose to relieve them of public awareness requirements to the same extent as master meter operators, retaining the same communication requirements. Proposed 49 CFR 192.616(j), which provides the alternative for master meter operators, also addresses petroleum gas operators.

#### *Compliance Dates*

The regulations currently require development and implementation of public awareness programs meeting API RP 1162. This proposal provides less onerous requirements for master meter and petroleum gas operators (for whom gas transportation is not a primary business activity) regardless of size. We propose to require compliance in early 2007. We believe this will allow sufficient time for compliance.

#### *Statutory Considerations*

PHMSA has broad authority to issue safety standards on the operation and maintenance of gas and hazardous liquid pipelines. This authority is in 49 U.S.C. 60102(a). In addition, 49 U.S.C. 60116 provides specific requirements for operators to develop public awareness programs and authorizes PHMSA to issue implementing regulations. Although this proposed rule provides less onerous requirements for certain master meter and petroleum gas system operators, compliance with it would satisfy the requirements 49 U.S.C. 60116 places on operators. Under 49 U.S.C. 60102(b), a pipeline safety standard must be practicable and designed to meet the need for pipeline safety and for protection of the environment. To satisfy this requirement, PHMSA must consider several factors in issuing a safety standard. These factors include the relevant available pipeline safety and environmental information, the appropriateness of the standard for the type of pipeline, the reasonableness of the standard, and reasonably identifiable or estimated costs and benefits. PHMSA has considered these

factors in developing this proposed rule. PHMSA must also consider any comments received from the public and any comments and recommendations of the Technical Pipeline Safety Standards Committee on gas pipeline safety standards and the Technical Hazardous Liquid Pipeline Safety Standards Committee on hazardous liquid pipeline safety standards (pipeline advisory committees). This document seeks public comment on the proposed rule; the pipeline advisory committees will formally consider it in a future meeting. PHMSA will address the public comments and the recommendations of the pipeline advisory committees when the agency prepares a final rule.

#### **Regulatory Analyses and Notices**

##### *Privacy Act Statement*

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

##### *Executive Order 12866 and DOT Policies and Procedures*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget. This proposed rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

##### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This proposed rule would affect operators of master meters and petroleum gas systems. Although we do not have quantitative data, we believe many of the operators of these systems are small entities. This proposed rule would relieve regulatory burden for most of these operators. PHMSA concludes this proposed rule would not have a significant negative economic impact on any small entity.

##### *Executive Order 13175*

PHMSA has analyzed this proposed rulemaking according to Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rulemaking would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the

funding and consultation requirements of Executive Order 13175 do not apply.

#### *Paperwork Reduction Act*

This proposed rule does not impose any new information collection requirements.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rulemaking.

#### *National Environmental Policy Act*

PHMSA has analyzed the proposed rulemaking for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and preliminarily determined the proposed rulemaking is unlikely to affect the quality of the human environment significantly. An environmental assessment document is available for review in the docket. PHMSA will make a final determination on environmental impact after reviewing the comments to this proposal.

#### *Executive Order 13132*

PHMSA has analyzed the proposed rulemaking according to Executive Order 13132 ("Federalism"). The proposed rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The proposed rule does not impose substantial direct compliance costs on State and local

governments. This proposed regulation would not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### *Executive Order 13211*

Transporting gas impacts the nation's available energy supply. However, this proposed rulemaking is not a "significant energy action" under Executive Order 13211. It also 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. Further, the Administrator of the Office of Information and Regulatory Affairs has not identified this proposed rule as a significant energy action.

#### **List of Subjects in 49 CFR Part 192**

Pipeline safety.

For the reasons provided in the preamble, PHMSA proposes to amend 49 CFR Part 192 as follows:

#### **PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS**

1. The authority citation for part 192 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

2. Amend § 192.616 as follows:

- a. Revise paragraph (a);
- b. Amend paragraph (h) by revising the second sentence; and
- c. Add paragraph (j).

The changes read as follows:

#### **§ 192.616 Public awareness.**

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and

implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (IBR, see § 192.7).

\* \* \* \* \*

(h) \* \* \* The operator of a master meter or petroleum gas system covered under paragraph (j) of this section must complete development of its written procedure by March 31, 2007. \* \* \*

\* \* \* \* \*

(j) Unless the operator transports gas as a primary activity, the operator of a master meter or petroleum gas system is not required to develop a public awareness program as prescribed in paragraphs (a) through (g) of this section. Instead the operator must develop and implement a written procedure to provide its customers public awareness messages twice annually. If the master meter or petroleum gas system is located on property the operator does not control, the operator must provide similar messages twice annually to persons controlling the property. The public awareness message must include:

- (1) A description of the purpose and reliability of the pipeline;
- (2) An overview of the hazards of the pipeline and prevention measures used;
- (3) Information about damage prevention;
- (4) How to recognize and respond to a leak; and
- (5) How to get additional information.

Issued in Washington, DC, on September 19, 2006.

**Theodore L. Willke,**

*Acting Associate Administrator for Pipeline Safety.*

[FR Doc. E6-16031 Filed 9-28-06; 8:45 am]

**BILLING CODE 4910-60-P**

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Nebraska National Forest, Nebraska & South Dakota; Supplement to the FEIS for the Nebraska National Forest Revised Land and Resource Management Plan (2002) for Black-tailed Prairie Dog (*Cynomys ludovicianus*) Management on the Nebraska National Forest and Associated Units

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to supplement.

**SUMMARY:** The USDA Forest Service will prepare a Supplement to the Final Environmental Impact Statement (Supplement) for the 2002 Nebraska National Forest Revised Land and Resource Management Plan (as amended) (LRMP) for black-tailed prairie dog (*Cynomys ludovicianus*) management on the Nebraska National Forest and associated units (NNF). The NNF includes the Buffalo Gap and Fort Pierre National Grasslands in South Dakota and the Oglala National Grassland, Samuel R. McKelvie National Forest, and Nebraska National Forest in Nebraska. The proposed action is to amend current management direction in the LRMP to meet various multiple use objectives by: (1) Specifying the desired range of acres of prairie dog colonies that will be provided on the NFF; and (2) allowing use of toxicants if the acreage exceeds the desired range and or multiple use objectives.

**DATES:** Written comments must be received within 30 days after publication in the **Federal Register**. The draft Supplement is expected in May, 2007, followed by a 45-day comment period. The final Supplement and Record of Decision is expected by October, 2007.

**ADDRESSES:** Written comments on the proposed action must be sent to Donald J. Bright, Forest Supervisor, USDA

Forest Service, 125 North Main, Chadron, Nebraska 69337. Comments can also be electronically submitted to: [comments-rocky-mountain-nebraska@fs.fed.us](mailto:comments-rocky-mountain-nebraska@fs.fed.us), Subject line: Prairie Dog Supplement to Nebraska LRMP.

**FOR FURTHER INFORMATION CONTACT:** Mike McNeill, Team Leader, USDA Forest Service, at 1801 Hwy 18 Truck Bypass PO Box 732, Hot Springs, South Dakota 57747, or call (605) 745-4107.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

The Record of Decision for the Revised LRMP for the Nebraska National Forest and Associated Units was approved in July, 2002. The current Nebraska LRMP (amended in 2005) and original LRMP Final Environmental Impact Statement (FEIS) can be found at <http://www.fs.fed.us/ngp/>. The LRMP provides general guidance and direction for managing the various natural resources on National Forest System lands. The LRMP identified the importance of prairie dogs as an element of biological diversity, and provided for increasing populations of black-tailed prairie dogs over time, particularly in Management Area 3.63, Black-footed ferret Reintroduction Habitat. The LRMP identified prairie dogs as a Management Indicator Species for several of the Geographic Areas, with guidance addressing vegetation management, livestock grazing, landownership adjustments, recreational shooting of prairie dogs, and use of rodenticides. Estimates of the anticipated acreage of prairie dog colonies were presented in the FEIS, but the LRMP did not set specific acreage objectives by unit, geographic area, or management area. Initially, the LRMP limited the use of rodenticides to control prairie dog populations to only those situations involving human health and safety risks or damage to infrastructure. In response to the issue that prairie dogs were moving from the national grasslands onto adjoining lands, in 2005 the Forest Service amended the LRMP to allow use of lethal control in boundary management zones up to one-half mile wide on the Buffalo Gap and Oglala National Grasslands and up to one-quarter mile wide on the Fort Pierre National Grassland, during the October 1 through January 31 period.

The spatial extent and density of prairie dog colonies fluctuate over time. Historically, prairie dog populations were likely influenced by natural disturbances such as bison grazing, fires, and drought. Prairie dogs prefer short vegetation (less than 6 or 7 inches tall) in order to detect potential predators, and therefore are more likely to expand their colonies in areas that are heavily grazed or recently burned, and during drought periods. During extended droughts, prairie dog colonies may spread outwards, although this may not reflect an actual increase in population size, since prairie dog density (number of prairie dogs per acre) may be lower as compared to years having greater precipitation (and more forage production).

The black-footed ferret, listed as endangered under the Endangered Species Act, relies exclusively upon prairie dogs as prey and their burrows for shelter. Once widely distributed throughout the Great Plains, black-footed ferret populations declined drastically during the 20th century. In 1987, the last 18 remaining black-footed ferrets were captured, and became the nucleus of a successful captive breeding program. Reintroductions of captive-reared ferrets began in 1991. The most successful of the nine sites where reintroductions have been attempted so far is Conata Basin/Badlands. Conata Basin is located on the Buffalo Gap National Grassland. Black-footed ferrets were reintroduced in Conata Basin beginning in 1996. This area now contains the largest free-ranging population of ferrets in the world. This population is considered to be self-sustaining, and in the past few years has even been sufficiently robust to provide some wild-born kits for reintroduction to other sites.

The western parts of both South Dakota and Nebraska have experienced nearly seven years of severe drought. During this extended drought, prairie dog colony acreages on the national grasslands have increased much faster than projected in the EIS for the LRMP. Conata Basin was designated as Management Area 3.63, Black-footed Ferret Reintroduction Habitat, in the 2002 LRMP, and in this Management Area, continued development and expansion of prairie dog colonies has been allowed.

Currently, the LRMP does not provide for limiting the number of acres of prairie dog colonies and does not provide for the use of lethal control methods for keeping the colonies within the desired range of acres. There is a concern that, if no limits are placed on prairie dog acreage, the desired balance of resource conditions, services and outputs will not be achieved, especially during drought conditions. The Forest has the ability to adjust livestock grazing through the current LRMP direction or project-level allotment planning and permit administration. It is desirable to have the option of managing the desired range of acres of prairie dog colonies based on rainfall and drought conditions on the grasslands, and to have a range of tools including the use of toxicants available for prairie dog management if the acreage substantially falls below or exceeds the desired range and or multiple use objectives.

The LRMP identifies a general purpose of revision to provide direction that would:

- (1) Provide goods and services to people,
- (2) Involve people and communities, and
- (3) Sustain ecosystem functions.

The LRMP purpose and need can be found on pages 1–6 through 1–8 of the LRMP FEIS.

#### **Purpose and Need for Action**

We conducted an interdisciplinary review of new information and changed circumstances from the original LRMP FEIS including prolonged drought conditions, changes in prairie dog numbers and distribution, and related concerns about resulting vegetation and soil conditions. The Supplement will disclose the environmental effects of the proposed action while still providing: (1) Sufficient habitat to support a self-sustaining population of black-footed ferrets that contributes to the overall recovery of the species; and (2) sufficient habitat to maintain a well-distributed population of black-tailed prairie dogs and other associated species across the national grasslands.

#### **Proposed Action**

The proposed action is to amend current management direction in the LRMP to meet various multiple use objectives by: (1) Specifying the desired range of acres of prairie dog colonies that will be provided on the NNF; and (2) allowing use of toxicants if the acreage exceeds the desired range and for multiple use objectives. This includes amending Chapter 1, Section

H, Standard #1 which identifies a limited use of rodenticides.

#### **Responsible Official**

Donald J. Bright, Forest Supervisor, USDA Forest Service, 125 North Main Street, Chadron, Nebraska 69337.

#### **Nature of Decision To Be Made**

After reviewing public comments on the proposed action and the draft Supplement, the Forest Service will decide whether or not to amend current management direction in the LRMP to meet various multiple use objectives by: (1) Specifying the desired range of acres of prairie dog colonies that will be provided on the NNF; and (2) allowing use of toxicants if the acreage exceeds the desired range and for multiple use objectives. This includes amending Chapter 1, Section H, Standard #1 which identifies a limited use of rodenticides.

#### **Scoping Process**

The Forest Service will be consulting with Federal, State, local agencies, tribes, and other individuals or organizations that may be interested in or affected by the proposal through various methods. Other Federal and State agencies will be offered cooperating agency status.

#### **Preliminary Issues**

The Forest Service has considerable experience in conserving and managing natural resources, including prairie dogs, black-footed ferrets, and other native wildlife in grassland ecosystems. Furthermore, the Forest Service conducted extensive public involvement through the process of establishing, revising and amending the LRMP. As a minimum, the following preliminary issues are anticipated:

- Effects on black-tailed prairie dogs;
- Effects on recovery of the endangered black-footed ferret;
- Effects on other wildlife species associated with prairie dogs;
- Effects on livestock grazing permittees;
- Effects on vegetation cover, topsoil, and undesirable plant species;
- Costs and effectiveness of management strategies.

The Supplement will examine these issues if not already addressed in the existing FEIS.

#### **Comment Requested**

This notice of intent initiates the scoping process which guides the Supplement. Comments should focus on the nature of the action proposed and should be relevant to the decision under consideration. Comments received from

the public will be considered in determining the potential effects of the proposed action and informing the decision.

#### **Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A draft Supplement will be prepared for comment. The comment period on the draft Supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, the reviewers of the draft Supplement 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 Supplement stage but that are not raised until after completion of the final Supplement 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 comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Supplement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft Supplement. 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 regarding the specificity of comments.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 25, 2006.

**Richard P. Kramer,**

*Acting Deputy Forest Supervisor.*

[FR Doc. E6-16051 Filed 9-28-06; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

**RIN 0596-AC46**

#### Small Business Timber Sale Set-Aside Program Share Recomputation

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed policy directive; correction and extension of public comment.

**SUMMARY:** The Forest Service published a notice of proposed policy directive in the **Federal Register** of August 1, 2006 (71 FR 43435), concerning a request for comments on the Small Business Timber Sale Set-Aside Program Share Recomputation. In the **Federal Register** of August 9, 2006 (71 FR 45519), a correction to content was made and the period for receiving public comments was extended to October 10, 2006.

The notice of August 1, 2006, contained an error in the **ADDRESSES** caption that is now being corrected. In addition, the date for receiving comments is being extended for an additional 60 days. The **DATES** caption has been revised to reflect that comments must be received by December 11, 2006.

**DATES:** Comments must be received in writing by December 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Richard Fitzgerald, Assistant Director, Forest Management Staff, by telephone at (202) 205-1753 or by internet at [rfitzgerald@fs.fed.us](mailto:rfitzgerald@fs.fed.us).

#### Correction

In the **Federal Register** of August 1, 2006, in FR Doc. E-12310, on page 43435, in the second column, correct the **ADDRESSES** caption to read: Send written comments by mail to the Director Forest Management, Mail Stop 1103, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250-1103; or via facsimile to (202) 205-1045.

Dated: September 22, 2006.

**Frederick Norbury,**

*Associate Deputy Chief for National Forest System.*

[FR Doc. E6-16073 Filed 9-28-06; 8:45 am]

**BILLING CODE 3410-11-P**

## ANTITRUST MODERNIZATION COMMISSION

### Notice of Public Hearings

**AGENCY:** Antitrust Modernization Commission.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Antitrust Modernization Commission will hold public hearings on October 18, 2006. The topics of the hearings are the McCarran-Ferguson Act and the Shipping Act.

**DATES:** October 18, 2006, 10 a.m. to 12 p.m. and 1 p.m. to 3 p.m. Interested members of the public may attend. Registration is not required.

**ADDRESSES:** Federal Trade Commission, Conference Center, 601 New Jersey Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission. Telephone: (202) 233-0701; e-mail: [info@amc.gov](mailto:info@amc.gov). Internet: <http://www.amc.gov>.

**SUPPLEMENTARY INFORMATION:** The purpose of these hearings is for the Antitrust Modernization Commission to take testimony and receive evidence regarding the McCarran-Ferguson Act and the Shipping Act as illustrative examples of immunities and exemptions for purposes of the Commission's general evaluation of antitrust immunities and exemptions.

The hearing on the McCarran-Ferguson Act will consist of one panel, which will begin at 10 a.m. and conclude at 12 p.m. The hearing on the Shipping Act will consist of one panel, which will begin at 1 p.m. and conclude at 3 p.m. Materials relating to the hearings, including lists of witnesses and the prepared statements of the witnesses, will be made available on the Commission's Web site ([www.amc.gov](http://www.amc.gov)) in advance of the hearings.

Interested members of the public may submit written testimony on the subject of the hearing in the form of comments, pursuant to the Commission's request for comments. See 70 FR 28,902-28,907 (May 19, 2005). Members of the public will not be provided with an opportunity to make oral remarks at the hearings. The AMC is holding this hearing pursuant to its authorizing statute. Antitrust Modernization Commission Act of 2002, Pub. L. 107-273, § 11057(a), 116 Stat. 1758, 1858.

Dated: September 26, 2006.

By direction of the Antitrust Modernization Commission.

**Andrew J. Heimert,**

*Executive Director & General Counsel, Antitrust Modernization Commission.*

[FR Doc. E6-16076 Filed 9-28-06; 8:45 am]

**BILLING CODE 6820-YH-P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletions from Procurement List.

**SUMMARY:** This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

**EFFECTIVE DATE:** October 29, 2006.

**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, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [SKennerly@jwod.gov](mailto:SKennerly@jwod.gov).

#### SUPPLEMENTARY INFORMATION:

##### Additions

On July 21; August 4; and August 11, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (71 FR 41417; 44255; and 46188) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

##### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

#### *End of Certification*

Accordingly, the following products and services are added to the Procurement List:

##### *Products*

*Product/NSNs:* Coat, Airman's Battle Uniform, Men's (ABU) (NISH)

8415-01-536-4578—Size 42 X-Short  
8415-01-536-4224—Size 36 Regular  
8415-01-536-4188—Size 34 Regular  
8415-01-536-4182—Size 34 X-Short  
8415-01-536-4193—Size 36 X-Short  
8415-01-536-4192—Size 34 X-Long  
8415-01-536-4227—Size 36 Long  
8415-01-536-4585—Size 42 X-Long  
8415-01-536-4583—Size 42 Regular  
8415-01-536-4577—Size 40 X-Long  
8415-01-536-4640—Size 48 Regular  
8415-01-536-4682—Size 40 Regular  
8415-01-536-4241—Size 38 Short  
8415-01-536-4239—Size 38 X-Short  
8415-01-536-4593—Size 46 Short  
8415-01-536-4592—Size 44 X-Long  
8415-01-536-4588—Size 50 X-Short  
8415-01-536-4586—Size 44 Short  
8415-01-536-4584—Size 42 Long  
8415-01-536-4574—Size 40 Regular  
8415-01-535-4170—Size 32 Short  
8415-01-536-4712—Size 50 Long  
8415-01-536-4639—Size 48 Short  
8415-01-536-4651—Size 48 Long  
8415-01-536-4367—Size 38 Regular  
8415-01-536-4369—Size 38 Long  
8415-01-536-4674—Size 50 Short  
8415-01-536-4576—Size 40 Long  
8415-01-536-4606—Size 46 X-Long  
8415-01-536-4596—Size 46 Regular  
8415-01-536-4600—Size 46 Long  
8415-01-536-4197—Size 36 Short  
8415-01-536-4573—Size 40 Short  
8415-01-536-4581—Size 42 Short  
8415-01-536-4178—Size 32 Regular  
8415-01-536-4237—Size 36 X-Long  
8415-01-536-4591—Size 44 Long  
8415-01-536-4590—Size 44 Regular  
8415-01-536-4180—Size 32 Long  
8415-01-536-4189—Size 34 Long  
8415-01-536-4134—Size 32 X-Short  
8415-01-536-4184—Size 34 Short  
8415-01-536-4572—Size 40 X-Short  
8415-01-536-4571—Size 38 X-Long

*Product/NSNs:* Coat, Airman's Battle Uniform, Women's, (ABU)

8410-01-536-3760—Size 6 Short  
8410-01-536-3000—Size 6 X-Short  
8410-01-536-2994—Size 4 Regular  
8410-01-536-3763—Size 6 Regular

8410-01-536-2980—Size 4 X-Short  
8410-01-536-2977—Size 2 Regular  
8410-01-536-2974—Size 2 Short  
8410-01-536-2982—Size 4 Short  
8410-01-536-3825—Size 20 Regular  
8410-01-536-3819—Size 18 Regular  
8410-01-536-3822—Size 18 Long  
8410-01-536-3816—Size 18 Short  
8410-01-536-3814—Size 16 Long  
8410-01-536-3812—Size 16 Regular  
8410-01-536-3808—Size 16 Short  
8410-01-536-3807—Size 16 X-Short  
8410-01-536-3805—Size 14 Long  
8410-01-536-3804—Size 14 Regular  
8410-01-536-3803—Size 14 Short  
8410-01-536-3800—Size 14 X-Short  
8410-01-536-3799—Size 12 Long  
8410-01-536-3797—Size 12 Regular  
8410-01-536-3795—Size 12 Short  
8410-01-536-3793—Size 12 X-Short  
8410-01-536-3792—Size 10 Long  
8410-01-536-3789—Size 10 Regular  
8410-01-536-3787—Size 10 Short  
8410-01-536-3784—Size 10 X-Short  
8410-01-536-3782—Size 8 Long  
8410-01-536-3779—Size 6 Long  
8410-01-536-3776—Size 8 Regular  
8410-01-536-3772—Size 8 Short  
8410-01-536-3769—Size 8 X-Short

*NPA:* Goodwill Industries of South Florida, Inc., Miami, Florida.

*NPA:* Four Rivers Resource Services, Inc., Linton, IN (at its facility in Sullivan, Indiana).

*Coverage:* The requirement being proposed for addition to the Procurement List is a quantity of no more than 100,000 units of any combination of the above NSNs for Coat, Airman's Battle Uniform, Men's or Coat, Airman's Battle Uniform, Women's.  
*Product/NSNs:* Trousers, Airman's Battle Uniform, Men's (ABU)

8415-01-536-4121—Size 46 Long  
8415-01-536-4111—Size 46 Regular  
8415-01-536-4103—Size 44 Short  
8415-01-536-4102—Size 44 Regular  
8415-01-536-4088—Size 42 Long  
8415-01-536-4077—Size 42 Short  
8415-01-536-4075—Size 40 X-Long  
8415-01-536-4073—Size 40 Long  
8415-01-536-4067—Size 40 Short  
8415-01-536-4021—Size 38 X-Long  
8415-01-536-3935—Size 38 Long  
8415-01-536-3920—Size 38 Short  
8415-01-536-3916—Size 38 X-Short  
8415-01-536-3912—Size 36 X-Long  
8415-01-536-3905—Size 36 Long  
8415-01-536-3903—Size 36 Regular  
8415-01-536-3893—Size 36 Short  
8415-01-536-3890—Size 40 X-Short  
8415-01-536-3874—Size 34 X-Long  
8415-01-536-3869—Size 34 Long  
8415-01-536-3855—Size 34 Regular  
8415-01-536-3849—Size 34 Short  
8415-01-536-3846—Size 34 X-Short  
8415-01-536-3844—Size 32 X-Long  
8415-01-536-3836—Size 32 Long  
8415-01-536-3833—Size 32 Regular  
8415-01-536-3830—Size 32 Short  
8415-01-536-3880—Size 36 X-Short  
8415-01-536-3826—Size 32 X-Short  
8415-01-536-3823—Size 30 X-Long  
8415-01-536-3821—Size 30 Long  
8415-01-536-3817—Size 30 Regular  
8415-01-536-3809—Size 30 X-Short  
8415-01-536-3794—Size 30 Short

8415-01-536-3791—Size 28 X-Long  
8415-01-536-3927—Size 38 Regular  
8415-01-536-3777—Size 28 Long  
8415-01-536-3774—Size 28 Regular  
8415-01-536-3759—Size 28 Short  
8415-01-536-4071—Size 40 Regular  
8415-01-536-3758—Size 28 X-Short  
8415-01-536-4109—Size 44 Long  
8415-01-536-4081—Size 42 Regular  
*Product/NSNs:* Trousers, Airman's Battle Uniform, Women's, (ABU)

8410-01-536-2748—Size 12 Short  
8410-01-536-2746—Size 12 X-Short  
8410-01-536-2744—Size 10 Long  
8410-01-536-2740—Size 10 Short  
8410-01-536-2739—Size 10 X-Short  
8410-01-536-2736—Size 8 Long  
8410-01-536-2725—Size 8 Short  
8410-01-536-2723—Size 8 X-Short  
8410-01-536-2721—Size 6 Long  
8410-01-536-2720—Size 6 Regular  
8410-01-536-2719—Size 6 Short  
8410-01-536-2718—Size 6 X-Short  
8410-01-536-2715—Size 4 Regular  
8410-01-536-2714—Size 4 X-Short  
8410-01-536-2711—Size 2 Regular  
8410-01-536-2709—Size 2 Short  
8410-01-536-2734—Size 8 Regular  
8410-01-536-2742—Size 10 Regular  
8410-01-536-2749—Size 12 Regular  
8410-01-536-2785—Size 22 Regular  
8410-01-536-2783—Size 20 Long  
8410-01-536-2780—Size 20 Regular  
8410-01-536-2778—Size 18 Long  
8410-01-536-2774—Size 18 Regular  
8410-01-536-2773—Size 18 Short  
8410-01-536-2771—Size 16 Long  
8410-01-536-2770—Size 16 Regular  
8410-01-536-2766—Size 16 Short  
8410-01-536-2765—Size 16 X-Short  
8410-01-536-2761—Size 14 Long  
8410-01-536-2760—Size 14 Regular  
8410-01-536-2756—Size 14 Short  
8410-01-536-2801—Size 4 Short  
8410-01-536-2754—Size 14 X-Short  
8410-01-536-2752—Size 12 Long

*NPA:* Four Rivers Resource Services, Inc., Sullivan, Indiana.

*NPA:* Goodwill Industries of South Florida, Inc., Miami, Florida.

*NPA:* Casco Area Workshop, Inc., Harrisonville, Missouri.

*Coverage:* The requirement being proposed for addition to the Procurement List is a quantity of no more than 200,000 units of any combination of the above NSNs for Trousers, Airman's Battle Uniform, Men's or Trousers, Airman's Battle Uniform, Women's.

*Contracting Activity Officer:* Mr. Robert Panichelle, Defense Supply Center Philadelphia, Philadelphia, PA.

#### **ServiceS**

*Service Type/Location:* Document Destruction, Internal Revenue Service, 1901 Butterfield Road, Downers Grove, Illinois.  
2001 Butterfield Road, Downers Grove, Illinois.  
230 S. Dearborn Street, IRS Field Procurement Operation, Chicago, Illinois.  
3615 Park Drive, Olympia Fields, Illinois.  
5860 W. 111th Street, Chicago, Illinois.  
8125 River Drive, Morton Grove, Illinois.



860 Algonquin Road, Schaumburg, Illinois.  
945 Lake View Parkway, Vernon Hills,  
Illinois.

NPA: Opportunity, Inc., Highland Park, IL.  
*Contracting Activity:* Internal Revenue  
Service, Dallas, TX.

*Service Type/Location:* Document  
Destruction, U.S. Railroad Retirement  
Board, 844 North Rush Street, Chicago,  
Illinois.

NPA: Opportunity, Inc., Highland Park,  
Illinois.

*Contracting Activity Officer:* U.S. Railroad  
Retirement Board, Chicago, Illinois.

*Service Type/Location:* Facilities  
Management, Air Force Space  
Command, Los Angeles Air Force Base,  
El Segundo, California.

NPA: PRIDE Industries, Inc., Roseville,  
California.

*Contracting Activity:* 61st Contracting  
Squadron/LGCC, El Segundo, California.

#### Deletions

On August 4, 2006, the Committee for  
Purchase From People Who Are Blind or  
Severely Disabled published notice (70  
FR 44255) of proposed deletions to the  
Procurement List.

After consideration of the relevant matter  
presented, the Committee has  
determined that the services listed below  
are 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 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 deleted from the Procurement  
List.

#### End of Certification

Accordingly, the following services are  
deleted from the Procurement List:

#### Services

*Service Type/Location:* Grounds  
Maintenance, U.S. Army Reserve Center,  
Anthony F. Eafrazi, Weirton, Weirton,  
West Virginia.

NPA: Hancock County Sheltered Workshop,  
Inc., Weirton, West Virginia.

*Contracting Activity:* Department of the  
Army.

*Service Type/Location:* Janitorial/Custodial,  
GSA, Distribution Depot, 500 Edwards  
Avenue, Harahan, Louisiana.

NPA: Louisiana Industries for the Disabled,  
Inc., Baton Rouge, Louisiana.

*Contracting Activity:* GSA, PBS.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. E6-16080 Filed 9-28-06; 8:45 am]

**BILLING CODE 6353-01-P**

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List; Proposed Additions And Deletions

**AGENCY:** Committee for Purchase from  
People Who Are Blind or Severely  
Disabled.

**ACTION:** Proposed Addition to and  
Deletions from Procurement List.

**SUMMARY:** The Committee is proposing  
to add to the Procurement List a service  
to be furnished by nonprofit agencies  
employing persons who are blind or  
have other severe disabilities, and to  
delete services previously furnished by  
such agencies.

*Comments Must be Received on or  
Before:* October 29, 2006.

**ADDRESSES:** Committee for Purchase  
From People Who Are Blind or Severely  
Disabled, Jefferson Plaza 2, Suite 10800,  
1421 Jefferson Davis Highway,  
Arlington, Virginia, 22202-3259.

*For Further Information or to Submit  
Comments Contact:* Sheryl D. Kennerly,  
Telephone: (703) 603-7740, Fax: (703)  
603-0655, or e-mail  
[SKennerly@jwod.gov](mailto:SKennerly@jwod.gov).

**SUPPLEMENTARY INFORMATION:** This  
notice is published pursuant to 41  
U.S.C. 47(a) (2) and 41 CFR 51-2.3. Its  
purpose is to provide interested persons  
an opportunity to submit comments on  
the proposed actions.

#### Addition

If the Committee approves the  
proposed addition, the entities of the  
Federal Government identified in this  
notice for the service will be required to  
procure the service 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 service to the Government.

2. If approved, the action will 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 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 service is proposed for  
addition to Procurement List for  
production by the nonprofit agency  
listed:

*Service Type/Location:* Full Food  
Service, FBI & Drug Enforcement  
Administration Training Academies,  
Quantico, Virginia.

NPA: ServiceSource, Inc., Alexandria,  
Virginia.

*Contracting Activity:* Federal Bureau  
of Investigation, Department of Justice,  
Washington, DC.

#### Deletions

#### Regulatory Flexibility Act Certification

I certify that the following action will  
not have a significant impact on a  
substantial number of small entities.  
The major factors considered for this  
certification were:

1. If approved, the action 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 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 deletion from the Procurement List.

#### End of Certification

The following services are proposed  
for deletion from the Procurement List:

#### Services

*Service Type/Location:* Janitorial/  
Custodial Maritime Building (Only),  
Port Road, Riviera Beach, Florida.

NPA: Elwyn, Inc., Aston, PA.

*Contracting Activity:* General Services  
Administration.

*Service Type/Location:* Janitorial/  
Grounds and Related Services, Motor  
Pool Office and Garage (Only), 450 N.  
Grande, Tucson, Arizona.

NPA: Beacon Group SW, Inc., Tucson,  
Arizona.

*Contracting Activity:* GSA, PBS—9PMFC, San Francisco, California.  
*Service Type/Location:* Janitorial/Custodial, Federal Records Center and USDA Laboratory, 1557 St. Joseph Avenue, East Point, Georgia.  
*NPA:* WORKTEC, Jonesboro, Georgia.  
*Contracting Activity:* GSA, PBS.  
*Service Type/Location:* Repair of Small Hand Tools, Robins Air Force Base, Robins AFB, Georgia.  
*NPA:* Epilepsy Association of Georgia, Warner Robins, Georgia.  
*Contracting Activity:* Department of the Air Force.  
*Service Type/Location:* Custodial Services, Denver Federal Center, Buildings 41, 44, and 48, Denver, CO.  
*NPA:* Aspen Diversified Industries, Inc., Colorado Springs, CO.  
*Contracting Activity:* GSA, PBS Region 8, Denver, CO.

**Sheryl D. Kennerly,**  
*Director, Information Management.*  
 [FR Doc. E6-16081 Filed 9-28-06; 8:45 am]  
**BILLING CODE 6353-01-P**

**DEPARTMENT OF COMMERCE**  
**International Trade Administration**  
**Initiation of Antidumping and Countervailing Duty Administrative Reviews**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.  
**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Sheila E. Forbes, Office of AD/CVD

Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4697.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates.

*Initiation of Reviews:* In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 2007.

	Period to be reviewed
<b>Antidumping Duty Proceedings</b>	
Argentina:	
Oil Country Tubular Goods, A-357-810, Siderca, S.A.I.C .....	8/1/05-7/31/06
Seamless Line and Pressure Pipe, A-357-809, Siderca, S.A.I.C .....	8/1/05-7/31/06
Brazil: Seamless Pipe, A-351-826, V & M do Brasil S.A./Vallourec & Mannesmann Brazil .....	8/1/05-7/31/06
Canada: Corrosion-Resistant Carbon Steel Flat Products, A-122-822 .....	8/1/05-7/31/06
Dofasco Inc.	
Stelco Inc.	
France: Corrosion-Resistant Carbon Steel Flat Products, A-427-808 .....	8/1/05-7/31/06
Duferco Coating SA	
Sorrail SA	
Italy: Granular Polytetrafluoroethylene (PTFE) Resin, A-475-703, Solvay Solexis, S.p.A .....	8/1/05-7/31/06
Japan: Oil Country Tubular Goods, A-588-835 .....	8/1/05-7/31/06
JFE Steel Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Malaysia: Polyethylene Retail Carrier Bags, A-557-813 .....	8/1/05-7/31/06
Europlastics Malaysia Sdn. Bhd.	
Eplastics Procurement Center Sdn. Bhd.	
Mexico: Oil Country Tubular Goods, A-201-817 .....	8/1/05-7/31/06
Hylsa, S.A. de C.V.	
Tubos de Acero de Mexico, S.A.	
Republic of Korea:	
Corrosion-Resistant Carbon Steel Flat Products, A-580-816 .....	8/1/05-7/31/06
Dongbu Steel Co., Ltd.	
Hyundai HYSCO	
Pohang Iron and Steel Co., Ltd./Pohang Coated Steel Co., Ltd./Pohang Steel Industries Co., Ltd.	
Union Steel Manufacturing Co., Ltd.	
Oil Country Tubular Goods, A-580-825 .....	8/1/05-7/31/06
Husteel Co., Ltd.	
Nexteel Co., Ltd.	
SeAH Steel Corporation	
Romania: Cut-to-Length Carbon Steel Plate, A-485-803 .....	8/1/05-7/31/06
Metalexportimport, S.A.	
Mittal Steel Galati S.A. (successor to Ispat Sidex)	
Socialist Republic of Vietnam: Frozen Fish Fillets, <sup>1</sup> A-552-801 .....	8/1/05-7/31/06

	Period to be reviewed
<p>Alphasea Co., Ltd.                      An Giang Agriculture and Foods Import Export Company (aka Afiex, A. Seafood, Afiex Seafood, or An Giang Afiex Company)                      An Giang Agriculture Technology Service Company (aka ANTESCO)                      An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or AnGiang Fisheries Import and Export)                      An Lac Seafood Co., Ltd.                      ANHACO                      Bamboo Food Co., Ltd.                      Basa Co., Ltd.                      Ben Tre Forestry and Aquaproduct Import-Export Company (aka FAQUIMEX)                      Binh Dinh Import Export Company (aka Imex Binhdinh)                      Blue Sky Co., Ltd.                      Cam Ranh Seafood Processing Seaprodex Company                      Can Tho Agricultural and Animal Products Import Export Company (aka CATACO)                      Cantho Seafood Export (aka CASEAFOOD)                      Can Tho Animal Fishery Products Processing Export Enterprise (aka Cafatex)                      Cantho Import Export Seafood Joint Stock Company (CASEAMEX)                      Da Nang Seaproducts Import-Export Corporation (aka Da Nang or Seaprodex Danang)                      Dragon Waves Frozen Food Factory Co.                      Duyen Hai Foodstuffs Processing Factory (aka COSEAFEX).                      East Sea Seafoods Joint Venture Co., Ltd (aka East Sea Seafoods)<sup>2</sup>                      Geologistics Ltd.                      Gepimex 404 Company.                      Hai Thach Trading Services Co., Ltd.                      Hai Vuong Co., Ltd.                      Hung Vuong Co., Ltd.                      Kien Giang Ltd.                      Mekongfish Company (aka Mekonimex or Mekong Fisheries Joint Stock Company)                      Nam Duong Co., Ltd (aka KP Khanh Loi or Nam Duong Trading Co.)                      Nam Hai Co., Ltd.                      Nam Viet Company Limited (aka NAVICO)                      Nhan Hoa Co., Ltd.                      Phan Quan Trading Co., Ltd.                      Phu Thanh Frozen Factory.                      Phu Thuan Company (aka PT Co.)                      Phuoc My Seafoods Processing Factory.                      Phuong Dong Seafood Co., Ltd.                      Quang Dung Food Co., Ltd.                      QVD Food Company, Ltd<sup>3</sup>                      QVD Dong Thap Food Co., Ltd.                      Sadece Aquatic Products Import Enterprise (aka DOCIFISH)                      Thanh Viet Co. Ltd .                      Thuan Hung Co., Ltd (aka THUFICO)                      Tin Thinh Co. Ltd.                      Tuan Anh Company Limited.                      United Seafood Packers Co., Ltd.                      Van Duc Foods Export Joint Stock Co.                      Viet Hai Seafood Company Limited (aka Vietnam Fish-One Co., Ltd)                      Vinh Hiep Co., Ltd .                      Vinh Hoan Company, Ltd .                      Vinh Long Import-Export Company (aka Imex Cuu Long)                      VN Seafoods Co., Ltd.</p>	
Lian Heng Investment Co., Ltd. <sup>4</sup> .....	10/22/04-7/31/06
Lian Heng Trading Co., Ltd . .....	10/22/04-7/31/06
Thailand: Polyethylene Retail Carrier Bags, A-549-821 .....	8/1/05-7/31/06
<p>Advance Polybag Inc.                      Alpine Plastics Inc.                      APEC Film Ltd .                      API Enterprises Inc.                      Apple Film Co., Ltd.                      CP Packaging Industry Co. Ltd.                      King Pak Ind. Co. Ltd .                      Multibax Public Co., Ltd .                      Naraipak Co., Ltd .                      Polyplast (Thailand) Co., Ltd .                      Sahachit Watana Plastic Ind. Co., Ltd.                      Thai Plastic Bags Industries Co., Ltd .                      Thantawan Industry Public Co., Ltd .                      U. Yong Ltd, Part.                      U. Yong Industry Co., Ltd .                      Universal Polybag Co., Ltd.                      Winner's Pack Co., Ltd .</p>	
<i>The People's Republic of China:</i>	

	Period to be reviewed
Floor-Standing Metal-Top Ironing Tables <sup>5</sup> , A-570-888 ..... Foshan Shunde Yongjian Housewares & Hardware Co., Ltd Since Hardware (Guangzhou) Co., Ltd	8/1/05-7/31/06
Petroleum Wax Candles <sup>6</sup> , A-570-504 ..... Amstar Business Company Limited . Apex Enterprises International Ltd . Deseado International, Ltd . Fuzhou Eastown Arts Co., Ltd . Gift Creative Company, Ltd . Golden Industrial Co., Ltd . Maverick Enterprise Co., Ltd . Great Founder International Co. Qingdao Kingking Applied Chemistry Co., Ltd. Shantou Jinyuan Mingfeng Handicraft Co. Shanghai Shen Hong Arts and Crafts Co., Ltd. Shanghai Changran Enterprise, Ltd . Shenzhen Sam Lick Manufactory (and affiliated exporter Prudential (HK) Candles Manufacturing Co., Ltd) . Transfar International Corp.	8/1/05-7/31/06
Polyethylene Retail Carrier Bags, <sup>7</sup> A-570-886 ..... Chun Hing Plastic Packaging Mfy. Ltd. Chun Yip Plastic Bag Factory Crown Polyethylene Products (Int'l) Ltd. Dongguan Nozawa Plastics Co., Ltd. and United Power Packaging, Ltd. (collectively "Nozawa") Heng Rong Plastic Products Co., Ltd. Rally Plastics Co., Ltd. Samson Plastic Manufactory Co., Ltd.	8/1/05-7/31/06
<b>Countervailing Duty Proceedings</b>	
Canada: Alloy Magnesium, C-122-815, Norsk Hydro Canada Inc .....	1/1/05-8/15/05
Pure Magnesium, C-122-815, Norsk Hydro Canada Inc .....	1/1/05-8/15/05
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products, C-580-818 .....	1/1/05-12/31/05
Dongbu Steel Co., Ltd Pohang Iron & Steel Co., Ltd. Dynamic Random Access Memory Semiconductors, C-580-851, Hynix Semiconductor, Inc. (formerly Hyundai Elec- tronics Industries Co., Ltd.) .....	1/1/05-12/31/05
Stainless Steel Sheet and Strip in Coils, C-580-835, Dai Yang Metal Co., Ltd .....	1/1/05-12/31/05
<b>Suspension Agreements</b>	
None .....	.....

<sup>1</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of frozen fish fillets from the Socialist Republic of Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam entity of which the named exporters are a part.

<sup>2</sup> On August 31, 2006, East Sea Seafoods requested a new shipper review and an administrative review.

<sup>3</sup> On August 31, 2006, this company also separately requested for an administrative review under the name QVD Food So., Ltd. ("QVD").

<sup>4</sup> Both Lian Heng Investment Co., Ltd. and Lian Heng Trading Co., Ltd. are Cambodian companies. They are included in this initiation with an expanded POR pursuant to the Department's recent partial affirmative final determination of circumvention of the antidumping duty order on certain frozen fish fillets from Vietnam. See *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608, 38610-11 (July 7, 2006).

<sup>5</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of floor-standing metal-top ironing tables from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>6</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of petroleum wax candles from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>7</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of polyethylene retail carrier bags from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a

domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an

importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 26, 2006.

**Thomas F. Futtner,**

*Acting Office Director, AD/CVD Operations, Office 4, Import Administration.*

[FR Doc. E6-16067 Filed 9-28-06; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-533-809

#### Certain Forged Stainless Steel Flanges from India: Notice of Partial Rescission of New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is rescinding new shipper reviews of three companies for whom it had initiated new shipper reviews on April 6, 2006. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 17439 (April 6, 2006). Our basis for rescinding these new shipper reviews is described below.

**EFFECTIVE DATE:** September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482 2924 or (202) 482-0649, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 28, 2006, we received requests from four Indian manufacturers of forged stainless steel flanges for "a new shipper review... and (failing that) an administrative review." Those four companies were Kunj Forgings Pvt. Ltd. (Kunj), Micro Forge (India) Ltd. (Micro), Pradeep Metals Limited (Pradeep), and Rollwell Forge, Ltd. (Rollwell). On April 5, 2006, we initiated an administrative review of each of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006). On April 6, 2006, based on the certifications and documentation these companies submitted, we initiated a new shipper review of each of them. *See Stainless Steel Flanges from India:*

*Notice of Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 17439 (April 6, 2006). The period of review for both the administrative review and the new shipper reviews is February 1, 2005, through January 31, 2006.

We issued antidumping questionnaires for both the administrative review and the new shipper review to each of the four companies on April 6, 2006. We received section A responses from all four companies on May 8, 2006. We received section B responses from Kunj, Pradeep, and Rollwell on May 31, 2006. We received a section D response from Micro (which reported that its home market was not viable) and from Pradeep on May 31, 2006. We also received section C responses from all four respondents on May 31, 2006.

Subsequent to initiating the new shipper reviews the Department conducted a data query of entry information from Customs and Border Protection (CBP). We determined, based on our review of those data, that Micro and Pradeep had no entries during the period of review, and therefore do not qualify for an administrative review for the period February 1, 2005, through January 31, 2006. We also determined that expanding the normal period of review to include an entry and sale to an unaffiliated customer in the United States would likely prevent the completion of the new shipper review within the time limits set forth in section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i). *See* 19 CFR 351.214(f)(2).

With respect to Rollwell, we determined that Rollwell does not qualify for a new shipper review because it had entries of subject merchandise that occurred prior to the entry it reported in its February 28, 2006, request for new shipper review. Therefore, the request does not satisfy the requirements of 19 CFR 351.214(b)(2)(iv)(A) and (C) because the submitted documentation does not establish the sale date or shipment date of Rollwell's actual first shipment to the United States. Furthermore, Rollwell did not submit its request for a new shipper review within one year of the first of its prior entries as required by 19 CFR 351.214(c). Moreover, Rollwell did not report the volume of sales subsequent to its first entry of subject merchandise, or even the volume of sales subsequent to the entry it reported in its February 28, 2006, request for a new shipper review. Therefore, Rollwell's request does not satisfy the requirements of 19 CFR 351.214(b)(2)(iv)(B). We have

determined, however, that Rollwell qualifies for the administrative review initiated on April 5, 2006.

In a memorandum to the file dated August 23, 2006, the Department stated that it had determined (based on the reasons described above) that Micro, Pradeep, and Rollwell had not met the regulatory requirements for new shipper reviews, and we therefore intended to rescind the new shipper reviews with respect to these companies. *See* memorandum to the file dated August 23, 2006, regarding "Intent to Rescind New Shipper Reviews of Micro Forge (India), Ltd., Pradeep Metals, Ltd., and Rollwell Forge, Ltd., and to Continue the New Shipper Review of Kunj Forgings Pvt., Ltd." We then invited parties to submit comments on our intent to rescind. We received no comments.

#### Scope of the Antidumping Duty Order

The products covered by this order are certain forged stainless steel flanges, both finished and not finished, generally manufactured to specification ASTM A-182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld-neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A-351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the scope of the order.

#### Partial Rescission of New Shipper Reviews

We have determined, for the reasons given above, that Micro, Pradeep, and Rollwell do not qualify for new shipper reviews. Therefore, we are rescinding the new shipper reviews with respect to Micro and Pradeep in accordance with 19 CFR 351.214(f)(2). We are also rescinding the new shipper review with

respect to Rollwell because its request for review does not meet the requirements of 19 CFR 351.214(b)(iv)(A), (B), and (C), and 19 CFR 351.214(c).

#### Notification

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection (CBP) to collect a bond or other security in lieu of a cash deposit in new shipper reviews. In accordance with H.R. 4, on August 18, 2006, the Department instructed CBP that importers will no longer have the option of posting a bond to fulfill security requirements for shipments of forged stainless steel flanges from India produced and exported by Kunj, Micro, Pradeep, and Rollwell, and entered, or withdrawn from warehouse, for consumption in the United States.

This notice also serves as the only reminder to any parties that are subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This notice is published in accordance with sections 751(a)(1) of the Act and 19 CFR 351.214(f)(3).

Dated: September 22, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6-16066 Filed 9-28-06; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE.

### International Trade Administration

A-570-893

#### Certain Frozen Warmwater Shrimp from the People's Republic of China: Initiation of New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** September 29, 2006.

**SUMMARY:** The Department of Commerce ("Department") has determined that a request to conduct a new shipper review of the antidumping duty order on frozen warmwater shrimp from the People's

Republic of China ("PRC"), received on August 31, 2006, meets the statutory and regulatory requirements for initiation. Therefore, in accordance with 19 CFR 351.214(d), we are initiating a new shipper review for Maoming Changxing Foods Co., Ltd. ("MCFC"). The period of review ("POR") for this new shipper review is February 1, 2006, through July 31, 2006.<sup>1</sup>

#### FOR FURTHER INFORMATION CONTACT:

Michael Quigley or Christopher Riker, AD/CVD Operations, Import Administration, Office 9, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4047 or (202) 482-3441, respectively.

#### Background

The notice announcing the antidumping duty order on certain frozen warmwater shrimp from the PRC was published on February 1, 2005. *See PRC Shrimp Order*. The Department received a timely request from MCFC on August 31, 2006, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on frozen warmwater shrimp from the PRC.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), MCFC certified that it did not export frozen warmwater shrimp to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), MCFC certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported frozen warmwater shrimp to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), MCFC also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), MCFC submitted documentation establishing the following: (1) the date on which it first shipped frozen warmwater shrimp for

export to the United States; (2) the volume of its first shipment (and certification of no subsequent shipments); and (3) the date of its first sale to an unaffiliated customer in the United States.

The Department conducted customs database queries to confirm that MCFC's shipment of subject merchandise during the POR had entered the United States for consumption and had been suspended for antidumping duties, and that there had been no subsequent shipments.

#### Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act, and 19 CFR 351.214, we find that the request made by MCFC, a producer and exporter, meets the threshold requirements for the initiation of a new shipper review for the shipment of certain frozen warmwater shrimp from the PRC. *See Memorandum to the File through James C. Doyle, Director, AD/CVD Operations, Office 9, from Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9: New Shipper Initiation Checklist* (September 22, 2006).

Pursuant to 19 CFR 351.214(g)(1)(i)(B), if the new shipper review is initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this new shipper review will be February 1, 2006, through July 31, 2006. We intend to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days from the date on which the preliminary results are issued. *See* section 751(a)(2)(B)(iv) of the Act; 19 CFR 351.214(i)(1).

Interested parties needing access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act and 19 CFR 351.214.

Dated: September 22, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration*

[FR Doc. E6-16070 Filed 9-29-06; 8:45 am]

BILLING CODE 3510-DR-S

<sup>1</sup> The antidumping duty order for certain frozen warmwater shrimp from PRC was published on February 1, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005) ("PRC Shrimp Order"). Therefore, a semiannual request for a new shipper review based on the anniversary month, February, was due to the Department by the final day of August 2006. *See* 19 CFR 351.214(d)(1).

**DEPARTMENT OF COMMERCE****International Trade Administration**

A-588-046

**Polychloroprene Rubber from Japan: Final Changed Circumstances Review and Determination to Revoke Finding in Part**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** September 29, 2006.

**SUMMARY:** On August 11, 2006, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review with intent to revoke, in part, the antidumping duty (AD) finding on polychloroprene rubber from Japan. See *Polychloroprene Rubber from Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Finding in Part*, 71 FR 46189 (August 11, 2006) (*Initiation and Preliminary Results*). We are now revoking this finding in part, with regard to certain polychloroprene rubber products from Japan, as described in the "Scope of Changed Circumstances Review" section of this notice, based on the fact that domestic parties have expressed no further interest in the relief provided by the finding with respect to the imports of such products.

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482-5831 and (202) 482-5253, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On June 30, 2006, the Department received a request on behalf of the petitioner, DuPont Performance Elastomers L.L.C. (DuPont), for revocation in part of the AD finding on polychloroprene rubber from Japan pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (the Act). DuPont requested partial revocation of the finding with respect to certain polychloroprene rubber products, listed below in the section entitled "Scope of Changed Circumstances Review." In its June 30, 2006, submission, DuPont stated that it no longer has any interest in antidumping relief from imports of such polychloroprene rubber from Japan. On

August 11, 2006, the Department published a notice of initiation and preliminary results of a changed circumstances review with intent to revoke, in part, the AD finding on polychloroprene rubber from Japan. See *Initiation and Preliminary Results*. The Department provided interested parties with a deadline to submit written comments no later than 14 days after the date of publication of the *Initiation and Preliminary Results*. *Id.*, 71 FR at 46190. No party commented on the Department's preliminary results of changed circumstances review.

**Scope of Changed Circumstances Review**

The merchandise subject to DuPont's request and covered by this changed circumstances review is polychloroprene rubber from Japan with (1) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and methacrylic acid, where the dispersion has a pH of 8 or lower (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of these polychloroprenes that contain comonomers other than methacrylic acid); (2) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and 2,3-dichlorobutadiene-1,3 modified with xanthogen disulfides, where the dispersion has a solids content of greater than 59 percent (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of polychloroprenes that contain comonomers other than 2,3-dichlorobutadiene-1,3); and (3) solid polychloroprenes that are dipolymers of chloroprene and 2,3-dichlorobutadiene-1,3 having a 2,3-dichlorobutadiene-1,3 content of 15 percent or greater (this category is limited to polychloroprenes in solid form and does *not* include aqueous dispersions). This changed circumstances administrative review covers polychloroprene rubber from Japan meeting the specifications as described above. Effective upon publication of this final results of changed circumstances review in the **Federal Register**, the amended scope of the finding will read as identified in the following section of this notice:

**Scope of the Finding (As Amended By These Final Results of Changed Circumstances)**

Imports covered by this finding are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.41.00, 4002.49.00,

4003.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and customs purpose. The Department's written description of the scope remains dispositive.

In addition, the following types of polychloroprene rubber from Japan are excluded from the scope of the finding: (1) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and methacrylic acid, where the dispersion has a pH of 8 or lower (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of these polychloroprenes that contain comonomers other than methacrylic acid); (2) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and 2,3-dichlorobutadiene-1,3 modified with xanthogen disulfides, where the dispersion has a solids content of greater than 59 percent (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of polychloroprenes that contain comonomers other than 2,3-dichlorobutadiene-1,3); and (3) solid polychloroprenes that are dipolymers of chloroprene and 2,3-dichlorobutadiene-1,3 having a 2,3-dichlorobutadiene-1,3 content of 15 percent or greater (this category is limited to polychloroprenes in solid form and does *not* include aqueous dispersions).

**Final Results of Review; Partial Revocation of Antidumping Duty Finding**

The affirmative statement of no interest by the petitioner concerning certain polychloroprene rubber from Japan, as described herein, constitutes changed circumstances sufficient to warrant revocation of this finding in part. The Department received no comments contesting the petitioner's statement of no interest. Therefore, the Department is partially revoking the finding with respect to certain polychloroprene rubber from Japan with regard to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d) 351.222(g). We will instruct the U.S. Customs and Border Protection to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain polychloroprene rubber, meeting the specifications indicated above, as of the date of publication in the **Federal Register** of the final results of this changed

circumstances review in accordance with 19 CFR 351.222(g)(4).

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances review, partial revocation of the AD duty finding and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: September 22, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-16068 Filed 9-28-06; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-894

#### **Certain Tissue Paper Products from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On April 28, 2006, the Department of Commerce (the Department) published in the **Federal Register** (71 FR 25145) a notice announcing the initiation of the antidumping duty administrative review on certain tissue paper products (tissue paper) from the People's Republic of China (PRC). The period of review (POR) is September 21, 2004, through February 28, 2006. This review is now being rescinded for Fujian Naoshan Paper Industry Group Co., Ltd. (Naoshan), Fuzhou Magicpro Gifts Co., Ltd. (Magicpro), Guilin Qifeng Paper Co., Ltd. (Guilin Qifeng), Goldwing Co., Ltd. (Goldwing), and AR Printing and Packaging (AR P&P), because the only requesting party withdrew its request in a timely manner.

**EFFECTIVE DATE:** September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kristina Boughton or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-8173 or (202) 482-0409, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On March 30, 2005, the Department published in the **Federal Register** an antidumping duty order covering tissue paper from the PRC. *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*Tissue Paper Order*). On March 2, 2006, the Department published a *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 71 FR 10642.

On March 30, 2006, interested party Cleo Inc., an importer of subject merchandise, requested, in accordance with 19 CFR 351.213(b), an administrative review of the antidumping duty order on tissue paper from the PRC for China National Aero-Technology Import & Export Xiamen Corp. (China National), Putian City Hong Ye Paper Products Co., Ltd., and Putian City Chengxiang Qu Li Feng covering the POR. On March 31, 2006, Seaman Paper Company of Massachusetts, Inc., petitioner, requested, in accordance with 19 CFR 351.213(b), an administrative review of the antidumping duty order on tissue paper from the PRC for 16 companies covering the POR. The companies are AR P&P, China National, Foshan Sansico Co., Ltd., Naoshan, Magicpro, Gifiworld Enterprise Co., Ltd., Guilin Qifeng, Goldwing, Kepsco, Inc., Max Fortune Industrial Limited, PT Grafitcindo Ciptaprima, PT Printec Perkasa, PT Printec Perkasa II, PT Sansico Utama, Sansico Asia Pasific Limited, and Vietnam Quijiang Paper Co., Ltd.

On March 31, 2006, Samsam Productions Ltd. requested, in accordance with 19 CFR 351.213(b), an administrative review of the antidumping duty order on tissue paper from the PRC for itself and its affiliated Chinese supplier Guangzhou Baxi Printing Products Co., Ltd. for the POR, as did Max Fortune Industrial Limited and Max Fortune Paper Products Co., Ltd. On April 28, 2006, the Department initiated an administrative review of 20 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006).

On July 24, 2006, petitioner requested that the Department extend the deadline for withdrawing requests for specific producers and exporters in the instant administrative review. On July 26, 2006, in accordance with 19 CFR 351.213(d)(i), the Department granted an extension for withdrawing requests until August 25, 2006. On August 25, 2006, petitioner filed a letter withdrawing its request for review of five companies, Naoshan, Magicpro, Guilin Qifeng, Goldwing, and AR P&P. Petitioner was the only party to request a review of these five companies.

##### **Rescission of Review**

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. The regulation also states that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. In this instance, petitioner requested a 29-day extension of the deadline to withdraw review requests. The Department granted the extension because the Department had not yet committed substantial resources to reviewing these companies. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Hungary: Rescission of Antidumping Duty Administrative Review*, 65 FR 35610 (June 5, 2000). Petitioner then submitted a request withdrawing the review with respect to the five companies within the extended 119-day deadline, in accordance with 19 CFR 351.213(d)(1). Because petitioner was the only party to request an administrative review of these five companies, we are partially rescinding this review of the antidumping duty order on tissue paper from the PRC covering the period September 21, 2004, through February 28, 2006, with respect to Naoshan, Magicpro, Guilin Qifeng, Goldwing, and AR P&P.

##### **Assessment**

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For those companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department will issue appropriate assessment



instructions directly to CBP within 15 days of publication of this notice.

#### Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 25, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6-16065 Filed 9-28-06; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 3.3

**ACTIONS:** Notice; establishment of Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 3.3 (CPDC—S&A 3.3) under provisions of the Federal Advisory Committee Act and announcement of the first meeting of the Committee.

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule of Federal Advisory Committee

Management, 41 CFR part 102-3, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the National Oceanic and Atmospheric Administration (NOAA) Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 3.3 (CPDC—S&A 3.3) is in the public interest, in connection with the performance of duties imposed on the Department by law. The CPDC—S&A 3.3 will advise the Secretary, through the Under Secretary of Commerce for Oceans and Atmosphere, on CCSP Topic 3.3: "Weather and Climate Extremes in a Changing Climate". This advice will be provided in the form of a draft Synthesis and Assessment product intended to be used by NOAA to develop a final product in accordance with the Guidelines for Producing the CCSP Synthesis and Assessment Products, the OMB Peer Review Bulletin, and the Information Quality Act Guidelines. The CPDC—S&A 3.3 will consist of no more than 35 members to be appointed by the Under Secretary to assure a balanced representation among preeminent scientists, educators, and experts reflecting the full scope of the scientific issues addressed in CCSP Synthesis and Assessment Product 3.3. The CPDC—S&A 3.3 will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, fifteen days from the date of publication of this notice.

Following establishment of CPDC—S&A 3.3, the first committee meeting will be held. All sessions of the meeting will be open to the public.

**Place:** The first meeting of CPDC—S&A 3.3 will be held at the International Pacific Research Center, Honolulu, Hawaii.

**Time and Date:** The meeting will convene at 8:30 a.m. on Monday, October 30, 2006 and adjourn at 12 noon on Thursday, November 2, 2006. Meeting information will be available online on the CPDC—S&A 3.3 Web site (<http://www.climate.noaa.gov/index.jsp?pg=/.ccsp/33.jsp>). Please note that meeting times and agenda topics described below are subject to change.

**Status:** The meeting will be open to public participation and will include a 60-minute public comment period on October 30 from 10 a.m. to 11 a.m. (check Web site to confirm this time). The CPDC—S&A 3.3 expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group

making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received by the CPDC—S&A 3.3 Designated Federal Official (DFO) by October 20, 2006 to provide sufficient time for review. Written comments received after October 20 will be distributed to the CPDC—S&A 3.3, but may not be reviewed prior to the meeting date. Seats will be available to the public on a first-come, first-served basis.

**Matters To Be Considered:** The meeting will (1) work on an initial draft document based on detailed outline presented in the final Prospectus (2) review of plans for completion and submission of the First Draft of Synthesis and Assessment Product 3.3 to the National Research Council for expert review.

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher D. Miller, CPDC—S&A 3.3 DFO and the Program Manager, NOAA/OAR/Climate Program Office, Climate Change Data and Detection Program Element, 1100 Wayne Avenue, Suite 1210, Silver Spring, Maryland 20910; telephone 301-427-2376, e-mail: [Christopher.D.Miller@noaa.gov](mailto:Christopher.D.Miller@noaa.gov).

Dated: September 25, 2006.

**Sharon Schroeder,**

*Director of Program Policy Division, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. E6-16059 Filed 9-28-06; 8:45 am]

BILLING CODE 3510-KD-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082806C]

#### Endangered and Threatened Species; Recovery Plans

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

**ACTION:** Notice of Availability; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces the availability of the Proposed Upper Columbia Spring Chinook Salmon, Steelhead, and Bull Trout Recovery Plan (Plan) for public review and comment. The Plan addresses the Upper Columbia Spring Chinook Salmon (*Oncorhynchus tshawytscha*) Evolutionarily Significant Unit (ESU), the Upper Columbia Steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS), and

Bull Trout (*Salvelinus confluentus*) in the Upper Columbia region. The Plan was prepared by the Upper Columbia Salmon Recovery Board (UCSRB) in conjunction with NMFS. Bull trout, listed as threatened, are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and are the subject of a draft recovery plan published by the USFWS in 2002. NMFS is soliciting review and comment from the public and all interested parties on the spring Chinook salmon and steelhead portions of the Proposed Plan. If comments are received on the bull trout portion of the Plan, NMFS will pass them on to the USFWS.

**DATES:** NMFS will consider and address all substantive comments received during the comment period. Comments must be received no later than 5 p.m. Pacific Daylight Time on November 28, 2006.

**ADDRESSES:** Please send written comments and materials to Lynn Hatcher, National Marine Fisheries Service, 304 South Water Street, Ellensburg, WA 98926. Comments may also be submitted by e-mail to: [UpperColumbiaPlan.nwr@noaa.gov](mailto:UpperColumbiaPlan.nwr@noaa.gov). Include in the subject line of the e-mail comment the following identifier: Comments on Upper Columbia Salmon Plan. Comments may be submitted via facsimile (fax) to 503-872-2737.

Persons wishing to review the Plan can obtain an electronic copy (i.e., CD-ROM) from Carol Joyce by calling 503-230-5408 or by e-mailing a request to [carol.joyce@noaa.gov](mailto:carol.joyce@noaa.gov), with the subject line "CD-ROM Request for Upper Columbia Salmon Plan". Electronic copies of the Plan are also available on-line on the NMFS Web site; [www.nwr.noaa.gov/Salmon-Recovery-Planning/ESA-Recovery-Plans/Draft-Plans.cfm](http://www.nwr.noaa.gov/Salmon-Recovery-Planning/ESA-Recovery-Plans/Draft-Plans.cfm) or the Upper Columbia Salmon Recovery Board Web site; [okanogancounty.org/planning/salmon\\_recovery.htm](http://okanogancounty.org/planning/salmon_recovery.htm).

**FOR FURTHER INFORMATION CONTACT:** Lynn Hatcher, NMFS Interior Columbia Salmon Recovery Coordinator (509-962-8911 x223), or Elizabeth Gaar, NMFS Salmon Recovery Division (503-230-5434).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). The ESA requires that recovery plans incorporate (1) objective, measurable criteria which, when met, would result in a determination that the species is no

longer threatened or endangered; (2) site specific management actions necessary to achieve the plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for listed species unless such a plan would not promote the recovery of a species.

NMFS' goal is to restore endangered and threatened Pacific salmon ESUs and steelhead DPSs to the point that they are again self sustaining members of their ecosystems and no longer need the protections of the ESA. NMFS believes it is critically important to base its recovery plans on the many state, regional, tribal, local, and private conservation efforts already underway throughout the region. Therefore, the agency supports and participates in locally led collaborative efforts to develop recovery plans, involving local communities, state, tribal, and Federal entities, and other stakeholders. As the lead ESA agency for listed salmon, NMFS is responsible for reviewing these locally produced recovery plans and deciding whether they meet ESA statutory requirements and merit adoption as proposed ESA recovery plans.

On December 30, 2005, the Upper Columbia Salmon Recovery Board (UCSRB) presented its locally developed draft recovery plan to NMFS. The UCSRB comprises representatives from Chelan County, Douglas County, Okanogan County, Yakama Nation, and the Confederated Colville Tribes. A variety of additional partners, representing Federal agencies, Washington State agencies, regional organizations, special purpose districts, and members of the public, also participated in the planning process.

After NMFS reviewed the draft plan, NMFS and the UCSRB made revisions to it, clarifying how it satisfies ESA recovery plan requirements and addressing additional elements needed to comply with those requirements. The jointly revised Plan is now available as a Proposed Recovery Plan for public review and comment.

Upon approval of a final Plan, NMFS will make a commitment to implement the actions in the Plan for which it has authority, to work cooperatively on implementation of other actions, and to encourage other Federal agencies to implement Plan actions for which they have responsibility and authority. NMFS will also encourage the State of Washington to seek similar implementation commitments from state agencies and local governments. NMFS expects the Plan to help NMFS and other Federal agencies take a more

consistent approach to future section 7 consultations and other ESA decisions. For example, the Plan will provide greater biological context for the effects that a proposed action may have on the listed ESU and DPS. This context will be enhanced by adding recovery plan science to the "best available information" for section 7 consultations as well as for section 10 habitat conservation plans, and other ESA decisions. Such information includes viability criteria for the ESU, DPS, and their independent populations; better understanding of and information on limiting factors and threats facing the ESU and DPS; better information on priority areas for addressing specific limiting factors; and better geographic context for where the ESU and DPS can tolerate varying levels of risk.

##### **The Plan**

The Plan is one of many ongoing salmon recovery planning efforts funded under the Washington State Strategy for Salmon Recovery. The State of Washington designated the UCSRB as the Lead Entity for salmon recovery planning for the Upper Columbia. The Plan incorporates many aspects of the work of the Interior Columbia Technical Recovery Team (ICTRT) appointed by NMFS. The ICTRT reviewed early drafts of the Plan and will be providing an independent scientific peer review of the Proposed Recovery Plan. The UCSRB has included public involvement in its recovery planning process, having received extensive comments in January, April, and June of 2005.

##### **ESU and DPS Addressed and Planning Area**

The Plan is intended for implementation within the range of the Upper Columbia River Spring Chinook Salmon (*O. tshawytscha*) ESU, listed as endangered on March 24, 1999 (64 FR 14307), and the Upper Columbia River Steelhead (*O. mykiss*) DPS, listed as endangered on August 18, 1997 (62 FR 43937), and reclassified as threatened on January 5, 2006 (71 FR 834). The spring Chinook salmon ESU contains three independent populations: the Wenatchee, Entiat, and Methow. The steelhead DPS contains five independent populations: Wenatchee, Entiat, Methow, Okanogan, and Crab Creek. These independent populations were identified based on the genetic, geographic, and habitat characteristics they share within the ESU or the DPS.

The Plan states that the current status of Upper Columbia Chinook and steelhead populations was assessed by local planners in consultation with the

ICTRT and state and tribal co-managers. In general, abundance of all spring Chinook salmon and steelhead populations has declined substantially from historical levels, and many populations are small enough that genetic and demographic risks are relatively high.

### The Plan's Recovery Goals, Objectives and Criteria

The Plan's goal is to ensure long-term persistence of viable populations of naturally produced spring Chinook and steelhead distributed across their native range. The Plan incorporates the four parameters of abundance, productivity, spatial structure, and diversity, which are the basis of NMFS' viable salmonid population (VSP) framework (McElhany *et al.* 2000), as the foundation for biological status assessments and recovery goals.

The Plan's recovery (delisting) objectives include increasing the abundance of naturally produced spring Chinook and steelhead spawners within each population in the Upper Columbia ESU/DPS to levels considered viable; increasing the productivity (spawner:spawner ratios and smolts/redds) of naturally produced spring Chinook salmon and steelhead within each population to levels that result in low risk of extinction; restoring the distribution of naturally produced spring Chinook salmon and steelhead to previously occupied areas where practical; and conserving their genetic and phenotypic diversity.

Because spring Chinook are currently listed as endangered under the ESA, the Plan identifies two levels of objectives for them. The first level relates to reclassifying the species as threatened and the second relates to recovery (delisting). The reclassification objectives include increasing the abundance, productivity, and distribution of naturally produced spring Chinook salmon sufficient to lead to reclassification as threatened, and conserving their genetic and phenotypic diversity.

The Plan sets forth specific criteria to meet the recovery objectives, based on the ICTRT's recommended criteria, which, if met, would indicate a high probability of persistence into the future for Upper Columbia River spring Chinook salmon and steelhead. The Plan establishes criteria for 95- percent probability of persistence

(5-percent extinction risk) for all Upper Columbia spring Chinook salmon and all but one population of the steelhead DPS. The Plan concludes that the Upper Columbia steelhead DPS may be recovered without attaining the 95-

percent probability of persistence for the Crab Creek population, based on the possibility that this population was not viable historically because of environmental conditions (e.g., intermittent stream flows and high water temperatures) and the assumption that the resident component of the Crab Creek population was historically the primary driver of the population's viability.

The ICTRT recently recommended a higher criterion for an ESU/DPS containing only one major population group (MPG), which is the case for both Upper Columbia spring Chinook salmon and Upper Columbia steelhead. The ICTRT recommended, in that case, that at least two populations should meet abundance/productivity criteria representing a 1-percent extinction risk (99-percent probability of persistence) over a 100-year period (ICTRT 2005b, p. 46). The ICTRT considers the 5-percent risk level "viable" and the 1-percent risk level "highly viable." The Plan does not adopt this more recent recommendation; instead, as stated above, the Plan adopts the 5-percent extinction risk for abundance/productivity for all populations in the Chinook salmon ESU and all but one in the steelhead DPS.

NMFS accepts the UCSRB's recommended recovery (delisting) criteria, since it calls for all known extant populations within the Chinook ESU and steelhead DPS to be viable. Furthermore, NMFS believes that it is not possible at this time to distinguish between the levels of effort needed to attain 95- vs. 99-percent probability of persistence; therefore, the Plan's actions would not change at this time in response to the ICTRT's more recently recommended criterion. Finally, NMFS will re-evaluate ESU and DPS status and the appropriateness of the recovery criteria in 5 years or less based on additional data from monitoring and research on critical uncertainties and could modify the recovery plan accordingly.

In accordance with its responsibilities under ESA section 4(c)(2), NMFS will conduct status reviews of the listed Upper Columbia spring Chinook salmon ESU and Upper Columbia steelhead DPS at least once every 5 years to evaluate their status and determine whether the ESU or DPS should be removed from the list or changed in status. Such evaluations will take into account the following:

- The biological recovery criteria (ICTRT 2005b) and listing factor (threats) criteria described in the Plan.
- The management programs in place to address the threats.

- Principles presented in the Viable Salmonid Populations paper (McElhany *et al.* 2000).

- Best available information on population and ESU status and new advances in risk evaluation methodologies.

- Other considerations, including: the number and status of extant spawning groups; the status of the major spawning groups; linkages and connectivity among groups; the diversity of life history and phenotypes expressed; and considerations regarding catastrophic risk.

- Principles laid out in NMFS' Hatchery Listing Policy (70 FR 37204, June 28, 2005).

### Causes for Decline and Current Threats

The Plan identifies the following causes for decline and threats to the ESU/DPS:

*Habitat:* Human activities have altered and/or curtailed habitat-forming processes and limited the habitat suitable for spring Chinook salmon and steelhead in the Upper Columbia River tributaries. Although recent land and water management practices have improved, some storage dams, diversions, roads and railways, agriculture, residential development, and forest management continue to threaten spring Chinook salmon and steelhead and their habitat. The result has been deleterious changes in water flow, water temperature, sedimentation, floodplain dynamics, riparian function, and other aspects of the ecosystem.

*Hydroelectric operations:* Conditions for Upper Columbia spring Chinook salmon and steelhead have been fundamentally altered throughout the Columbia River basin by the construction and operation of mainstem dams and reservoirs for power generation, navigation, and flood control. Upper Columbia salmon and steelhead are adversely affected by hydrosystem-related flow and water quality effects, obstructed and/or delayed passage, and ecological changes in impoundments.

*Harvest:* Harvest of Upper Columbia Chinook salmon and steelhead occurs in commercial, recreational, and tribal fisheries in the mainstem Columbia, and in some tributaries. Upper Columbia spring Chinook salmon and steelhead are rarely taken in ocean fisheries; most harvest of these listed species occurs in the Columbia mainstem and some tributaries. Aggregate harvest rates (from fishing in all areas) have generally been reduced from their peak periods as a result of international treaties, fisheries conservation acts, the advent of weak stock management in the 1970s and

1980s, regional conservation goals, and the listing of many salmon ESUs and steelhead DPSs under the ESA. While fisheries do not target weak stocks of listed salmon or steelhead, listed fish are incidentally caught in fisheries directed at hatchery and healthy, unlisted wild stocks.

**Hatcheries:** In the Upper Columbia Region, the 12 hatcheries currently producing spring Chinook and steelhead are operated to mitigate for loss of habitat and for passage mortalities resulting from the Columbia River hydrosystem. These hatcheries provide valuable mitigation and/or conservation benefits but can cause substantial adverse impacts if not properly managed. The Plan describes the risks to listed fish from these hatcheries, including genetic effects that reduce fitness and survival, ecological effects such as competition and predation, facility effects on passage and water quality, mixed stock fishery effects, and masking the true status of wild populations.

**Additional Factors:** The Plan considers that there could be additional factors that affect Upper Columbia River spring Chinook salmon and steelhead, including changes in estuarine habitat, global climate change, inadequacy of existing regulatory mechanisms, fluctuating ocean cycles, and predation.

### Recovery Strategies and Actions

The Plan's initial approach is to target reductions in all manageable threats and to improve the status of all extant Upper Columbia spring Chinook and steelhead populations. As monitoring and evaluation programs improve understanding of the effectiveness of various actions and their benefits throughout the life cycle of salmon and steelhead, adjustments may be made through the adaptive management framework described in the Plan.

The Plan describes objectives and strategies and recommends specific actions for Upper Columbia spring Chinook salmon and steelhead recovery. Among the most significant recommendations are the following:

**Habitat:** The Plan includes habitat restoration actions in all streams that currently support or may support (in a restored condition) listed spring Chinook salmon and steelhead in the Upper Columbia Basin. The objectives and recommended actions are derived from subbasin plans, watershed plans, the Upper Columbia Biological Strategy, the Douglas County public utility district (PUD) and Chelan County PUD Anadromous Fish Agreement and Habitat Conservation Plans (AFAHCPs), and relicensing agreements. The Plan

emphasizes actions that: protect existing areas where high ecological integrity and natural ecosystem processes persist; restore connectivity (access) throughout the historical range, where feasible and practical; protect and restore riparian habitat along spawning and rearing streams and identify long term opportunities for riparian habitat enhancement; protect and restore floodplain function and reconnection, off channel habitat, and channel migration processes where appropriate; and increase habitat diversity by rebuilding, maintaining, and adding instream structures (e.g., large woody debris, rocks, etc.) where long term channel form and function efforts are not feasible.

**Hydroelectric operations:** Upper Columbia spring Chinook and steelhead migrate through four federally owned projects and three to five projects owned by PUDs. These projects are licensed by the Federal Energy Regulatory Commission. The Plan acknowledges that hydropower strategies and actions are being implemented, reviewed, and considered in several ongoing processes, including Federal Columbia River Power System (FCRPS) ESA section 7 consultations (for the lower four Federal dams on the Columbia River), the AFAHCPs and relicensing agreements. The Plan's recommended actions are intended to be consistent with these processes. The Plan emphasizes continued implementation of the actions identified in the AFAHCPs, which adopted a standard of no net impact (NNI) on the Upper Columbia Spring Chinook Salmon ESU and steelhead DPS.

**Harvest:** Harvest objectives for treaty and non-treaty salmon and steelhead fisheries in the Columbia River Basin are set by the applicable state, tribal, and Federal agencies. Fishery objectives from McNary Dam to the mouth of the Columbia River (fishing zones 1–6) are established by state, tribal, and Federal parties in *U.S. v. Oregon*, 302 F. Supp. 899 (D. Or. 1969). While recognizing the role of the treaty and non-treaty co-managers, the Plan proposes that the *U.S. v. Oregon* parties incorporate Upper Columbia recovery goals when formulating fishery plans affecting Upper Columbia spring Chinook salmon and steelhead. The appropriate co-managers and fishery management agencies are also asked to work together with local stakeholders to develop tributary fisheries management goals and plans.

**Hatcheries:** The hatchery strategies and actions in the Plan are being reviewed and considered in several ongoing processes, including in the

Chelan County and Douglas County Public Utility District AFAHCPs, the Grant County biological opinion, and *U.S. v. Oregon*. NMFS hopes the Plan's recommended goals and actions will be implemented through these ongoing processes. The Plan emphasizes that hatchery programs play an essential role in spring Chinook salmon and steelhead recovery. Among other measures, the Plan proposes that hatchery programs employ mechanisms to manage hatchery returns on spawning grounds in balance with naturally produced fish, while maintaining production levels identified in various agreements. It also proposes that, as the populations recover, hatchery programs should be modified to minimize adverse impacts of hatchery fish on naturally produced fish.

**Integration:** The Plan states that recovery will depend on integrating actions that address habitat, harvest, and hydroelectric operations; moreover, it emphasizes that recovery actions must be implemented at both the ESU/DPS and the population scales.

### Time and Cost Estimates

The ESA section 4(f)(1) requires that the recovery plan include "estimates of the time required and the cost to carry out those measures needed to achieve the Plan's goal and to achieve intermediate steps toward that goal" (16 U.S.C. 1533[f](1)). Currently, the plan provides an overall cost estimate of \$138 million, which represents the estimated cost of implementing the tributary actions for habitat, hatcheries, and research, monitoring, and evaluation, over 10 years.

Cost estimates for Columbia mainstem hydropower and estuary actions are included in two modules that NMFS developed because of the regional scope and applicability of the actions. These modules are incorporated into the Upper Columbia Plan by reference and are available on the NMFS Web site: [www.nwr.noaa.gov/Salmon-Recovery-Planning/ESA-Recovery-Plans/Other-Documents.cfm](http://www.nwr.noaa.gov/Salmon-Recovery-Planning/ESA-Recovery-Plans/Other-Documents.cfm). The hydropower cost estimates will be updated over time, as the section 7 consultation on the remanded 2004 FCRPS BiOp is completed. The estuary recovery costs could be further refined following public comment on the ESA recovery plan for the three listed lower Columbia ESUs and one listed Lower Columbia steelhead DPS in 2007. There are virtually no estimated costs for recovery actions associated with harvest to report at this time. This is because no actions are currently proposed that go beyond those already being implemented through *U.S. v. Oregon* and other harvest management forums. In the

event that additional harvest actions are implemented through these forums, those costs will be added during the implementation phase of this recovery plan. All cost estimates will be refined and updated over time.

The Plan states that if its recommended actions are implemented, recovery of the spring Chinook salmon ESU and the steelhead DPS is likely to occur within 10 to 30 years. The cost estimates cover capital projects and non-capital work projected to occur within the first 10-year period. NMFS supports the policy determination to include 30 years of implementation, with the proviso that before the end of the first 10-year implementation period, specific actions and costs will be estimated for the subsequent years to achieve long-term goals and to proceed until a determination is made that listing is no longer necessary. NMFS agrees that a 10- to 30-year range is a reasonable period of time during which to implement and evaluate the actions identified in the Plan.

#### Conclusion

NMFS concludes that the Plan meets the requirements of ESA section 4(f) and thus is proposing it as an ESA recovery plan.

#### Literature Cited

Interior Columbia Technical Recovery Team. 2005a. Updated population delineation in the Interior Columbia Basin. National Marine Fisheries Service, Northwest Fisheries Science Center. Memorandum. May 11, 2005.

Interior Columbia Technical Recovery Team. 2005b. Viability criteria for application to Interior Columbia Basin salmonid ESUs. National Marine Fisheries Service, Northwest Fisheries Science Center. July 2005.

McElhany, P., M. H. Ruckelshaus, M. J. Ford, T. C. Wainwright, E. P. Bjorkstedt. 2000. Viable salmon populations and the recovery of evolutionarily significant units. U.S. Dept. of Commerce, NOAA Tech. Memo., NMFS-NWFSC-42, 156 p.

#### Public Comments Solicited

NMFS solicits written comments on the proposed Plan. All comments received by the date specified above will be considered prior to NMFS' decision whether to adopt the Plan. Additionally, NMFS will work with the UCSRB to provide a summary of the comments and responses through its regional Web site and provide a news release for the public announcing the availability of the response to comments. NMFS seeks comments particularly in the following areas: (1)

The analysis of limiting factors and threats; (2) the recovery objectives, strategies, and actions; (3) the criteria for removing the ESU and DPS from the Federal list of endangered and threatened wildlife and plants; and (4) estimates of time and cost to implement recovery actions, including the intent to be even more specific by soliciting implementation schedules.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: September 25, 2006.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 072006A]

#### Incidental Takes of Marine Mammals During Specified Activities; Geophysical Surveys in South San Francisco Bay South of the Dumbarton Bridge

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

**ACTION:** Notice; issuance of an incidental take authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to Fugro West, Inc. (Fugro), to take small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and gray whales, by harassment, incidental to geographical seismic surveys being conducted in south San Francisco Bay (SFB or Bay) in California.

**DATES:** This authorization is effective from September 11, 2006, until September 10, 2007.

**ADDRESSES:** A copy of the application, IHA, the Environmental Assessment (EA), and/or a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, NMFS, (301) 713-2289, ext 137, or Monica DeAngelis, NMFS, (562) 980-3232.

## SUPPLEMENTARY INFORMATION:

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

### Summary of Request

On March 30, 2006, URS Corporation (URS) on behalf of Fugro submitted an application to NMFS requesting an IHA for the possible harassment of small numbers of California sea lions

(*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsi*), harbor porpoises (*Phocoena phocoena*), and gray whales (*Eschrichtius robustus*) incidental to conducting geophysical surveys in south SFB, California. The purpose of the surveys is to aid the San Francisco Public Utility Commission (SFPUC) in the design of an underground water pipeline, the Bay Division Tunnel, in south SFB.

### Description of the Activity

The seismic study will span from Newark Slough and Plummer Creek adjacent to the Cargill Salt property in the east, to the Ravenswood Baylands open space on the western shore of SFB. The study will roughly parallel the existing SFPUC trans-bay pipelines, approximately 1 mile south of the Dumbarton Bridge. Marine seismic surveys will take approximately 8–10 days to perform. In the Newark Slough and Plummer Creek areas, work will be restricted to the non-pupping seasons of the harbor seal (July 1–November 30).

The geophysical (seismic) studies will include 21 seismic sample transects. A total of 25–35 linear miles (40–56 km) of marine-based geophysical sampling will occur. The marine seismic reflection data will be collected along a series of lines that cross the Bay centered over the projected alignment. A centerline and four wing lines are planned. Cross lines, or tie lines, will be run perpendicular to the centerline and extend 200–500 m (656–1,640 ft) beyond the alignment parallel lines, unless restricted by water depth or man-made obstructions. Water depths in the survey area range from roughly 14 m (45 ft) in the deeper mid-Bay channel to about 1.8–2.4 m (6–8 ft) along the shore and in Newark Slough at high tide. Work will be conducted at high tide in the shallow nearshore areas.

Data will be collected from a small boat that tows a seismic energy source and a multichannel hydrophone. Two energy sources will be used, a Squid “minisparker” system and a Geopulse “boomer” system. An onboard generator powers the energy sources. The hydrophone contains multiple sensors that detect the seismic waves reflected from the water bottom and subsea floor sediments and rocks. The hydrophone is filled with inert silicon oil.

The survey boat will travel along predetermined survey lines using a differential global positioning system (DGPS) for navigation. Boat speed during surveys will be at 3–4 knots. The length of time for each survey transect will vary depending on the total distance of the transect. The longest transects spanning from east to west

will take about 1 hour to complete. The shorter north-south transect will generally take less than 30 minutes to complete.

The energy source will be fired every 1/2 second (boomer) or 1 second (minisparker). Data received by the hydrophone are recorded with an onboard seismograph and laptop computer. Sound pressure level from a boomer operating at 350 joules is 204 dB re 1 microPa rms at 1 m, and from a mini-sparker is 209 dB re 1 microPa rms at 1 m. Frequency range for the boomer is at 750–3,500 Hz, with pulse duration 0.1 ms; and frequency range for the minisparker is at 150–2,500 Hz, with pulse duration 0.8 ms.

### Comments and Responses

A notice of receipt and request for 30-day public comment on the application, the proposed authorization, and a draft EA was published on June 20, 2006 (71 FR 35412). During the 30-day public comment period, comments were received from three entities, including a private citizen, the non-governmental organization Center for Biological Diversity (CBD), and the Marine Mammal Commission (the Commission).

*Comment 1:* One commenter opposes the project out of concern that sea lions, seals, and whales in the Bay would be killed by blasting and sonar.

*Response:* As described in detail in the **Federal Register** notice of receipt of the application (71 FR 35412, June 20, 2006), no blasting or sonar is planned to be used for the proposed seismic surveys. The project only uses low intensity acoustic device to conduct seismic surveys of the Bay bottom, and the sound levels used are not expected to cause any mortality, injury, or temporary threshold shift (TTS) of hearing to marine mammals.

*Comment 2:* The CBD questioned whether the authorized take meet certain conditions provided in the MMPA that exempt the moratorium on take of marine mammals. These conditions include that the proposed activity (a) must result in the incidental take of only “small numbers of marine mammals of a species or population stock;” and (b) can have no more than a “negligible impact” on species and stocks. Furthermore, the CBD stated its opinion that in issuing an authorization, NMFS must (a) provide for the monitoring and reporting of such takings and (b) prescribe methods and means of affecting the “least practicable impact” on the species or stock and its habitat.

*Response:* A **Federal Register** notice (71 FR 35412) published on June 20,

2006, provided a detailed description of the proposed activity. A thorough analysis of the proposed project, the potential impacts to marine mammal species and stocks, the potential impacts to marine mammal habitat, and proposed implementation of mitigation measures by using the best available scientific information was presented in the above referenced **Federal Register** notice and is not repeated here. The analysis prompted NMFS to reach a conclusion that the proposed project would only result in the incidental take of small numbers of marine mammals, and would have no more than a negligible impact on marine mammal species and stocks in the vicinity of the project area. In addition, no take by Level A harassment (injury) or death is anticipated.

NMFS also solicited comments from the Commission and its Scientific Advisors during the public comment period. The Commission concurs with NMFS’ finding that, in light of the proposed mitigation measures, the proposed activities are unlikely to have more than a negligible, short-term impact on the potentially affected marine mammal species and stocks. Therefore, NMFS believes that the authorized harassment takes should be at the lowest level practicable due to incorporation of mitigation measures described in the IHA and in this document.

The same **Federal Register** notice also provided a detailed description of the monitoring and reporting requirements.

*Comment 3:* The CBD stated that as a threshold issue, an IHA issued pursuant to 16 USC section 1371(a)(5)(D) is only available if the activity has no potential to result in serious injury or mortality to a marine mammal. If such injury or mortality is possible, take can only be authorized pursuant to a Letter of Authorization (LOA) consistent with regulations promulgated pursuant to 16 USC section 1371(a)(5)(A) and 50 CFR section 216.105. Because of the very real risk of marine mammal injury and death from seismic surveys, the CBD expressed its opinion that as a general principle, that the IHA process was inappropriate for authorizing take related to seismic surveys.

*Response:* As mentioned previously, in light of the proposed mitigation measures, the proposed activities are unlikely to have more than a negligible, short-term impact on the potentially affected marine mammal species and stocks. This conclusion is also supported by the Commission. Therefore, no take by Level A harassment (injury) or death is anticipated by the proposed action,

therefore, issuance of an LOA is not warranted.

*Comment 4:* The CBD is concerned about the link between seismic surveys and marine mammal stranding events. CBD provided the following examples to support its concern: In 2002, 2 beaked whales (*Ziphius cavirostris*) were found to have stranded in the Gulf of California, Mexico, coincident with geographical surveys that were being conducted in the area (Hildebrand, 2004). That same year, endangered adult humpback whales were reported to have stranded in unusually high numbers along Brazil's Abrolhos Banks, where oil-and-gas surveys were being conducted (Engel *et al.*, 2004). Additionally, the CBD cited studies that suggested that critically endangered western Pacific gray whales were displaced from important feeding grounds and exhibited behavioral changes in response to seismic surveys off Russia's Sakhalin Island (Wursig *et al.*, 1999; Weller *et al.*, 2002). Moreover, CBD cited that one court case that addressed the likely impacts of seismic surveys on marine mammals found sufficient evidence of harm to enjoin the project (see CBD v. National Science Foundation, 2002 WL 31548073).

*Response:* These examples presented in the comment are irrelevant to the proposed project by SFPUC. While the use of air guns, as noted in the above examples, are standard methods for oil and gas exploration related seismic surveys, the geophysical/seismic surveys proposed by SFPUC will only use two types of low intensity acoustic equipment, the mini-sparker or the boomer. The difference of energy output levels between air guns and the mini-sparker or boomer to be used by SFPUC, is at least in the multitude of 600 times, in terms of sound pressure level (SPL).

In addition, although on several occasions multiple animal strandings occurred in the vicinity where there have been seismic surveys conducted using powerful air guns, the causation between seismic surveys and strandings has yet to be scientifically established. Two of the references (Hildebrand, 2004; Engel *et al.*, 2004) cited did not state that seismic surveys are the cause of the strandings. The report by Wursig *et al.* (1999), cited in Comment 3, provided a detailed study of behavioral ecology of the western Pacific gray whale that summers off Sakhalin Island, Russia. This report by Wursig *et al.* (1999) did not suggest that the species were displaced from their important feeding ground as suggested in the CBD comment. On the contrary, a follow-up final report (Wursig *et al.*, 2000) on the same subject stated that "whales did not

appear to be displaced by industrial activity."

In general, pressure pulses from air guns have longer rise times and are, therefore, less likely to cause damaging pressure waves such as those emitted from high explosives. To date there is no evidence that seismic pulses cause acute physical damage to marine mammals (Gordon *et al.*, 2004).

*Comment 5:* The CBD stated that NMFS cannot authorize some take (i.e. harassment) if other unauthorized take (i.e. serious injury or mortality) may also occur. Because CBD believes that because NMFS has not promulgated any regulations pursuant to 16 USC sec 1371(a)(5)(A) related to seismic surveys, neither an IHA nor an LOA can lawfully be issued for SFPUC's proposed activities. CBD further states that even if an IHA were the appropriate vehicle to authorize take for SFPUC's planned activities, because the proposed IHA, as drafted, is inconsistent with the statutory requirements for issuance, it cannot lawfully be granted by NMFS.

*Response:* Findings reached by NMFS scientists and also supported by the Scientific Advisors of the Commission, supported NMFS' determination that serious injury or mortality is not likely to occur from the proposed low-intensity seismic survey. Please refer to the **Federal Register** notice published on June 20, 2006 (71 FR 35412) and latter in this document for more information. Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. An authorization shall be granted if NMFS finds that the taking (1) will have a negligible impact on the species or stock(s), (2) will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and, (3) that the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth.

*Comment 6:* The CBD questions about the analyses NMFS conducted on reaching the finding of "small numbers." CBD states that while the IHA request does estimate the number of harbor seals that may be affected, the EA prepared by NMFS discuss only "negligible impact" and does not address the number of marine mammals to be harassed. CBD is concerned that none of the documents address the number of sea lions or harbor seals that may be impacted.

*Response:* NMFS' **Federal Register** notice (71 FR 35412, June 20, 2006)

states that "California sea lions, harbor porpoises and gray whales are not known to regularly visit the proposed project area." Therefore, while NMFS is unable to provide an accurate estimate of the numbers of these animals that may be taken by Level B harassment, that number would be from zero to a few individuals at most. As for the harbor seal, both the **Federal Register** notice and the EA provided a population estimate of the species within the proposed project based on a five-year survey (per. Comm. Monica DeAngelis, NMFS Southwest Region, 2006), which is approximately 42 individuals that use Newark Slough, the nearby haul-out site. This meets the definition of "small numbers" required by the MMPA, when compared to the total population of the California stock of harbor seal (minimum population estimate of 31,600; Carretta *et al.*, 2006).

*Comment 7:* The CBD questions NMFS' conclusion that underwater noise below 160 dB re 1 microPa rms dB would not constitute harassment and cited the following examples: In its recent decision document related to seismic surveys associated with oil and gas exploration in the Chukchi Sea, NMFS imposed a 120-dB safety zone for aggregations of bowhead whales based on its finding that "bowhead whales apparently show some avoidance in areas of seismic sounds at levels lower than 120 dB" (MMS, 2006). CBD further states that harbor porpoises, a species of marine mammal which may be found in the project zone, have been reported to avoid a broad range of sounds low-frequency (airgun pulses), mid-frequency (sonar transmissions), and high-frequency (acoustic harassment devices) at very low sound pressure levels (between 100 and 140 dB re 1  $\mu$ Pa) (Kastelein *et al.*, 2000; Olesiuk *et al.*, 2002; Calambokidis *et al.*, 1998; NMFS, 2005).

*Response:* Marine mammals' responses to underwater sounds vary widely from species to species due to their different hearing sensitivities towards different frequency bands (Richardson *et al.*, 1995). While bowhead whales may be affected by seismic sounds above 120 dB re 1 microPa in the Beaufort Sea, it is not known whether they will respond in a similar manner when in waters other than the Beaufort Sea. In addition, bowhead whales do not occur in SFB. In the harbor porpoise examples referenced in *Comment 7*, harbor porpoises were exposed to acoustic signals with much higher frequencies than the acoustic signals being produced by the proposed project (150 3,500 Hz). For example, the experiment

conducted by Kastelein *et al.* (2000) used three types of sound and all had harmonics with high sound pressure levels above 11 30 kHz. Gordon *et al.* (1998) reported on experimental playbacks to harbor porpoises in inshore waters around Orkney, Scotland, using a small source air gun (source level 228 dB re 1 microPa at 1 m) and observed no changes in the rate of acoustic contact as a result of sound exposure. In general, it is well known that harbor porpoises' hearing sensitivity drops sharply as frequency goes under 8,000 Hz (Andersen, 1970; Kastelein *et al.*, 2002).

Additionally, as discussed in the EA, the proposed project area in south SFB falls in one of the largest metropolitan regions in North America. Since SFB is home to a variety of industrial activities and increased vessel traffic, it is expected that ambient noise levels are higher than those in other non-metropolitan areas. Therefore, it is likely that marine mammals in SFB are habituated to a high level of ambient noise due to these daily anthropogenic sounds.

Furthermore, as discussed above and in the **Federal Register** notice (71 FR 35412, June 20, 2006), marine mammal densities within the proposed project area are typically very low. California sea lions, harbor porpoises and gray whales are not known to regularly visit the proposed project area. Based on a five-year study, the average number of harbor seal utilizing the haul-out site is only approximately 42 individuals. Therefore, NMFS believes that any take, if occurs, would constitute Level B harassment (e.g., behavior).

**Comment 8:** The CBD is concerned that the calculation of numbers of marine mammals harassed by SFPUC is likely an underestimate as it relies on a received sound threshold (160 dB) that is too high.

**Response:** It is NMFS' criterial that underwater noise level of 160 dB re 1 microPa and below would not cause Level B harassment to most marine mammal species, including these species found in the action area. Please see response to **Comment 7** for additional information.

**Comment 9:** The CBD questions NMFS' criteria for avoiding Level A harassment for cetaceans (180 dB) and for pinnipeds (190 dB). CBD is not aware of scientific justification for these thresholds exists. As demonstrated in the literature cited in CBD's previous IHA comments, the CBD believes that these thresholds are too high. CBD cited studies undertaken on the acoustic sensitivity of pinnipeds and suggested that these species are at lower risk of

threshold shift or auditory injury than cetaceans (Kastak *et al.*, 2005; Kastak *et al.*, 1999). Furthermore, CBD stated that some pinnipeds, such as harbor seals, have exhibited low discomfort thresholds, suggesting acute sensitivity to anthropogenic noise (Kastelein *et al.*, 2006). CBD points out that harbor seals are the marine mammal the EA identifies as most likely to be affected by seismic surveys, and given their sensitivity to acoustic disturbance, they should be given especially rigorous protection.

**Response:** In 1998, scientists convened at the High Energy Seismic Sound (HESS) Workshop, reviewed the available scientific information, and agreed on the received sound levels above which marine mammals might incur permanent tissue damage resulting in a permanent threshold shift (PTS) of hearing. Shortly thereafter, a NMFS panel of bioacousticians used the information gathered at the HESS workshop to establish the current Level A Harassment acoustic criteria for non-explosive sounds, 180 dB re 1 microPa-m (rms) for cetaceans, and 190 dB re 1 microPa-m (rms) for pinnipeds, exposed to impulsive sounds. In the absence of good sound scientific information for specific species, NMFS conservatively adopt these criteria to establish safety zones, within which monitoring or mitigation measures must be applied, for all cetacean and pinniped species.

A study by Finneran *et al.* (2002) on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*), used the behavioral response paradigm by exposing a bottlenose dolphin and a beluga whale to intense impulses from a seismic watergun. Results from this experiment showed that masked temporary threshold shifts (MTTS) occurred to the beluga whale after exposure to an impulsive sound of 160 kPa, or 226 dB re 1 microPa peak-to-peak (p-p), with total energy fluxes of 186 dB re 1 microPa<sup>2</sup>-s. No MTTS was observed in the dolphin at the highest exposure conditions: 207 kPa, 228 dB re 1 microPa p-p, and 188 dB re 1 microPa<sup>2</sup>-s total energy flux.

No comparable studies have been conducted on pinnipeds regarding their responses to impulsive sounds. The two references (Kastak *et al.*, 2005; Kastak *et al.*, 1999) cited in the comment cannot be used to address the noise responses of pinnipeds for the proposed project because animals in these studies were exposed to band noises for extended durations (20 22 minutes in Kastka *et al.*, 1999; 20, 25, and 50 minutes in Kastka *et al.*, 2005). On the contrary, acoustic signals used in the proposed

projects are impulse sound with extremely short duration (0.1 and 0.8 mili-second for the boomer and the mini-sparker, respectively), thus much lower energy flux. In the third reference (Kastelein *et al.*, 2006) cited in the comment, harbor seals were also exposed to band noise, and no TTS was observed. All these studies underscore the importance of including sound exposure metrics (incorporating sound pressure level and exposure duration) in order to fully assess the effects of noise on marine mammal hearing, not by just looking at the absolute sound pressure levels.

**Comment 10:** The CBD is concerned that, even with the mitigation measures described in the EA, it is quite possible that marine mammals, being well camouflaged, and who remain underwater for long periods of time, may wander into the safety zone. CBD is concerned that the tiny margin of error NMFS is allowing may result Level A harassment. At 100 m (328 ft) from the mini-sparker or 45 m (148 ft) from the boomer, the effective sound reaching a marine mammal would be 179 dB, which is 1 dB lower than the cited in NMFS criteria 180 dB level to avoid Level A harassment of cetaceans.

**Response:** NMFS does not agree with the CBD concern. First, not all marine mammals remain underwater for long periods of time. As noted in the **Federal Register** notice (71 FR 35412, June 20, 2006), harbor seals in SFB dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.*, 1995), and the mean diving duration for gray whales is approximately 1.84 minutes (Wursig *et al.*, 2003). Second, as sound amplitudes in dB are measured in log scale, 1 dB re 1 microPa difference translates to 1.26 times difference in energy level. Please see response to **Comment 9** regarding NMFS Level A Harassment criteria for noise exposure by marine mammals.

**Comment 11:** The CBD disagrees with the decision that NMFS did not analyze the fourth alternative in its EA, which would have required acoustic monitoring. Under the current plan, NMFS would have operators rely exclusively on visual monitoring in maintaining a safety zone around the array for marine mammals. CBD argues that although a large whale would likely be detected by visual observers, harbor porpoise would be very difficult to observe visually. CBD states that passive acoustic surveys are not just beneficial, they are eminently practicable, and cites the example of the United Kingdom's



Joint Nature Conservation Committee (JNCC) mandates the use of passive monitoring that “where there are species of particular conservation importance or where a given species or group is difficult to detect by visual observation alone” (JNCC, 2004).

*Response:* NMFS does not agree with CBD’s comment. As noted in the draft EA (NMFS, 2006), the radii (45 m (148 ft) for the boomer and 100 m (328 ft) for the mini-sparker) based on the 180-dB re 1 microPa isopleths are too small to allow for accurate and effective passive acoustic monitoring (PAM). The JNCC (2004) stated, “in practice this will mean that the exclusion zone must reflect the range accuracy of the system and will often be more than 500 m.” The JNCC also noted that in many cases PAM is not as accurate as visual observation when determining range. Thus, NMFS believes that in this particular seismic survey project, where the safety zone is sufficiently small and less than the JNCC’s recommended 500 m (1,640 ft), is not warranted.

*Comment 12:* The CBD noticed that the draft EA did not explain the “Additional Passive and Active Acoustic Monitoring” measures to which it alluded and stated that the mere suggestion that such additional measures exist means that NMFS should have explored these measures in order to comply with the MMPA’s prescription that all methods and means of ensuring the least practicable impact have been adopted. CBD urges NMFS to take whatever additional measures are available to ensure that no Level A harassment takes place, and at very least to seriously consider additional available mitigation measures, such as PAM.

*Response:* NMFS does not agree with CBD’s comment. Acoustic monitoring is neither warranted nor would it work within such a small area. Please refer to response for *Comment 11* for acoustic monitoring. As far as additional mitigation measures are concerned, as part of the IHA, NMFS requires the surveyors to “soft start” acoustic device when work is initiated to allow any marine mammals that are potentially missed during the pre-survey monitoring to vacate the project area. However, NMFS considers that the likelihood of Level A harassment occurring during this project to be remote, given that pre-survey monitoring should be very effective for such a small area.

*Comment 13:* The CBD noted that “URS will develop a monitoring plan that would collect data for each distinct marine mammal species observed in the south Bay proposed project area during

the period of seismic surveys” (71 FR at 35415). CBD is concerned that there is no such monitoring plan is now in place, and, therefore, the public cannot review the adequacy of such a plan.

*Response:* URS provided a brief outline of its monitoring plan in its application. URS worked with scientists at NMFS Headquarters and the Southwest Regional Office to develop a set of agree upon mitigation requirements and procedures for the proposed seismic survey project. These were provided in detail in the **Federal Register** notice (71 FR 35412, June 20, 2006). Based on these mitigation requirements and procedures, URS submitted an updated monitoring plan which was approved by NMFS, and is discussed later in this document. A copy of the monitoring plan can be downloaded from NMFS’ Office of Protected Resources Web site (see **ADDRESSES**).

*Comment 14:* Both the proposed IHA notice and the EA state that NMFS does not intend to consult under the ESA as no listed species are in the action area. While no ESA-listed marine mammals are likely to be in the action area, CBD argues that the South Bay area of the proposed seismic surveys is within the range of ESA-listed fish. Both steelhead trout and coho salmon historically occurred in the South Bay and spawned in the various tributaries. There are still important runs of steelhead in South Bay creeks that could be affected by the seismic surveys.

*Response:* NMFS Permit, Conservation and Education Division has discussed this proposed project with endangered species biologists from NMFS Southwest Region. Although available information indicates that a couple of the listed salmonids may occur in the project area, these species use SFB primarily as a migration corridor en route to the Pacific Ocean to rear as juveniles or to upstream areas to spawn as adults. This migration takes place in the winter and spring months. Adult steelhead and adult winter-run Chinook salmon typically begin migrating through SFB in early December. Adult spring-run Chinook salmon migrate through the SFB during the spring months. Juvenile steelhead and Chinook salmon migrate downstream through SFB during the late winter and spring months. Since the proposed seismic survey is planned in summer/fall months, specifically to avoid potential impacts to ESA-listed fish species, NMFS believes that no ESA-listed fish species will be affected by the proposed seismic surveys. Therefore, no section 7 consultation is warranted.

*Comment 15:* The EA acknowledges that coho salmon historically had runs in the South Bay, including such tributaries as Newark Slough (at the eastern end of the project activity), and that coho may still be transitory or incidental visitors to the South Bay. CBD is also concerned about the Central California Coast Coho Evolutionary Significant Unit (“ESU”), which the EA determined not to be affected due to their low hearing sensitivity, and because “the proposed project would be limited to relatively small areas, temporary in duration, would not block fish passage, and would not contribute towards Bay water turbidity.”

CBD is also concerned about various Distinct Population Segments (“DPSs”) of West Coast steelhead (*Oncorhynchus mykiss*), which were listing as “threatened” or “endangered” on January 5, 2006 (71 FR 634). CBD points out that steelhead continue to run in several creeks in the action areas. CBD recommends NMFS to initiate section 7 consultation, as the proposed seismic testing threatens several runs of the Central California Coast steelhead DPS.

*Response:* NMFS disagree with CBD’s comment on the potential impacts of the activity on listed fish species, and determines no listed species will be affected. Please see response to *Comment 14* for more information.

*Comment 16:* The CBD is concerned that NMFS’ dismissal of potential acoustic impacts to fish because salmon have “low hearing sensitivity” is not scientifically supportable. CBD argues that fish are sensitive to acoustic disruption, particularly the high-decibel disruptions planned in this project.

CBD states that one series of recent studies showed that fish sustained extensive damage to the hair cells located at the sensory epithelia of the inner ear after they were exposed to impulsive air gun noise. The damage, described as “blebbing” and “blistering” on the surface of the epithelia, “suggest that hair cells had been ‘ripped’ from the epithelia (immediate mechanical damage) or, alternatively, had ‘exploded’ after exposure (physiological damage)” (McCauley *et al.*, 2003).

*Response:* NMFS disagree with CBD’s assessment on acoustic impact on fish species in the project area. First, it is important to understand that different fish species differ greatly in the range of frequencies, or bandwidth of sound that they are able to detect, just like any other animal groups (e.g., mammalian species). Second, the draft EA did not state that “salmon have low hearing sensitivity”. The draft EA states that salmonids have “low hearing sensitivity

for sounds above 150 Hz." One should not be confused that the parameter in this case is the frequency of sound, as measured in Hz or kHz, not the amplitude (or loudness), which is normally measured in decibel (dB).

The lowest levels of the sound detected at each frequency (or hearing threshold) by several salmon species are described in several studies (e.g., Hawkins and Johnstone, 1978; Knudsen *et al.*, 1992; 1994), and it is general accepted that these fish response to sound at frequencies generally below about 35 Hz (Knudsen *et al.*, 1994; Hastings and Popper, 2005). It also appears, however, that these fish only respond when they are very close to the infrasound source, most likely because very low-frequency sound will not propagate in shallow water (Rogers and Cox, 1988).

The experiments by McCauley *et al.* (2003), as cited in the comment, were conducted by carrying out trials where pink snapper (*Pagrus auratus*) held in cages and were exposed to signals from an air-gun towed toward and away from the cages. The air-gun, which has a source level of 222.6 dB re 1 microPa p-p (or 203.6 dB re 1 microPa rms) at 1 m, was towed from start up at 400 800 m (1,312 2,615 ft) away to 5 15 m (16 49 ft) at closest approach to the cage. The study showed that the ears of fish exposed to an operating air-gun sustained extensive damage to their sensory epithelia that was apparent as ablated hair cells. However, the authors cautioned that several caveats must be considered when interpreting these results. First, the fish studied were caged and could not swim away from the sound source. Video monitoring of behavior suggested that the fish would have fled the sound source if possible. It is also likely that many fish species hearing the approaching air-gun would swim away, as has been observed on a large scale by Engas *et al.* (1996). Second, the authors also cautioned that the fish used (i.e., pink snapper) are more sensitive to intense stimulation than other species such as salmon. Third, the impact of exposure on ultimate survival of the fish is not clear.

Finally, due to the transient and short-term (8 – 10 days) nature of the proposed project, the timing of the project (to avoid the time period when ESA-listed species are expected to be present), and because the acoustic energy being introduced into the water is relatively low, NMFS does not believe that the proposed project will affect ESA-listed fish species in the project area.

*Comment 17:* As with marine mammals, CBD is also concerned about

noise-induced temporary hearing loss in fish. CBD states that even at fairly moderate levels, noise from outboard motor engines is capable of temporarily deafening some species of fish, and other sounds have been shown to affect the short-term hearing of a number of other species, including sunfish and tilapia (Scholik and Yan, 2002a; Scholik and Yan, 2002b; Smith *et al.*, 2003).

CBD cited several studies that documented noise affects on fish species. For example, fish display marked "alarm" responses to airguns and other forms of anthropogenic noise (Knudsen *et al.*, 1992; McCauley *et al.*, 1999; Wardle *et al.*, 2001). Also for years fishermen in various parts of the world have complained about declines in their catch after intense acoustic activities moved into the area, suggesting that noise is seriously altering the behavior of some commercial species (McCauley *et al.*, 2000). A group of Norwegian scientists attempted to document these declines in a Barents Sea fishery and found that catch rates of haddock and cod (the latter known for its particular sensitivity to low-frequency sound) plummeted in the vicinity of an airgun survey across a 1,600 square-mile area, an area larger than the state of Rhode Island. In another experiment, catch rates of rockfish were similarly shown to decline (Engas *et al.*, 1996; Skliski *et al.*, 1992; L kkeborg and Soldal, 1993). Drops in catch rates in these experiments range from 40 to 80 percent.

CBD is also concerned about possible high mortalities from noise exposure in developmental stages of fish. CBD cited that a number of studies, including one on non-impulsive noise, show that intense sound can kill eggs, larvae, and fry outright or retard their growth in ways that may hinder their survival later (Dalen *et al.*, 1996; Dalen and Knutsen, 1987; Banner and Hyatt, 1993; Kostyuchenko, 1973). Also, larvae in at least some species are known to use sound in selecting and orienting toward settlement sites (Simpson *et al.*, 2005). Acoustic disruption at that stage of development could have significant consequences on affected species (Popper, 2003).

*Response:* Unless the impacts of anthropogenic sounds are directly affecting marine mammal food sources impacts on non-ESA-listed fish species are not related to the issuance of this IHA. As addressed in the previous response, because the transient and short-term (8 – 10 days) nature of the proposed project, and because the low acoustic energy being introduced into the water is relatively low, NMFS does not believe that the proposed project

will significantly affect marine mammal food sources or any non-ESA-listed fish species/stocks in the survey area. In addition, many of the experiments cited in the comments were conducted on fish that were placed in confined cages and could not swim away. Those studies (e.g., (Scholik and Yan, 2002a; Scholik and Yan, 2002b; Smith *et al.*, 2003) also exposed fished for long duration with continuous noise, which contained significantly more acoustic energy, as compared to brief pulsed sound from seismic surveys.

As for the alarm behavior expressed by the Atlantic salmon, the study cited in the comments (Knudsen *et al.*, 1992) used low frequency intense sound under 150 Hz to elicit awareness reaction. The authors stated that "the 150 Hz sound failed to evoke avoidance responses, even at a level 30 dB above the threshold for spontaneous awareness reactions." This conclusion supports that salmonids have lower sensitivity towards sounds at and above 150 Hz. A separate study cited in the comment (Wardle *et al.*, 2001) used high-power airgun to evaluate the effects of seismic airguns on marine fish. Despite some "C-start reactions" displayed by a triple G. airgun (three synchronized airguns), the authors stated that "the sound of the G. guns had little effect on the day-to-day behaviour of the resident fish and invertebrates."

*Comment 18:* The Commission recommends that, prior to issuing the requested authorization, the NMFS

(1) determine whether the proposed pre-survey and post-survey monitoring are of sufficient duration and extent to yield meaningful results;

(2) specify the minimum approach distances around Newark Slough and Plummer Creek during the harbor seal pupping season to ensure that seals are not disturbed at those sites;

(3) require that the applicant inform stranding network participants of the dates of the proposed activities to alert them that any animals that strand around those dates should be examined for signs of acoustic trauma; and

(4) specify that survey activities be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to the proposed activities.

*Response:* The proposed project would occur in a limited area for 8 – 10 days, and the potential impacts, if any, to marine mammals are expected to be minimal as discussed in the **Federal Register** notice (71 FR 35412, June 20, 2006). Therefore, NMFS believes that

the proposed pre-survey and post-survey monitoring are of sufficient duration and extent for such a small scale operation. NMFS also believes that notifying the stranding network participants of the dates of the proposed activities is not warranted since no injury or mortality is likely or authorized from the proposed seismic surveys.

The proposed seismic surveys will be carried out in summer/fall of 2006, which is not harbor seal pupping season. Therefore, no nursing seals or seal pups are expected to be disturbed at Newark Slough and Plummer Creek.

NMFS agrees with the Commission that survey activities should be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury may have occurred incidental to the proposed activities. This requirement is one of the conditions in the IHA.

#### **Description of the Marine Mammals Potentially Affected by the Activity**

The marine mammals most likely to be found in SFB are the California sea lion, Pacific harbor seal, and harbor porpoise. From December through May, gray whales may also be present in the Bay. General information of these species can be found in Carretta *et al.* (2006), which is available at the following URL: <http://www.nmfs.noaa.gov/pr/pdfs/sars/po2005.pdf>. Refer to that document for information on these species. Additional information on these species is presented below.

##### *Pacific harbor seal*

Within the project area, Pacific harbor seals are known to haul-out near the junction of Newark Slough and Plummer Creek. Newark Slough is a continually used seal haul-out site, although it is used by small numbers of harbor seals compared with Mowry Slough to the south and Yerba Buena Island and Castro Rocks in the North Bay. Harbor seals are also known to utilize Newark Slough as a pupping site (Harvey and Oates, 2002) and up to 82 individuals have been documented hauling-out at that location on a single day. During a five-year survey period between 2000 and 2005 at Newark Slough, an average of 42 individuals were counted each year during the pupping season, compared to Mowry Slough 2 miles to the south, where an average of 279 animals were counted each year during the pupping season. The California stock of harbor seal is the only stock of this species found in the proposed project area, and its

abundance is estimated to be 34,233 (Carretta *et al.*, 2006).

##### *California sea lion*

California sea lions breed off the Central and Southern California coastline. Once the pupping season is completed (May - June), male sea lions migrate north and enter the Bay. Although California sea lions are mainly known for haul-out sites off the San Francisco and Marin shorelines within the Bay, it is possible for this species to forage in the south Bay area as well. The U.S. stock of the California sea lion population is estimated between 237,000 to 244,000 (Carretta *et al.*, 2006).

##### *Gray whale*

In the past, eastern Pacific gray whales have been seen irregularly in SFB. These individuals likely wandered off the migration route. The number of gray whales observed in the Bay increased in 1999 and 2000, and the observed whales apparently were feeding in a number of areas in May and June. The increased aberrancies of gray whale sightings in timing and location, along with foraging activities on its migration route in 1999 and 2000, were potentially caused by a significant decline in amphipod density in gray whale's feeding ground in the Bering and Chukchi seas (Le Boeuf *et al.*, 2000). Although twice being hunted to the brink of extinction in the mid 1800s and again in the early 1900s, the eastern North Pacific gray whales population has since increased to a level that equals or exceeds pre-exploitation numbers (Jefferson *et al.*, 1993). Angliss and Lodge (2006) reported the latest abundance estimate of this population is 18,178.

##### *Harbor porpoise*

Harbor porpoises found in waters off the coast of central California from San Francisco to Point Arena belong to the San Francisco-Russian River stock. Year-round surveys in the Gulf of the Farallones area have shown harbor porpoise occurrence within 10 - 20 km (6 - 12 miles) of San Francisco Bay (Calambokidis *et al.*, 1990). High harbor porpoise sightings were also reported just outside the Golden Gate and about 1 km (0.62 mile) inside SFB, however, the occurrence of harbor porpoises in the southern part of the Bay is rare (DeAngelis, personal comm. 2006). Based on Carretta *et al.* (2006), the estimated abundance of the San Francisco-Russian River stock of harbor porpoise is 8,521.

#### **Potential Effects on Marine Mammals and Their Habitat**

Seismic surveys using acoustic energy may have the potential to adversely impact marine mammals in the vicinity of the activities (Gordon *et al.*, 2004). Intense acoustic signals from seismic surveys have been known to cause behavioral alteration such as reduced vocalization rates (Goold, 1996), avoidance (Malme *et al.*, 1986, 1988; Richardson *et al.*, 1995; Harris *et al.*, 2001), and changing in blow rates (Richardson *et al.*, 1995) in several marine mammal species.

The proposed seismic studies use a low-intensity acoustic energy source with levels of 204 dB re 1 microPa rms at 1 m (boomer) and 209 dB re 1 microPa rms at 1 m (minisparker) to conduct the seismic surveys. However, it is unlikely that any marine mammals in the vicinity will be exposed to high sound pressure levels due to transmission loss of the acoustic energy in the water column. In addition, the sound pulses produced by the energy sources are extremely short, lasting for only 0.1 ms for the boomer and 0.8 ms for the minisparker. Therefore, the energy from the seismic impulse is expected to be significantly low.

Pinniped disturbance could also be caused by the presence of vessels and humans that are involved in the geographical surveys. These disturbances could cause hauled out harbor seals or California sea lions to flush and possibly result in temporary use of alternate haul-out sites in the Bay. However, long term abandonment of the sites is not likely because noise from traffic, recreational boaters, and other human activities already occur in the area, and it is likely that these animals have become habituated to these disturbances.

Furthermore, marine mammal densities within the project are typically very low. California sea lions, harbor porpoises and gray whales are not known to regularly visit the proposed project area, which is located in southern SFB. Although harbor seals use portions of the proposed project area as haul-out sites, their density is low. Within the last 5 years, individual harbor seals counted while hauling-out at the Newark Slough haul-out site during the post-pupping season have fluctuated between a maximum of 34 animals in 2001 to a minimum of 10 animals in 2005 (DeAngelis, personal comm. 2006). Numbers of harbor seals counted at the Newark Slough haul-out site during May 2001 and May 2002 (pupping season) ranged from 26 - 65 individuals. Lastly, the entire

geophysical survey will only last for 8 - 10 days, which excludes any possible long term noise exposure to marine mammals in the vicinity of the action area.

Based on this information, NMFS concluded that a small number of Pacific harbor seals, California sea lions, harbor porpoises, and gray whales that may be swimming, foraging, or resting in the project vicinity would be potentially taken by Level B behavioral harassment due to the proposed activity. In addition, proposed mitigation measures discussed below would greatly reduce the potential takes of marine mammals due to the proposed geophysical surveys.

### Mitigation

The following mitigation measures are required under the IHA that has been issued to Fugro for conducting geophysical surveys in southern SFB. NMFS believes that the implementation of these mitigation measures will reduce impacts to marine mammals to the lowest extent practicable.

#### *Time and Location*

Geophysical studies will only be conducted during daylight hours from 7 a.m. - 7 p.m., when marine mammal monitoring prior to and during the surveys will be most effective.

Seismic studies will not occur in the vicinity of Newark Slough or Plummer Creek during the harbor seal pupping season (March 1 - June 30). Seismic studies will only occur over open water transects during that period.

#### *Establishment of Safety Zones*

A 45-m (148-ft) radius safety zone for the boomer system and a 100-m (328-ft) radius for the minisparker system safety zones shall be established and monitored during the seismic surveys. At these distances, the SPLs would be reduced to 179 dB re 1 microPa rms and 169 dB re 1 microPa rms, respectively, which are lower than NMFS standards set for avoiding marine mammal Level A harassment (180 dB re 1 microPa rms for cetaceans and 190 dB re 1 microPa rms for pinnipeds).

Observers on boats will survey the safety zone for 15 minutes to ensure that no marine mammals are seen within the zone before a seismic survey begins. If marine mammals are found within the safety zone, seismic surveys will be delayed until they move out of the area. If a marine mammal is seen above the water and then dives below, the surveyor will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the

safety zone. This 15-minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994), the mean diving duration for harbor porpoises ranges from 44 to 103 seconds (Westgate *et al.*, 1995), and the mean diving duration for gray whales is approximately 1.84 minutes (Wursig *et al.*, 2003).

#### *Soft Start*

Although marine mammals will be protected from Level A harassment by establishment of a safety zone at a SPL levels of 169 and 179 dB re 1 microPa rms, mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area prior to receiving a potential injury, and to further reduce Level B harassment by startling marine mammals with a sudden intensive sound, Fugro will implement "soft start" practice when starting up acoustic equipment. By implementing the "soft start" practice, acoustic equipment will be initiated at an energy level less than full capacity (i.e., approximately 40 - 60 percent energy levels) for at least 5 minutes before gradually escalating to full capacity. This would ensure that, although not expected, any pinnipeds and cetaceans that are missed during safety zone monitoring will not be injured.

#### *Equipment Shut-down If Marine Mammal Enters Safety Zone*

With all the aforementioned mitigation measures in place, marine mammals may still enter the safety zone when geophysical surveys are underway. As a result, there is a possibility that Level A harassment could occur to these animals when exposed to intensive sounds. In order to prevent any potential Level A harassment to marine mammals from occurring, the surveyors shall shut down the acoustic equipment if a marine mammal is sighted in or believed to have entered within the safety zone during the survey transect. The surveyors shall not start the acoustic equipment again until the marine mammal leaves the safety zone, or no marine mammals are sighted within the safety zone for 15 minutes after the last sighting.

#### **Monitoring and Reporting**

URS has developed a monitoring plan that will collect data for each distinct marine mammal species observed in the

south Bay proposed project area during the period of the seismic surveys. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, the time corresponding to the daily tidal cycle, and any behavioral changes due to the geophysical surveys will be recorded on daily observation sheets.

Monitoring will be conducted by qualified NMFS-approved biologists. Binoculars and optical or digital laser range finders that are accurate to 3 feet (0.9 m) will be standard equipment for the monitors.

Monitoring will begin prior to the first day of the survey to establish baseline data, and would occur from a chase boat during the 8 - 10 day survey period. Post-survey monitoring will occur for a period of one day upon completion of the seismic studies.

Before the startup of the survey equipment, a marine mammal observer will visually survey the area for 15 minutes to confirm the safety zone is clear of any marine mammals. Seismic surveys will not begin until the safety zone is clear of marine mammals. Two observers will be present when surveys start onboard a separate boat and scan different sections of the overall survey area, particularly the safety zone. Once seismic survey of a transect begins and a marine mammal is sighted or believed to be within the safety zone, the observer(s) must notify the surveyor (or other authorized individual) immediately turn off the acoustic equipment and follow the mitigation requirements as outlined previously (see Mitigation). The seismic equipment must not be turned on until the animal leaves the safety zone, or 15 minutes after the last sighting. The surveyor may continue seismic survey uninterrupted as long as no marine mammals are sighted within the safety zone.

URS shall submit a final report to NMFS 90 days after completion of the seismic survey project. The final report would include data collected for each distinct marine mammal species observed in the south Bay project area during the period of the seismic surveys. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the geophysical surveys shall also be included in the final report.

#### **National Environmental Policy Act (NEPA)**

In June, 2006, NMFS prepared a draft EA on the issuance of an IHA to Fugro to take marine mammals by harassment incidental to conducting seismic surveys in south SFB. The draft EA was

released for public review and comment along with the application and the proposed IHA. During the 30-day public comment period NMFS received comments from the CBD on the draft EA. All comments are addressed in full in the Comments and Responses section. Subsequently, NMFS finalized the draft EA and issued a Finding of No Significant Impact on the proposed project on September 8, 2006.

#### Endangered Species Act (ESA)

Based on a review conducted by NMFS biologists, no ESA-listed species are expected to be affected by the seismic surveys in south SFB during the proposed project period in summer/fall. Therefore, NMFS has determined that this action will have no effect on listed species, and a section 7 consultation is not necessary.

#### Determinations

For the reasons discussed in this document and in the identified supporting documents, NMFS has determined that the impact of seismic surveys and other activities associated in the south SFB would result, at worst, in the Level B harassment of small numbers of California sea lions, Pacific harbor seals, harbor porpoises, and potentially gray whales that inhabit or visit south SFB. While behavioral modifications, including possibly temporarily vacating the area during the survey period of 8 - 10 days, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within SFB and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to determine that this action will have a negligible impact on California sea lions, Pacific harbor seals, harbor porpoises, and gray whale populations along the California coast.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

#### Authorization

NMFS has issued an IHA to Fugro for the potential harassment of small numbers of harbor seals, California sea lions, harbor porpoises, and gray whales incidental to conducting of seismic surveys in south San Francisco Bay in California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 25, 2006.

**P. Michael Payne,**

*Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. E6-16089 Filed 9-28-06; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 092106F]

#### Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas; Fall Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** In preparation for the 2006 ICCAT meeting, the Advisory Committee to the U.S. Section to International Commission for the Conservation of Atlantic Tunas (ICCAT) will meet in October 2006.

**DATES:** An open session will be held on October 15, 2006, from 2 to 5 p.m. Closed sessions will be held from 9 a.m. to 5 p.m. October 16-17, 2006. Oral and written comments can be presented during the public comment session on October 15, 2006. Mailed written comments on issues being considered at the meeting should be received no later than October 10, 2006.

**ADDRESSES:** The meeting will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910. Written comments should be sent to Kelly Denit at NOAA Fisheries Office of International Affairs, Room 13114, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Kelly Denit (301) 713-2276.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee to the U.S. Section to ICCAT will meet in open session on October 15. The Advisory Committee will receive information on the stock status of highly migratory species and management recommendations of ICCAT's Standing Committee on Research and Statistics. There will be an opportunity for oral public comment during the October 15, 2006, open session. Written comments may also be submitted at the October 15 open session or by mail. If mailed, written comments should be received by October 10, 2006 (see **ADDRESSES**).

During its fall meeting, the Advisory Committee will also hold two executive sessions that are closed to the public. The first executive session will be held on October 16, 2006, and a second executive session will be held on October 17, 2006. The purpose of these sessions is to discuss sensitive information relating to upcoming international negotiations.

NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak, and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

#### Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kelly Denit at (301) 713-2276 at least five days prior to the meeting date.

Dated: September 26, 2006.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 06-8374 Filed 9-26-06; 2:28 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Biometrics will meet in closed session on *September 28-29, 2006*, at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. This meeting will define the role of biometrics technologies and capabilities within DoD's Space. It will also recommend best organizational fit within DoD to implement the biometric and identify dominance missions. The briefings will contain proprietary

material from the private business sector.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will: Identify the biometric mission space metrics across the major applications (e.g. physical and logical access, intelligence, data sharing, Homeland Defense, force protection/ counter terrorism, privacy protection, administrative and business practices-pay, human resource, medical, digital signature, etc.). Additionally the task force will develop a methodology to address needed taxonomy and policy development activities within the Department of Defense and identify the activities required for effective operational support and organizations structure to support these activities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(4) and that, accordingly, the meetings will be closed to the public.

**FOR FURTHER INFORMATION CONTACT:** Maj, Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301-3140, via e-mail at [charles.lominac@osd.mil](mailto:charles.lominac@osd.mil), or via phone at (703) 571-0081.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102-3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 102-3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: September 25, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06-8361 Filed 9-28-06; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Energy Strategy will meet in closed session on *October 6, 2006; November 29, 2006; and December 14, 2006*; at Science Applications International Corporation (SAIC); 8301 Greensboro Drive, McLean, VA. This meeting will specifically identify strategic transition-opportunities inherently offered by technologies that have implications for energy and their systemic second- and third-order effects. The briefings will contain proprietary material from the private business sector.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: identify DoD operational and strategic constraints and vulnerabilities created by optimizing tactical platforms and capabilities without regard to energy usage; programs and means for the DoD to reduce its energy demand, particularly on petroleum-based fuels; and examine implications of alternative.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(4) and that, accordingly, the meetings will be closed to the public.

**FOR FURTHER INFORMATION CONTACT:** Major Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301-3140, via e-mail at [charles.lominac@osd.mil](mailto:charles.lominac@osd.mil), or via phone at (703) 571-0081.

Dated: September 25, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06-8362 Filed 9-28-06; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Directed Energy will meet in closed session on *September 28, 2006*, at the Institute for Defense Analysis, 1801 N. Beauregard Street, Alexandria, VA. The task force will review directed energy weapon systems and technology applications.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Review all surface, sub-surface, air and space DE programs in The Department and other organizations; examine recent supporting technology advancements and their applications with respect to supporting military DE weapon system developments; as well as make recommendations on potential strategic advantage DE weapons can provide with regards to the delivery of precision effects, decreased collateral damage, limiting unintended effects, and decreasing post combat reconstitution costs and efforts.

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

**FOR FURTHER INFORMATION CONTACT:** Major Chad Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301-3140, via e-mail at [charles.lominac@osd.mil](mailto:charles.lominac@osd.mil) or via phone at (703) 571-0081.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102-3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 102-3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: September 25, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06-8363 Filed 9-28-06; 8:45 am]

**BILLING CODE 5001-06-M**

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Directed Energy will meet in closed session on November 2 and 3, 2006. The location is to be determined. The task force will review directed energy weapon systems and technology application.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Review all surface, sub-surface, air and space DE programs in the Department and other organizations; examine recent supporting technology advancements and their applications with respect to supporting military DE weapon system developments; as well as make recommendations on potential strategic advantage DE weapons can provide with regards to the delivery of precision effects, decreased collateral damage, limiting unintended effects, and decreasing post combat reconstitution costs and efforts.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Major Chad Lominac, USAF, Defense

Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301-3140, via e-mail at charles.lominac@osd.mil, or via phone at (703) 571-0081.

Dated: September 25, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-8364 Filed 9-28-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463). The topic of the meeting on October 17-19, 2006 are to review new start and continuing research and development projects requesting Strategic Environmental Research and Development Program funds in excess of \$1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: October 17, 2006 from 8:30 a.m. to 5 p.m., October 18 from 9 a.m. to 4 p.m. and October 19, 2006 from 8:30 a.m. to 3 p.m.

ADDRESSES: SERDP Program Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Jensen, SERDP Program Office, 901 North Stuart Street, Suite 303,

Arlington, VA or by telephone at (703) 696-2126.

Dated: September 25, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-8359 Filed 9-28-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Department of Defense Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Services (SES) Performance Review Board (PRB) for the Department of Defense Office of Inspector General (DoD OIG), as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings and performance awards to the Inspector General.

EFFECTIVE DATE: September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Peterson, Director, Human Capital Advisory Services, Administration and Management, DoD OIG, 400 Army Navy Drive, Arlington, VA 22202, (703) 602-4516.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the DoD OIG, PRB:

Dated: September 25, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

- Patricia A. Branin ..... Assistant Inspector General for Audit Policy and Oversight, ODIG-P&O.
John R. Crane ..... Assistant Inspector General for Communications and Congressional Liaison.
Uldric L. Fiore ..... General Counsel, Assistant Inspector General for Office of Legal Counsel.
Thomas F. Gimble ..... Acting Inspector General.
Paul J. Granetto ..... Assistant Inspector General for Defense Financial Auditing Service, ODIG-AUD.
L. Jerry Hansen ..... Deputy Inspector General for Policy and Oversight.
Melissa Heist ..... Assistant Inspector General for Audit, Environmental Protection Agency.
Donald M. Horstman ..... Director of Investigations of Senior Officials, ODIG-INV.
Richard B. Joliffe ..... Assistant Inspector General for Acquisition and Contract Management, ODIG-AUD.
Helen Lew ..... Assistant Inspector General for Audit Services, Department of Education.
Patricia A. Marsh ..... Deputy Director, Defense Financial Auditing Service, ODIG-AUD.
William B. Morrison ..... Assistant Inspector General for Inspections and Evaluations, ODIG-P&O.
James L. Pavlik ..... Assistant Inspector General for Investigation Policy and Oversight, ODIG-P&O.
Richard T. Race ..... Acting Principal Deputy Inspector General.
Wanda A. Scott ..... Assistant Inspector General for Readiness and Operations Support, ODIG-AUD.
Linda Snider ..... Assistant Inspector General, Audit Planning and Administration, Department of Energy.
Mary L. Ugone ..... Deputy Inspector General for Auditing.
Eugene S. Waszily ..... Deputy Inspector General, General Services Administration.
R. Keith West ..... Principal Assistant Inspector General for Auditing, ODIG-AUD.

Daniel F. Willkens ..... Acting Director, Defense Criminal Investigative Service, Assistant Inspector General for Investigations, ODIG-INV.  
 Stephen D. Wilson ..... Assistant Inspector General for Administration and Management.  
 Shelton R. Young ..... Deputy Inspector General for Intelligence.

[FR Doc. 06-8360 Filed 9-28-06; 8:45am]

BILLING CODE 5001-06-M

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Conductive (Electrical, Ionic, and Photoelectric) Polymer Membrane Articles, and Method for Producing Same

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 7,109,136 B2 entitled "Conductive (Electrical, Ionic, and Photoelectric) Polymer Membrane Articles, and Method for Producing Same" Issued September 19, 2006. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arnold Boucher at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone; (508) 233-5431 or E-mail: [Arnold.Boucher@natick.army.mil](mailto:Arnold.Boucher@natick.army.mil).

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 06-8356 Filed 9-28-06; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Intent To Prepare an Environmental Impact Statement for the Upper Ohio Navigation Study, PA, in Allegheny and Beaver Counties

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), the Pittsburgh District of the U.S. Army Corps of Engineers (Corps) is seeking public comment on the environmental scope of an upcoming study, named the

"Upper Ohio Navigation Study, Pennsylvania." This study will consider and evaluate the feasibility of alternatives for maintaining commercial navigation on the Pennsylvania portion of the Ohio River, and also consider and evaluate the feasibility of ecosystem restoration opportunities.

The focus of the upper Ohio River navigation feasibility study is to develop the best plan for maintaining safe, environmentally sustainable, and reliable navigation on the upper 40 miles of the Ohio River in Pennsylvania. Navigation is currently provided through three old lock and dam facilities—Emsworth, Dashields and Montgomery locks and dams—dating from the 1920s. The study will consider a 60-year period from 2010 to 2070. Navigation alternatives will consider facility operation and maintenance, rehabilitation, and new construction needs and opportunities.

In order to facilitate early public involvement in the planning process, the Corps will be conducting two environmental scoping meetings open to the public in the study area. The public is invited to attend these meetings to hear an overview of the study, and assist in the identification of significant issues to be considered during the study process. (See **DATES**).

**DATES:** Public scoping meetings will be held on:

1. October 24, 2006, 7 p.m. to 9 p.m., Monaca, PA.

2. October 25, 2006, 7 p.m. to 9 p.m., Coraopolis, PA.

**ADDRESSES:** The meeting locations are:

1. Monaca, PA—Community College of Beaver County, Library Resource Center, Conference Room 103, One Campus Drive, Monaca, PA 15061.

2. Coraopolis, PA—Holiday Inn, 8256 University Boulevard, Coraopolis, PA 15108.

**FOR FURTHER INFORMATION CONTACT:** The Corps' point-of-contact for questions or comments on the study and the environmental impact statement is Mr. Conrad Weiser, U.S. Army Corps of Engineers, Pittsburgh District, 2200 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA, 15222-4186. Telephone: (412) 395-7220. E-mail:

[Conrad.E.Weiser@usace.army.mil](mailto:Conrad.E.Weiser@usace.army.mil).

Requests to be placed on the study mailing list should also be sent to this address. General information on the study is also posted on the Corps'

internet site: [http://www.Lrp.usace.army.mil/pm/upper\\_ohio.htm](http://www.Lrp.usace.army.mil/pm/upper_ohio.htm).

#### SUPPLEMENTARY INFORMATION:

1. **Authority:** The proposed action is being conducted under the authority of United States Senate, Committee on Public Works resolution dated May 16, 1955; and United States House of Representatives, Committee on Public Works and Transportation resolution dated March 11, 1982.

2. **Background:** a. The Corps is initiating a study to identify and evaluate feasible alternatives to maintain environmentally sustainable commercial river navigation on the upper 40 miles of the Ohio River in Pennsylvania. Existing locks and dams to be considered in this study are the Emsworth, Dashields, and Montgomery (EDM) locks and dams. The EDM facilities are the uppermost three of the 19 facilities forming the Ohio River Navigation System. This system provides navigable depths the full 981-mile length of the river between its origin at the "Point" in Pittsburgh, PA, to its mouth at Cairo, IL.

b. Emsworth is the oldest operating facility of the Ohio River system. Its locks date from 1921, while its original fixed crest dams were replaced in 1938 with higher gated structures. Dashields and Montgomery locks and dams were placed into operation in 1929 and 1936, respectively. Locks and Dams 52 and 53 near the river's mouth are the only other pre-World War II facilities on the Ohio River system, and these are in the process of being replaced by a single facility, Olmsted Locks and Dam.

c. Emsworth, Dashields, and Montgomery each have two lock chambers, a main chamber measuring 110' x 600'± and an auxiliary chamber measuring 56' x 360'. Compared to the 110' x 1,200' main lock chambers at the modern Ohio River facilities, they are the lowest capacity locks on the river. They form a bottleneck between the modern downstream Ohio River navigation structures and the tributary Monongahela River locks with their 720-foot chambers. The disparity in capacity is magnified during main chamber closures when all traffic must use the small 56' x 360' chambers. These small chambers can only process one barge at a time, necessitating multiple lockages for typical tows of as many as 15 barges, more or less. This study will



consider the potential benefits of larger main lock chambers at EDM.

d. Additional concerns at EDM involve the structural integrity of the aged concrete lock walls. Internal cracks throughout the concrete lock walls may eventually propagate through entire wall sections and lead to significant movements of wall sections. A major cause of cracking is concrete deterioration. Because these three locks and dams were constructed prior to the advent of air-entrainment in concrete, the concrete has been particularly susceptible to weathering and freeze-thaw damage. Another source of concern is that concrete construction practices of the 1920's and 1930's, including mix-design, placement, consolidation, curing, and cold/hot weather protection, were much less stringent compared to the quality control tolerances required for a similar project constructed today. Still another contributing factor is the raising of the Emsworth Dams and pool in 1938, which increased the head between the upper and lower pools and increased structural loads on the concrete lock walls.

e. Major rehabilitations on the EDM lock and approach walls undertaken in the 1980s addressed short-term issues, but there remains a concern about their long-term effectiveness. Prior to these major rehabilitation efforts, lock wall surfaces were in advanced stages of deterioration and there were concerns about the stability of various wall sections. Degraded concrete surfaces were removed, and a 12-inch overlay of new concrete was provided in an attempt to retard deterioration rates by preventing water from reaching the interior concrete. However, despite these efforts, water is apparently still reaching the interior concrete and causing it to become saturated and susceptible to additional deterioration.

f. Following years of different attempts at estimating concrete structural reliability, including the possible development of analytical models and expert opinion, it was decided that a condition assessment of these three projects and expert opinion were the appropriate tools to complete this essential task. In September of 2000 a five-person panel of experts was assembled to estimate the current and future reliability of the structures on the upper Ohio River. This panel of experts established probabilities of failures, the potential consequences for various failure modes and estimated the impacts to the expected service life of several repair or replacement options for concrete wall sections.

g. The U.S. Army Corps of Engineers, Great Lakes and Ohio River Division, is nearing completion of a system-wide study of Ohio river navigation projects. The study was initiated in 1995 and is referred to as the Ohio River Mainstem System Study (ORMSS). ORMSS is being conducted by a team of specialists from the Corps' Louisville, Huntington, Nashville, and Pittsburgh districts. The product of this study is a "System Investment Plan," which will be the strategic "roadmap for reinvestment" establishing priorities for expenditure of federal funds on the navigation system and recommending site-specific feasibility studies.

h. The ORMSS "System Investment Plan" identifies the need for new main locks at the EDM facilities. The Upper Ohio River navigation feasibility study of EDM is the site-specific feasibility study that could lead to project authorization in a future Water Resources Development Act.

i. The ORMSS Report combines plan formulation with a programmatic environmental impact statement in a main report and a series of appendices. The ORMSS Environmental Appendix includes environmental documentation and a system-wide Cumulative Effects Assessment (CEA). The CEA evaluates past environmental impacts, current conditions, and reasonably foreseeable future actions by the Government and others that may impact "Valued Environmental Components" or resources within and adjacent to the Ohio River.

j. In accordance with the National Environmental Policy Act (NEPA) of 1969, the anticipated environmental scope and complexity of the Upper Ohio River navigation feasibility study in Pennsylvania will warrant that the NEPA document be a tiered environmental impact statement (EIS) referencing the ORMSS Programmatic EIS while anticipating future site-specific, supplemental NEPA documents for each recommended project component.

3. *Public Participation.* a. The Corps will conduct public meetings to gain input from interested agencies, organizations, and the general public concerning the scope and content of the EIS, alternatives that should be analyzed, and related issues and impacts to be addressed in the EIS (see **DATES**).

b. The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Upper Ohio Navigation Study, Pennsylvania, are

urged to participate in this NEPA evaluation process.

c. Public comments are welcomed anytime throughout the study process. Formal opportunities for public and agency participation include: (1) Public meetings; (2) correspondence, telephone or e-mail at any time throughout the NEPA process; (3) review and comment on the draft EIS; and (4) review of the final EIS. Schedules and locations for formal review periods will be announced through the study's mailing list and in local news media. Anyone who wishes to be included on the mailing list for public distribution of meeting announcements and documents should contact Mr. Conrad Weiser.

4. *Schedule:* The draft EIS is anticipated to be released for public review and comment in May 2012. The final report and final EIS are scheduled to be completed in October 2012.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 06-8358 Filed 9-28-06; 8:45 am]

**BILLING CODE 3710-GM-M**

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## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Intent To Convey the "Drum Stick" Parcel of the Former Fort Ord, Located in Monterey County, CA in Return for the "Stillwell Kidney" Parcel Owned by the City of Seaside

**AGENCY:** Department of the Army, U.S. Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to 10 U.S.C. 2869(d)(1) the Department of the Army (Army) is providing notice of its intent to convey the "Drum Stick" parcel of the former Fort Ord, located in Monterey County, CA in return for the "Stillwell Kidney" parcel owned by the City of Seaside. Fort Ord was selected for closure by the Base Realignment and Closure Commission in 1991. The Drum Stick parcel is an undeveloped, densely-vegetated 11.28-acre property adjacent to California State Route 1 on the former Fort Ord. The Stillwell Kidney parcel currently contains approximately 400 abandoned housing units. Under 10 U.S.C. 2869, the Army is authorized to enter into an agreement to convey real property, including any improvements thereon, located on a military installation that is closed or realigned under a Base Realignment and Closure (BRAC) Act to any person who agrees to convey to the Army real property of at

least equal value. The Army has concluded that the Stillwell Kidney parcel has a fair market value that is at least equal to that of the Drum Stick parcel.

**ADDRESSES:** U.S. Army Corps of Engineers, Norfolk District, ATTN: CENAO-CO, 803 Front Street, Norfolk, VA 23510-1096.

**FOR FURTHER INFORMATION CONTACT:** Todd Waldman, Esquire, (757) 201-7202.

Dated: September 21, 2006.

**Joseph R. Loschi,**  
District Counsel.

[FR Doc. 06-8357 Filed 9-28-06; 8:45 am]

**BILLING CODE 3710-EN-M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Intent To Prepare an Environmental Impact Statement (EIS)/ Overseas Environmental Impact Statement (OEIS) for Atlantic Fleet Active Sonar Training and To Announce Public Scoping Meetings

**AGENCY:** Department of the Navy, DoD.  
**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR pts 1500-1508), and Executive Order (EO) 12114, "Environmental Effects Abroad of Major Federal Actions" (44 Fed. Reg. 62,18722 (Mar. 29, 1979)), the Department of the Navy (DON) announces its intent to prepare a combined NEPA EIS and EO 12114, OEIS, to evaluate the potential environmental consequences associated with mine warfare (MIW) and antisubmarine warfare (ASW) active sonar training exercises along the east coast and Gulf of Mexico. The MIW/ASW sonar training exercises include Independent Unit Level Training, Coordinated Unit Level Training, and Strike Group Training exercises. These active sonar training exercises include air, surface, and subsurface sonar platforms that are manned by personnel who require training in order to maintain certification and readiness for deployment. Additionally, effective MIW and ASW are dependent on training involving coordination among these platforms. The EIS/OEIS will consider two Action Alternatives to accomplish these objectives, in addition to the No Action Alternative.

**DATES:** Public scoping meetings will be held at the following seven sites to

receive comments on environmental concerns that should be addressed in the EIS/OEIS:

New London, CT; Chesapeake, VA; Morehead City, NC; Charleston, SC; Jacksonville, FL; Panama City, FL; and Corpus Christi, TX, on the following dates:

1. Monday, October 23, 2006, 5 p.m.–8 p.m., Chesapeake Conference Center, 900 Greenbrier Circle, Chesapeake, VA.
2. Thursday, October 26, 2006, 5 p.m.–8 p.m., American Bank Center, 1901 North Shoreline Boulevard, Corpus Christi, TX.
3. Thursday, November 2, 2006, 5 p.m.–8 p.m., Radisson Hotel New London, 35 Governor Winthrop Boulevard, New London, CT.
4. Tuesday, November 7, 2006, 5 p.m.–8 p.m., Ramada Inn Mandarin, 3130 Hartley Road, Jacksonville, FL.
5. Thursday, November 9, 2006, 5 p.m.–8 p.m., Marriott Bay Point Resort, 4200 Marriott Drive, Panama City, FL.
6. Tuesday, November 14, 2006, 5 p.m.–8 p.m., National Guard Armory, 3609 Bridge Street, Morehead City, NC.
7. Thursday, November 16, 2006, 5 p.m.–8 p.m., Town and Country Inn and Conference Center, 2008 Savannah Highway, Charleston, SC.

Each of the seven scoping meetings will consist of an informal, open house session with information stations staffed by DON representatives. Additional information concerning the meetings will be available on the EIS/OEIS Web page located at: <http://www.AFASTEIS.GCSAIC.COM>.

**FOR FURTHER INFORMATION CONTACT:** Atlantic Division Naval Facilities Engineering Command, Attn: Code EV21 (Atlantic Fleet Sonar PM), 6506 Hampton Blvd., Norfolk, Virginia 23508-1278; telephone 1-757-322-4767; Fax 757-322-4894.

**SUPPLEMENTARY INFORMATION:** The Navy currently uses active sonar for ASW and MIW training associated with ongoing Independent Unit Level Training (single unit events including sonar maintenance), Coordinated Unit Level Training (Intermediate and Squadron events), and Strike Group Training (Composite Training Unit Exercise, Expeditionary Strike Group Exercises, and Joint Task Force Exercises) along the east coast and Gulf of Mexico. The proposed action is to identify areas in which to conduct ASW and MIW active sonar training along the east coast and Gulf of Mexico. The proposed EIS/OEIS will address the potential consequences to the marine environment associated with ASW and MIW active sonar

training along the east coast and Gulf of Mexico.

The purpose of the proposed action is to provide and maintain the long-term viability of Navy active sonar training for the U.S. Atlantic Fleet ship, submarine, and aircraft crews to meet deployment requirements and maintain proficiency of ASW and MIW skills, while protecting human health and the environment. The need for the proposed action is to meet the legal mandate for the Chief of Naval Operations to organize, equip, and train all naval forces for combat as directed in 10 U.S.C. 5062. Navy forces must train to deal with the threat of modern quiet submarines; the most effective detection technology available is active sonar detection. In addition, Navy forces must train to detect mines which can prevent access to strategic areas, damage fleet forces, and disrupt commerce.

Three alternatives, which each meet the requirement to train and maintain combat-ready Navy forces, will be analyzed in the EIS/OEIS. The No Action Alternative is the continuation of year-round training within and adjacent to current Navy East Coast and Gulf of Mexico Operating Areas. Two action alternatives evaluate the capability of fixed and seasonal active sonar training areas along the east coast and Gulf of Mexico to meet operational criteria and provide year-round training capacity and fidelity, include short notice and surge deployments of U.S. Atlantic Fleet units. Additionally, the EIS/OEIS may also incorporate other reasonable alternatives that meet the Navy's purpose and need as informed by the public scoping process.

All alternatives would consider the protective measures used during Navy training to minimize potential effects to the marine environment.

The EIS/OEIS will evaluate the potential environmental effects of ASW and MIW active sonar training associated with each alternative. Effects to be addressed will include, but not be limited to, the following:

(1) *Physical environment*—air and water quality and ambient sound levels.

(2) *Biological resources*—wildlife, including threatened and endangered species and otherwise protected wildlife such as marine mammals and migratory birds, fish and fisheries, including analysis of essential fish habitat, coastal, marine, and benthic communities, and special biological resource areas.

(3) *Socioeconomic resources*—including recreational, commercial and industrial activities, safety and occupational health and hazardous materials, airspace, artificial reefs, and cultural resources.

The analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts.

The Navy is initiating the scoping process to identify public concerns and local issues that should be addressed in the EIS/OEIS. Federal, state, and local agencies and interested persons are encouraged to provide comments to the Navy to identify specific issues or topics of environmental concern. All comments provided at the scoping meetings will be evaluated in developing the scope of the EIS/OEIS.

Written comments on the EIS/OEIS should be postmarked no later than December 1, 2006. Comments may be mailed to Atlantic Division Naval Facilities Engineering Command, *Attn:* Code EV21 (Atlantic Fleet Sonar PM), 6506 Hampton Boulevard, Norfolk, VA 23508-1278.

Dated: September 26, 2006.

**M.A. Harvison,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E6-16064 Filed 9-28-06; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 28, 2006.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each

proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 25, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Revision of a currently approved collection.

*Title:* Title I State Plan for Vocational Rehabilitation Services and Title VI—Part B Supplement for Supported Employment Services.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs (primary).

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 80.

*Burden Hours:* 1002000.

*Abstract:* The Rehabilitation Act of 1973, as amended (the Act), requires each state to submit to the Commissioner of the Rehabilitation Services Administration (RSA) a State Plan for the Vocational Rehabilitation (VR) Services program and the State Supported Employment (SE) Services program that meets the requirements of Sections 101(a) and 625 of the Act. Program funding is contingent on Departmental approval of the State Plan and its supplement. Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 03189. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to

U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-16046 Filed 9-28-06; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 30, 2006.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection,

grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 26, 2006.

**Angela C. Arrington,**

*IC Clearance Official, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Revision.

*Title:* National Student Loan Data System (NSLDS).

*Frequency:* On Occasion; Weekly; Monthly; Quarterly.

*Affected Public:* Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 34,976.

*Burden Hours:* 134,840.

*Abstract:* The U.S. Department of Education will collect data from postsecondary schools and guaranty agencies about Federal Perkins loans, Federal family education loans, and William D. Ford direct student loans to be used to determine eligibility for Title IV student financial aid.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3156. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-16069 Filed 9-28-06; 8:45 am]

BILLING CODE 4000-01-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. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, November 2, 2006—9 a.m.—5 p.m.

Friday, November 3, 2006—8:30 a.m.—4 p.m.

**ADDRESSES:** Best Western Hood River Inn, 1108 East Marina Way, Hood River, Oregon, Phone Number: (541) 386-2200, Fax Number: (541) 386-8905.

**FOR FURTHER INFORMATION CONTACT:** Erik Olds, Federal Coordinator, Department of Energy Richland Operations Office, 2440 Stevens Drive, P.O. Box 450, H6-60, Richland, WA, 99352; *Phone:* (509) 376-8656; *Fax:* (509) 376-1214.

#### 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:

- General Risk Assessment.
- Double-Shell Tank Integrity Advice.
- Characterization of Tank Leaks.
- Bechtel National Inc. Contract Renegotiation.
- Chair Election.
- Columbia River Toxic Initiative.
- Site-Specific Advisory Board Chairs Meeting Update.
- Site-Specific Advisory Board Chairs Letter.
- Tri-Party Agreement Milestone 15 Change Package.
- Agency Updates.
- Committee Updates.

*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 Erik Olds' 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. Individuals

wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's 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 Erik Olds' office at the address or telephone number listed above.

Issued at Washington, DC, on September 25, 2006.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. E6-16050 Filed 9-28-06; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TX06-2-004]

#### Aero Energy LLC; Notice of Filing

September 25, 2006.

Take notice that on September 13, 2006, Oasis Power Partners LLC (Oasis) filed an Affidavit of James Walker, as evidence showing that a portion of the Sagebrush Line is needed for Oasis' future expansion plans, pursuant to the Commission's August 14, 2006 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on October 4, 2006.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-16003 Filed 9-28-06; 8:45 am]  
BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TX06-2-002]

#### Aero Energy LLC; Notice of Filing

September 25, 2006.

Take notice that on September 13, 2006, Caithness Sagebrush 20, LLC (Caithness Sagebrush 20) filed an Affidavit of Matthew W. Scobee, which provides a detailed description of specific wind development plans that will necessitate additional firm transmission capacity across the Sagebrush Line for Caithness Sagebrush 20 use, pursuant to the Commission's August 14, 2006 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on October 4, 2006.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-16008 Filed 9-28-06; 8:45 am]  
BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. TX06-2-003]

#### Aero Energy LLC; Notice of Filing

September 25, 2006.

Take notice that on September 13, 2006, Eurus Energy America Corporation (Eurus) filed an Affidavit of Mark Anderson, as evidence showing that a portion of the Sagebrush Line is needed for Eurus' future expansion plans, pursuant to the Commission's August 14, 2006 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on October 4, 2006.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-16009 Filed 9-28-06; 8:45 am]  
BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC06-126-000]

#### Boston Edison Company, Commonwealth Electric Company, Canal Electric Company, Cambridge Electric Light Company; Notice of Shortened Comment Period

September 22, 2006.

On September 19, 2006, the Commission issued a notice in the above referenced proceeding. *Combined Notice of Filing #1*, September 19, 2006. The comment date was October 5, 2006. By this notice, the date for filing comments is shortened to and including September 29, 2006.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-15998 Filed 9-28-06; 8:45 am]  
BILLING CODE 6717-01-P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. QF84-377-011]

#### Colstrip Energy Limited Partnership; Notice of Filing

September 22, 2006.

Take notice that on September 6, 2006, Colstrip Energy Limited Partnership tendered for filing a supplement to their application for recertification filed on May 3, 2006.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on October 11, 2006.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-16001 Filed 9-28-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP06-455-000, CP06-456-000  
and CP06-457-000]

#### Kinder Morgan Illinois Pipeline LLC; Notice of Application

September 25, 2006.

Take notice that on September 14, 2006, Kinder Morgan Illinois Pipeline LL (KMIP), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket Nos. CP06-455-000, CP06-456-000 and CP06-457-000 an application pursuant to sections 7 (c) of the Natural Gas Act (NGA) and Part 157 of the Commission's

Regulations, for certificates of public convenience and necessity authorizing:

The long-term lease of 360 MDth per day of firm capacity in approximately 25.73 miles of existing pipeline facilities owned by Natural Gas Pipeline Company of America (Natural), all located in Cook, Will and Kankabee Counties, Illinois; the construction and operation of approximately 3.1 miles of new 24-inch pipeline and appurtenances; the construction and operation of three (3) new meter/regulator stations and appurtenances (for the receipt of gas into its lease capacity and its new pipeline); the undertaking of self-implementing interstate transportation of natural gas under Part 284, Subpart G of the Commission's Regulations; and the future construction of facilities under the blanket certificate authority under Part 157, Subpart f of the Commission's Regulations.

This application is on file with the Commission and open to public inspection. This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

KMIP will be a new interstate pipeline company subject to Commission jurisdiction under the NGA. The design capacity of KMIP will be 360 MDth per day. KMIP has one anchor shipper, The Peoples Gas Light and Coke Company (PGLC), which has signed a precedent agreement for long-term firm transportation service totaling 360 MDth per day. KMIP's facilities are intended to help meet the goals of PGLC which are to: (1) Increase gas supply diversity into the City of Chicago, (2) lessen dependence on PGLC's Crawford Station by providing additional supply access directly to the Calumet region of its system and (3) increase reliability of supply in the event of catastrophic interruption of existing deliveries into PGLC's Chicago distribution system. The estimated cost of the proposed facilities is \$13.3 million. KMIP proposes an in-service date by November 1, 2007.

Any questions regarding this application should be directed to Bruce H. Newsome, Vice President, Kinder Morgan Illinois Pipeline LLC, 747 East

22nd Street, Lombard, Illinois 60148 at (603) 691-3526.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentators will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentators will not be required to serve copies of filed documents on all other parties. However, the non-party commentators will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link at <http://www.ferc.gov>. The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

*Comment Date:* October 16, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-16004 Filed 9-28-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP06-458-000]

#### Natural Gas Pipeline Company of America; Notice of Application

September 25, 2006.

Take notice that on September 14, 2006, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP06-458-000 an application pursuant to sections 7 (b) and (c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for:

(1) Permission and approval to abandon Natural's lease (and operation) of certain transmission facilities from The Peoples Gas Light and Coke Company (PGLC) in the City of Chicago (City), Illinois;

(2) Permission and approval to abandon, by sale to PGLC, certain minor facilities in the City owned by Natural located along PGLC owned facilities that will no longer be subject to lease by Natural; and

(3) Certificate authorization to acquire by lease (and to operate) certain transmission facilities from PGLC in the City pursuant to a new lease agreement between PGLC and Natural.

This application is on file with the Commission and open to public inspection. This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail [FERCONlineSupport@ferc.gov](mailto:FERCONlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Natural states that pursuant to lease agreements between Natural and PGLC dated July 10, 1947, February 20, 1950 and July 16, 1970, as amended April 20, 1976, Natural currently leases PGLC's Crawford Line Nos. 1, 2 and 3 and Calumet Line Nos. 1, 2 and 3 within the City. Natural further states it has executed a new lease agreement with PGLC dated April 5, 2006 that will replace the old lease agreements and which provides for an extension of term and a reduction of the leased property in the Calumet Area (the lease of property in the Crawford Area is to remain unchanged).

The new lease arrangement in the City will continue to provide Natural supervision, operation and control of facilities used by Natural to make deliveries to PGLC, Nicor Gas and Northern Indiana Public Service Company, three of Natural's largest transportation and storage customers. The new lease arrangement does not include PGLC's Calumet Line No. 3, which was removed to reflect PGLC's desire to control and operate that pipeline as part of its local distribution system in order to receive the supply of gas to be delivered to PGLC by Kinder Morgan Illinois (KMIP), a new interstate natural gas pipeline company (and Natural), at a new city gate station to be located near 138th Street and Torrence Avenue, which Natural is to construct, own and operate under its blanket certificate. KMIP and Natural are filing concurrently two related applications which involve KMIP constructing a new pipeline system (KMIP Project), including the long term lease of capacity from Natural,<sup>1</sup> and Natural abandoning by lease to KMIP certain capacity in existing pipelines owned by Natural.<sup>2</sup>

Natural seeks this abandonment/certificate authority to coincide with the abandonment and certificate authority requested by Natural and KMIP in the two related applications.

Any questions regarding this application should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 at (603) 691-3526.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to

<sup>1</sup> KMIP is filing concurrently in Docket Nos. CP06-455-000, *et al.* a related application seeking the above authority.

<sup>2</sup> Natural is filing concurrently in Docket No. CP06-454-000 a related application seeking the above authority.

obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the

“e-Filing” link at <http://www.ferc.gov>. The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

*Comment Date:* October 16, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-16005 Filed 9-28-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP06-454-000]

#### Natural Gas Pipeline Company of America; Notice of Application for Abandonment

September 25, 2006.

Take notice that on September 14, 2006, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authorization to abandon, by long-term operating lease, 360 MDth per day of firm capacity in 25.73 miles of existing pipeline facilities owned by Natural and, specifically, in Natural’s 8.43 mile 30-inch North Hayden Lateral, a 10.09 mile portion of Natural’s 36-inch Herscher-Dyer Road Pipeline and a 7.21 mile portion of Natural’s 36-inch Calumet Pipeline No. 3, all in Kankakee, Will and Cook Counties, Illinois. This application is on file with the Commission and open to public inspection.

Natural states that pursuant to a lease agreement between Natural and Kinder Morgan Illinois Pipeline LLC (KMIP) dated September 12, 2006, Natural has agreed to lease capacity in existing pipeline facilities owned by Natural to KMIP. KMIP’s lease of such capacity, in conjunction with its construction of certain pipeline facilities (KMIP Project), is the subject of a separate application being filed concurrently by KMIP.<sup>1</sup>

Natural states that the lease of 360 MDth per day of firm capacity by

<sup>1</sup> KMIP is filing concurrently in Docket Nos. CP06-455-000, *et al.* a related application seeking authority to develop and operate a new pipeline system designed to transport gas for The Peoples Gas Light and Coke Company (PGLC), including the lease of capacity in existing facilities owned by Natural.

Natural to KMIP is an integral part of the KMIP Project and will avoid the construction of 25.73 miles of new 30-inch pipeline. By leasing capacity from Natural, KMIP will reduce the overall cost and improve the efficiency of the KMIP Project and will also minimize new pipeline construction and the potential for associated environmental disruption. The design capacity of KMIP’s system will be 360 MDth per day. Natural further states that its existing system capacity will not be decreased by the lease, because the proposed location of 2.6 miles of new KMIP pipeline, in relation to the existing pipeline facilities of Natural, both upstream and downstream, will have the operational effect of enhancing the throughput capabilities of such existing Natural facilities.

Natural seeks abandonment authority in the present docket to coincide with the certificate authority requested by KMIP in its separate application.

Any questions regarding this application should be directed to Bruce H. Newsome, Vice President or Phillip R. Telleen, Attorney for Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148 at (630) 691-3526 and (630) 691-3749, respectively.

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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public

Reference Room in Washington, DC. There is an “eSubscription” link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* October 16, 2006.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-16010 Filed 9-28-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2106-047—California]

#### Pacific Gas and Electric Company; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Scoping Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

September 25, 2006.

a. *Type of Filing:* Notice of Intent to File a License Application and Pre-Filing Document (PAD) under the Commission’s Integrated Licensing Process and Commencing Licensing Proceeding.

b. *Project No.:* 2106-047.

c. *Dated Filed:* July 27, 2006.

d. *Submitted By:* Pacific Gas and Electric Company.

e. *Name of Project:* McCloud-Pit Hydroelectric Project.

f. *Location:* The McCloud-Pit Hydroelectric Project is located on the McCloud and Pit Rivers in Shasta County, California. The project occupies lands of the United States, managed by the United States Department of Agriculture-Forest Service.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission’s Regulations

h. *Applicant Contact:* Randal Livingston, Senior Director, Power Generation, Pacific Gas and Electric Company, P.O. Box 770000, N11E/1137, San Francisco, CA 94177; (415) 973-6950, facsimile (415) 973-5323.

i. *FERC Contact:* Emily Carter at (202) 502-6512 or e-mail at [emily.carter@ferc.gov](mailto:emily.carter@ferc.gov).

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or expertise with respect to environmental issues to cooperate with



us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph "n" below.

k. *With this notice we are initiating informal consultation with:* (a) The United States Fish and Wildlife Service and/or National Marine Fisheries under section 7 of the Endangered Species Act and the joint agency regulations there under at 50 CFR Part 402; and (b) the State Historic Preservation Officer, as required by section 106 of the National Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 50 CFR 800.2.

l. Pacific Gas and Electric Company filed a Pre-Application Document (PAD) including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number (P-2106-047), excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph "h."

Register online at <http://ferc.gov/esubscribenow.htm> to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the Scoping Document 1 (SD1). All comments on SD1 should be sent to the address above in paragraph "h." In addition, all comments on SD1, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (McCloud-Pit Hydroelectric Project) and number (P-2106-047), and bear the heading "Comments on Pre-Application Document," "Comments on Scoping Document 1," "Study Requests," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in

commenting on the PAD or SD1, submitting study requests, or any agency requesting cooperating status must do so by October 25, 2006.

Comments on SD1 and other permissible forms of communications with the Commission may be filed electronically via the Internet, in lieu of paper. The Commission strongly encourages electronic filings.

See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

o. At this time, Commission staff intends to prepare and Environmental Assessment (EA) for this project, in accordance with the National Environmental Policy Act (NEPA). There is the possibility, however, that an Environmental Impact Statement (EIS) will be required. Nevertheless, the scoping meetings will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

#### Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the times and place noted below. The agenda for each meeting is also listed below. We invite all interested individuals, organizations, and agencies to attend one or all of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. We encourage all attendees to review the PAD before the meetings to facilitate effective discussion.

The times, location, and agendas of these meetings are as follows:

All meetings will be held in the same location: Holiday Inn Hotel, 1900 Hilltop Dr., Redding, CA.

#### Day 1—Evening Scoping Meeting

Date: Monday, October 23, 2006.

Time: 6 p.m.—9 p.m. (PST).

#### Agenda:

Session 1—6–7 p.m.:

- “Open House” atmosphere.
- All interested parties bring forth issues for discussion on a one-on-one basis with FERC staff.
- All issues and comments will be summarized.

Session 2—7–9 p.m.:

- Brief overview of the identified issues.
- Summary of the Open House Session.
- Open discussion of issues, management objectives, existing information, data gaps, and

information needs.

- Discussion of integrated process plan.

#### Day 2—Morning Scoping Meeting

Date: Tuesday, October 24, 2006.

Time: 9 a.m.—11 a.m.

#### Agenda:

- Brief overview of the identified issues and summary of evening meeting and open house session.
- Open discussion of issues, management objectives, existing information, data gaps, and information needs.
- Discussion and Finalization of integrated process plan.

SD1, which outlines the subject areas to be addressed in the environmental document, will be mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph "m" above. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a revised list of issues identified through the scoping process.

#### Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of Federal, State, and Tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

#### Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

**Magalie R. Salas,**

Secretary.

[FR Doc. E6-16007 Filed 9-28-06; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ER05-85-005]

**PJM Interconnection, L.L.C. and Duquesne Light Company; Notice of Filing**

September 22, 2006.

Take notice that on May 4, 2006, Duquesne Light Company and AES Beaver Valley LLC (Settling Parties) submitted a Partial Settlement together with two amendments to agreements. The Settling Parties state that the Partial Settlement, if approved by the Commission without material condition or modification, will resolve the matter in this proceeding concerning banking provisions of the Transmission Agreement dated August 28, 1985 between Duquesne and AES.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on October 12, 2006.

Magalie R. Salas,  
*Secretary.*

[FR Doc. E6-15999 Filed 9-28-06; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. RP06-525-000]

**Williston Basin Interstate Pipeline Company; Notice of Annual Report of Penalty Revenue Credits**

September 22, 2006.

Take notice that on August 29, 2006, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing its "Annual Report of Penalty Revenue Credits" covering such activity during the twelve month period June 30, 2006.

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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time September 29, 2006.

Magalie R. Salas,  
*Secretary.*

[FR Doc. E6-15997 Filed 9-28-06; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings #1**

September 22, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG06-82-000.

*Applicants:* CR Clearing, LLC.

*Description:* Fee Collection Report of CR Clearing, LLC dba Conception Wind Power under EG06-82: Application for Exempt Wholesale Generator Status.

*Filed Date:* 09/13/2006.

*Accession Number:* 20060920-0127.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 04, 2006.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER00-2677-005.

*Applicants:* Covanta Delaware Valley, L.P.

*Description:* Covanta Delaware Valley LP submits its triennial market power update demonstrating that it continues to lack market power in generation and transmission and cannot erect barriers.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0115.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER03-467-001.

*Applicants:* Gulf States Energy, Inc.

*Description:* Gulf States Energy Inc submits its triennial updated market power analysis.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0113.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER03-891-002.

*Applicants:* Gulf States Energy Investments L.P.

*Description:* Gulf States Energy Investments, LP submits its triennial updated market power analysis.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0114.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER05-1093-001.

*Applicants:* Hermiston Power Partnership.

*Description:* Hermiston Power Partnership submits its compliance filing of its revised Reactive Supply and Voltage Control from Generation Sources Service rate schedule.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0062.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER05-1102-002.

*Applicants:* Goldendale Energy Center, LLC.

*Description:* Goldendale Energy Center LLC submits its compliance filing of its revised Reactive Supply and Voltage Control from Generation Sources Services rate schedule.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0064.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-186-003.

*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Co submits a compliance filing required by FERC's 7/6/06 Order showing the calculation of the refund amounts including interest.

*Filed Date:* 09/15/2006.

*Accession Number:* 20060918-0383.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 06, 2006.

*Docket Numbers:* ER06-587-000; ER06-587-001; ER06-587-004.

*Applicants:* Interstate Power and Light Company.

*Description:* Interstate Power and Light Co submits Substitute Sheets 1-17 of their Rate Schedule RES-5 submitted on 1/31/06.

*Filed Date:* 09/15/2006.

*Accession Number:* 20060920-0112.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 06, 2006.

*Docket Numbers:* ER06-783-003.

*Applicants:* New York Independent System Operator, Inc.

*Description:* New York Independent System Operator Inc submits corrected Substitute Second Revised Sheet No. 83.01 et al to its compliance filing submitted on 8/14/06.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0175.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1417-001.

*Applicants:* Weyerhaeuser Company.  
*Description:* Weyerhaeuser Co submits the Third Amended Petition for Market-Based Rate Authority.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060921-0073.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1490-000.

*Applicants:* CERITAS Energy, LLC.

*Description:* Ceritas Energy, LLC submits a notice of cancellation of FERC Rate Schedule No. 1.

*Filed Date:* 09/14/2006.

*Accession Number:* 20060918-0380.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 05, 2006.

*Docket Numbers:* ER06-1494-000.

*Applicants:* Nevada Power Company.

*Description:* Nevada Power Co submits an executed 203 KV Facilities Interconnection Agreement with Valley Electric Association, Inc.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0111.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1499-000.

*Applicants:* Minergy Neenah, L.L.C.

*Description:* Minergy Neenah, LLC submits a notice of cancellation of the Power Purchase Agreement w/ Wisconsin Power and Light Co formerly known as Alliant Energy-Wisconsin Power and Light Co.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0170.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1500-000.

*Applicants:* Wisconsin Electric Power Company.

*Description:* Wisconsin Electric Power Co submits a notice of cancellation of its FERC Rate Schedule No. 102, a Wholesale Distribution Export Service Agreement w/ Alliant Energy Corporate Services, Inc.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0169.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1502-000.

*Applicants:* Round Rock Energy LLC.

*Description:* Round Rock Energy LLC submits petition for acceptance of initial rate schedule, waivers and blanket authority.

*Filed Date:* 09/18/2006.

*Accession Number:* 20060920-0171.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1503-000; ER06-1504; ER03-888-002.

*Applicants:* Nordic Marketing of Ohio, LLC; Nordic Marketing of Pennsylvania, LLC; Nordic Marketing of Illinois, LLC.

*Description:* Nordic Marketing of Ohio, Pennsylvania and Illinois submit their triennial updated market analysis in support of market-based rate authorization.

*Filed Date:* 09/15/2006.

*Accession Number:* 20060920-0172.

*Comment Date:* 5 p.m. Eastern Time on Friday, October 06, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-16011 Filed 9-28-06; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission****Combined Notice of Filings #1**

September 25, 2006.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC06-161-000.

*Applicants:* Puget Sound Energy, Inc.

*Description:* Puget Sound Energy, Inc. submits its application for authorization for acquisition of an existing generation facility and acquisition by a holding company.

*Filed Date:* 09/11/2006.

*Accession Number:* 20060922-0104.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 02, 2006.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER96-1361-010; ER98-4138-006; ER99-2781-008; ER98-3096-012; ER01-202-005; ER00-1770-013; ER02-453-007; ER04-472-004; ER04-529-004.

*Applicants:* Atlantic City Electric Company; Potomac Electric Company; Delmarva Power & Light Company; Pepco Energy Services, Inc.; Potomac Power Resources, LLC; Connectiv Energy Supply, Inc.; Connectiv Atlantic Generation, LLC; Connectiv Delmarva Generation, Inc.; Connectiv Bethlehem, LLC; Fauquier Landfill Gas, LLC; Rolling Hills Landfill Gas, LLC.

*Description:* Atlantic City Electric Co. et al. submit a notification of change in status in compliance with the requirements of FERC's Order 652.

*Filed Date:* 09/21/2006.

*Accession Number:* 20060922-0059.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 12, 2006

*Docket Numbers:* ER03-500-001.

*Applicants:* Liberty Power Corp, LLC.

*Description:* Liberty Power Corp, LLC submits its updated market power analysis pursuant to the Commission's Order No. 652.

*Filed Date:* 09/21/2006.

*Accession Number:* 20060922-0058.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 12, 2006.

*Docket Numbers:* ER03-769-002.

*Applicants:* American PowerNet Management, LP.

*Description:* American PowerNet Management, LP submits its triennial market power analysis pursuant to the Commission's 6/20/03 letter order.

*Filed Date:* 09/20/2006.

*Accession Number:* 20060922-0054.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 11, 2006.

*Docket Numbers:* ER03-771-001.

*Applicants:* Accent Energy New Jersey LLC.

*Description:* Accent Energy New Jersey LLC submits its updated market power analysis and new Original Sheet 2.

*Filed Date:* 09/20/2006.

*Accession Number:* 20060922-0056.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 11, 2006.

*Docket Numbers:* ER06-257-002.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits a compliance filing providing revisions to the designation of Service Agreement 1154 an executed Network Integration Transmission Service Agreement with Associated Electric Coop, Inc.

*Filed Date:* 09/14/2006.

*Accession Number:* 20060922-0064.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 05, 2006.

*Docket Numbers:* ER06-432-003.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits its Substitute First Revised Sheet 58 et al. to FERC Electric Tariff, Fourth Revised Volume 1.

*Filed Date:* 09/21/2006.

*Accession Number:* 20060922-0060.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 12, 2006.

*Docket Numbers:* ER06-733-002.

*Applicants:* Midland Cogeneration Venture LP.

*Description:* Midland Cogeneration Venture Limited Partnership submits its notice of non-material change in status related to the sale of 43.5% of its ownership interest.

*Filed Date:* 09/21/2006.

*Accession Number:* 20060922-0062.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 12, 2006.

*Docket Numbers:* ER06-1208-001.

*Applicants:* Vermont Electric Power Company; Vermont Transco LLC

*Description:* Vermont Electric Power Co. & Vermont Transco, LLC jointly submits certain rate schedules that were transferred from VELCO to VT Transco effective 6/30/06.

*Filed Date:* 09/20/2006.

*Accession Number:* 20060922-0057.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 11, 2006.

*Docket Numbers:* ER06-1419-001.

*Applicants:* MeadWestvaco Virginia Corporation.

*Description:* MeadWestvaco Virginia Corp. submits its First Amended Petition for Market-Based Rate Authority, Acceptance of Initial Rate Schedule, Waivers and Blanket

Authority along with Rate Schedule FERC No.1.

*Filed Date:* 09/19/2006.

*Accession Number:* 20060920-0174.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1443-001.

*Applicants:* FirstEnergy Service Company; Pennsylvania Power Company; Metropolitan Edison Company; Pennsylvania Electric Company; Cleveland Electric Illuminating Company; Ohio Edison Company; The Toledo Electric Company  
*Description:* FirstEnergy Service Co. on behalf of Pennsylvania Power Co. et al. submit an Amendment to their 8/31/06 filing of an initial and amended market-based rate tariffs.

*Filed Date:* 09/20/2006.

*Accession Number:* 20060922-0055.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 11, 2006.

*Docket Numbers:* ER06-1458-001.

*Applicants:* E.ON U.S., LLC.

*Description:* E On US, LLC on behalf of Louisville Gas and Electric Co. et al. submits a substitute unexecuted Service Agreement for Network Integration Transmission Service.

*Filed Date:* 09/21/2006.

*Accession Number:* 20060922-0061.

*Comment Date:* 5 p.m. Eastern Time on Thursday, October 12, 2006.

*Docket Numbers:* ER06-1495-000.

*Applicants:* American Electric Power Service Corporation.

*Description:* American Electric Power Service Corp. on behalf of AEP Texas North Company submits a fully executed generation interconnection agreement between TSP and Whirlwind Energy LLC.

*Filed Date:* 09/19/2006.

*Accession Number:* 20060920-0173.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1496-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits its Transmission Interconnection Agreement with Interstate Power and Light Co. et al.

*Filed Date:* 09/19/2006.

*Accession Number:* 20060920-0239.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1497-000.

*Applicants:* PJM Interconnection, LLC.

*Description:* PJM Interconnection, LLC submits revisions to its Amended and Restated Operating Agreement and the PJM Open Access Transmission Tariff.

*Filed Date:* 09/19/2006.

*Accession Number:* 20060920-0167.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1498-000.  
*Applicants:* American Transmission Company LLC.

*Description:* American Transmission Company LLC submits an executed Distribution-Transmission Interconnection Agreement with New London Utilities dated as of 8/31/06.

*Filed Date:* 09/19/2006.

*Accession Number:* 20060920-0108.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1501-000.  
*Applicants:* ISO New England Inc.; New England Power Pool Participants Committee.

*Description:* ISO New England Inc. and New England Power Pool submit several proposed changes to the ISO New England Information Policy.

*Filed Date:* 09/18/2006

*Accession Number:* 20060920-0168.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1506-000.  
*Applicants:* Entergy Services Inc.  
*Description:* Entergy Services, Inc. on behalf of Entergy Arkansas, Inc. submits an executed Service Agreement providing for cost-based, short-term power sales to North Arkansas Electric Cooperative, Inc.

*Filed Date:* 09/20/2006.

*Accession Number:* 20060922-0053.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 11, 2006.

*Docket Numbers:* ER06-1507-000.  
*Applicants:* Wabash Valley Power Association, Inc.

*Description:* Wabash Valley Power Association, Inc. submits an Agreement for Electric Service implementing Industrial Load Rate Schedule 2 with Midwest Energy Cooperative and Jasper County REMC.

*Filed Date:* 09/20/2006.

*Accession Number:* 20060922-0052.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 11, 2006.

*Docket Numbers:* ER06-1508-000.  
*Applicants:* Southern California Edison Company.

*Description:* Southern California Edison Co. submits a Service Agreement for Wholesale Distribution Service with the City of Industry, CA.

*Filed Date:* 09/20/2006.

*Accession Number:* 20060922-0051.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 11, 2006.

*Docket Numbers:* ER06-1509-000.  
*Applicants:* Minergy Neenah, LLC.  
*Description:* Minergy Neenah, LLC submits a Notice of Cancellation of

FERC Rate Schedule 1, effective 9/19/06.

*Filed Date:* 09/19/2006.

*Accession Number:* 20060922-0050.  
*Comment Date:* 5:00 pm Eastern Time on Tuesday, October 10, 2006.

*Docket Numbers:* ER06-1510-000.  
*Applicants:* PJM Interconnection, LLC.

*Description:* PJM Interconnection, LLC submits an Open Access Transmission Tariff and Interconnection Service Agreement and Construction Service Agreement with South Point Biomass Generation, LLC and Ohio Power Company.

*Filed Date:* 09/20/2006.

*Accession Number:* 20060922-0049.  
*Comment Date:* 5 p.m. Eastern Time on Wednesday, October 11, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E6-16012 Filed 9-28-06; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 11810-004]

#### City of Augusta; Notice of Availability of Final Environmental Assessment

September 22, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff reviewed an application for an Original Major License for the Augusta Canal Project located on the Augusta Canal, adjacent to the Savannah River, Richmond County, Augusta, GA.

The Commission issued a draft multi-project Environmental Assessment (EA) for the Augusta Canal Project, Sibley Mill Project (P-5044) and Enterprise Mill Project (P-2935) on May 20, 2005. No substantive comments were filed regarding the Sibley Mill and Enterprise Mill projects, and, subsequently, licenses were issued for these projects.

On February 3, 2006, and February 7, 2006, the U.S. Department of Commerce (Commerce), and the U.S. Department of the Interior (Interior), respectively, filed signed copies of a draft Settlement which outlines a proposal for project operation, flows, and fishways for the Augusta Canal Project. By letter filed December 15, 2005, the City stated that the state agencies (the Georgia Department of Natural Resources and South Carolina Department of Natural Resources) agree with the terms of the draft Settlement. The draft Settlement, if finalized, would require changes to Commerce's and Interior's section 18 prescriptions. The City is currently in the process of finalizing the Settlement. Should a final, signed Settlement be filed with the Commission, the details of that Settlement would be addressed

in any order issued for this licensing proceeding.

This final EA addresses the issues pertinent to the Augusta Canal Project. Commission staff analyzed the potential environmental effects of licensing the Augusta Canal Project and concluded that issuing a license, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. You may register online at <http://www.ferc.gov/docs-filing/subscription.asp> to be notified via e-mail of new filings and issuances related to this or any other pending projects. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. E6-16000 Filed 9-28-06; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[FERC Docket Nos. CP06-61-000; CP01-23-003]

#### **North Baja Pipeline, LLC; Notice of Availability/Completion of the Draft Environmental Impact Statement/ Report and Draft Land Use Plan Amendment for the Proposed North Baja Pipeline Expansion Project**

September 22, 2006.

The environmental staffs of the Federal Energy Regulatory Commission (FERC or Commission), the California State Lands Commission (CSLC), and the Bureau of Land Management (BLM) (Agency Staffs) have prepared the draft environmental impact statement/ environmental impact report and draft land use plan amendment (draft EIS/EIR/plan amendment) to address North Baja Pipeline, LLC's (North Baja) proposed expansion of its natural gas pipeline system.

The draft EIS/EIR/plan amendment was prepared as required by the National Environmental Policy Act (NEPA), the California Environmental Quality Act, and the Federal Land

Management and Policy Act. The purpose of this document is to inform the public and the permitting agencies about the potential adverse and beneficial environmental impacts of the proposed North Baja Pipeline Expansion Project (Project or proposed Project) and its alternatives, and recommend mitigation measures that would reduce the significant adverse impacts to the maximum extent possible, and, where feasible, to a less than significant level. The Agency Staffs have concluded that if the Project is constructed and operated in accordance with applicable laws and regulations, North Baja's proposed mitigation, and the Agency Staffs' additional mitigation recommendations, it would be an environmentally acceptable action.

The FERC is the lead Federal agency and will use the document to consider the environmental impacts that could result if it issues North Baja a Certificate of Public Convenience and Necessity and a Presidential Permit amendment under sections 7 and 3, respectively, of the Natural Gas Act. The CSLC is the lead State agency and will use the document to consider North Baja's application to amend its existing right-of-way lease across the State's Sovereign and School Lands in conjunction with the environmental impacts that could result from any part of the Project in California.

The BLM is participating as a cooperating agency in the preparation of this document because the Project would cross Federal land under the jurisdiction of the Palm Springs-South Coast, El Centro, and Yuma Field Offices. The Bureau of Reclamation (BOR) is also a cooperating agency in the preparation of this document because lands administered by the BOR would be crossed by the Project. Under section 185(f) of the Mineral Leasing Act of 1920, the BLM has the authority to issue Right-of-Way Grants for all affected Federal lands. The draft EIS/EIR/plan amendment will be used by the BLM to consider whether to amend North Baja's existing Right-of-Way Grant and issue Temporary Use Permits for the installation of approximately 67.4 miles of pipeline and ancillary facilities across Federal lands managed by the BLM, the BOR, and the U.S. Fish and Wildlife Service (FWS). The draft EIS/EIR/plan amendment will also be used by the BLM to consider amending the California Desert Conservation Area Plan (as amended), which would be necessary for pipeline construction outside of designated utility corridors, as well as amending the Yuma District Resource Management Plan, which would be necessary for pipeline

construction across the Milpitas Wash Special Management Area.

The BLM proposes to adopt the draft EIS/EIR/plan amendment per Title 40 Code of Federal Regulations (CFR) part 1506.3 to meet its responsibilities under NEPA and its planning regulations per Title 43 CFR part 1610. The BLM will present separate Records of Decision for the Right-of-Way Grant and the plan amendments for the North Baja Pipeline Expansion Project after the issuance of the final environmental impact statement/environmental impact report and proposed land use plan amendment (final EIS/EIR/proposed plan amendment). The concurrence or non-concurrence of the BOR and the FWS would be considered in the BLM's decision.

The existing North Baja system is currently certificated by the FERC to transport 512,500 dekatherms per day (Dthd) of natural gas in a southbound direction. Once completed, the expanded system would be capable of transporting up to 2,932,000 Dthd (2,753 million standard cubic feet per day) of natural gas from planned liquefied natural gas (LNG) storage and vaporization terminals located on the Baja California coast in Mexico in a northbound direction for delivery to customers in California and Arizona. In addition to the new volumes from the LNG terminals, North Baja would continue to offer southbound gas transportation service for several existing shippers.

The draft EIS/EIR/plan amendment addresses the potential environmental effects of the construction and operation of the following facilities proposed by North Baja:

- 79.8 miles of pipeline loop <sup>1</sup> (B-Line) adjacent to North Baja's existing pipeline (A-Line) consisting of 11.7 miles of 42-inch-diameter pipeline extending from the existing Ehrenberg Compressor Station at milepost (MP) 0.0 in La Paz County, Arizona to the existing Rannells Trap at MP 11.7 in Riverside County, California, and 68.1 miles of 48-inch-diameter pipeline extending from Rannells Trap to an interconnection at the U.S.-Mexico border at MP 79.8 in Imperial County, California;
- Less than 0.1 mile (about 20 feet) of 36-inch-diameter pipeline (SoCal Gas Company [SoCal Gas] Interconnect) to connect the B-Line to the existing SoCal Gas system within the proposed Blythe Meter Station site at MP 0.5 in Riverside County;

<sup>1</sup> A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

- 0.6 mile of 10-inch-diameter pipeline lateral<sup>2</sup> (Blythe Energy Interconnect Lateral [BEI Lateral]) extending from the proposed Blythe Meter Station site to an interconnection with the existing Blythe Energy Facility I supply pipeline in Riverside County;
- 45.7 miles of 16-inch-diameter pipeline lateral (Imperial Irrigation District [IID] Lateral) extending from MP 74.5 of the B-Line near the existing Ogilby Meter Station to the existing IID El Centro Generating Station in Imperial County;
- Modifications at its existing Ehrenberg Compressor Station and the existing Ogilby Meter Station to allow northbound flow of natural gas;
- Metering modifications at its existing El Paso Natural Gas Company (El Paso) Meter Station at the Ehrenberg Compressor Station site to allow LNG-source gas to be delivered into the El Paso system;
- One meter station (Blythe Meter Station) in Riverside County to measure gas delivery from the North Baja system to SoCal Gas and the BEI Lateral;
- One odorant facility at the existing Ogilby Meter Station to odorize the natural gas before delivery into the SoCal Gas system;
- One meter station (El Centro Meter Station) at the existing IID El Centro Generating Station to measure gas delivery from the North Baja system to the IID;
- One tap where the IID Lateral would connect to the B-Line in Imperial County;
- Three pig<sup>3</sup> launchers;
- Four pig receivers;
- Nine remote manual valves with automatic shutdown capability on the B-Line, adjacent to the existing A-Line valve sites; and
- Four remote manual valves with automatic shutdown capability on the IID Lateral.

#### Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS/EIR/plan amendment is encouraged to do so. To expedite the Agency Staffs' receipt and consideration of your comments, electronic submission of comments is strongly recommended. See Title 18 CFR 385.2001(a)(1)(iii) and the instructions on the FERC Internet Web site (<http://www.ferc.gov>) under the eFiling link

<sup>2</sup> A lateral pipeline typically takes gas from the main system to deliver it to a customer, local distribution system, or another interstate transmission system.

<sup>3</sup> A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

and the link to the User's Guide. Before you can submit comments, you will need to create a free account by clicking on "Sign-up" under "New User." You will be asked to select the type of submission you are making. This type of submission is considered a "Comment on Filing." Comments submitted electronically must be submitted by December 28, 2006.

If you wish to mail comments, please mail your comments so that they will be received in Washington, DC on or before December 28, 2006. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Reference Docket Nos. CP06-61-000 and CP01-23-003;
- Label one copy of your comments for the attention of Gas 1, DG2E; and
- Send an additional copy of your letter to:

Tom Filler, California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825.

Your letter to the CSLC should reference CA State Clearinghouse No. 2006081127.

In addition to or in lieu of sending written comments, the FERC, the CSLC, and the BLM invite you to attend two public meetings the Agency Staffs will conduct in the Project area to receive comments on the draft EIS/EIR/plan amendment. Both meetings will begin at 7 p.m. (PST), and are scheduled as follows:

Date	Location
Tuesday, December 5, 2006.	Vacation Inn, 2015 Cottonwood Circle, El Centro, CA 92243. (760) 352-9700.
Wednesday, December 6, 2006.	Blythe City Council Chamber, 235 North Broadway, Blythe, CA 92225. (760) 922-6161.

These meetings will be posted on the FERC's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx>. Interested groups and individuals are encouraged to attend and present written or oral comments on the draft EIS/EIR/plan amendment. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and necessary modifications are made to the draft EIS/EIR/plan amendment, a

final EIS/EIR/proposed plan amendment will be published and distributed by the Agency Staffs. The final EIS/EIR/proposed plan amendment will contain the Agency Staffs' responses to comments timely received on the draft EIS/EIR/plan amendment.

Comments will be considered by the FERC, the CSLC, and the BLM, but will not serve to make the commenter a formal party to the proceeding. Any person seeking to become a formal party to the proceeding must file a motion to intervene pursuant to Rule 214 of the FERC's Rules of Practice and Procedure (Title 18 CFR part 385.214).

Anyone may intervene in this proceeding based on the draft EIS/EIR/plan amendment. You must file your request to intervene as specified above.<sup>4</sup> You do not need intervenor status to have your comments considered and responded to.

The draft EIS/EIR/plan amendment has been placed in the public files of the FERC and the CSLC and is available for public inspection at:

Federal Regulatory Energy Commission, Public Reference Room, 888 First St. NE.; Room 2A, Washington, DC 20426; (202) 208-1371.

California State Lands Commission, 100 Howe Avenue, Suite 100 South, Sacramento, CA 95825; (916) 574-1938.

The draft EIS/EIR/plan amendment is also available for viewing on the FERC and CSLC Web sites at the Internet addresses below.

<http://www.ferc.gov>

<http://www.slc.ca.gov>

A limited number of copies of the draft EIS/EIR/plan amendment are available from the FERC's Public Reference Room identified above. These copies may be requested in hard copy or as .pdf files on compact disk. In addition, copies of the draft EIS/EIR/plan amendment have been mailed to Federal, State, and local government agencies; elected officials; Native American tribes; affected landowners; local libraries and newspapers; intervenors to the FERC's proceeding; and other interested parties. Hard copies of the draft EIS/EIR/plan amendment can be viewed at the following libraries in the Project area:

Yuma County Library District, 350 3rd Avenue, Yuma, AZ 85364.  
Palo Verde Valley Library, 125 W. Chanslorway, Blythe, CA 92225.  
El Centro Public Library, 539 State Street, El Centro, CA 92243.

<sup>4</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Hemet Public Library, 510 E. Florida Avenue, Hemet, CA 92543.

Holtville City Library, 101 E. 6th Street, Holtville, CA 92250.

Imperial Public Library, 200 W. 9th Street, Imperial, CA 92251.

City of Rancho Mirage Public Library, 42–520 Bob Hope Drive, Rancho Mirage, CA 92270.

Glen Avon Library, 9244 Galena Street, Riverside, CA 92509.

Palo Verde District Library, 701 Silver Spur Road, Rollins Hills Estates, CA 90274.

Additional information about the Project is available from the FERC's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the FERC, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site.

Information concerning the involvement of the CSLC in the EIS/EIR process may be obtained from Tom Filler, Project Manager, at (916) 574–1938, or on the CSLC Internet Web site at <http://www.slc.ca.gov>.

Information concerning the proposed land use plan amendments and the involvement of the BLM in the EIS/EIR and plan amendment process may be obtained from Lynda Kastoll, Project Manager, at (760) 337–4421.

**Magalie R. Salas,**  
Secretary.

[FR Doc. E6–16002 Filed 9–28–06; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2082–027]

#### PacifiCorp, Oregon and California; Notice of Availability of the Draft Environmental Impact Statement for the Klamath Hydroelectric Project and Intention To Hold Public Meetings

September 25, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Klamath Hydroelectric Project (FERC No. 2082), located primarily on the Klamath River, in Klamath County, Oregon and Siskiyou County, California, and has prepared a Draft Environmental Impact Statement (draft EIS) for the project. The existing project occupies 219 acres of lands of the United States, which are administered by the U.S. Bureau of Land Management or the U.S. Bureau of Reclamation.

The draft EIS contains staff evaluations of the applicant's proposal and alternatives for relicensing the Klamath Hydroelectric Project. The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

Comments on the draft EIS should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must be filed by November 24, 2006, and should reference Project No. 2082–027.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at <http://www.ferc.gov> under the eLibrary link.

In addition to or in lieu of sending written comments, you are invited to attend one or more public meetings that will be held to receive comments on the draft EIS during the month of November. Meeting dates, times, and locations will be provided in a subsequent Notice.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meeting will be recorded by a

court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. Meeting information will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Commission staff will consider comments it receives as it prepares the final EIS for this project. The final EIS will be part of the record from which the Commission will make its decision.

Copies of the draft EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The draft EIS also may be viewed on the Internet at [www.ferc.gov](http://www.ferc.gov) under the eLibrary link. Enter the docket number (P–2082) to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Anyone may intervene in this proceeding based on this draft EIS (18 CFR 380.10). You must file your request to intervene as specified above.<sup>1</sup> You do not need intervenor status to have your comments considered.

For further information, contact John Mudre at (202) 502–8902 or at [john.mudre@ferc.gov](mailto:john.mudre@ferc.gov).

**Magalie R. Salas,**  
Secretary.

[FR Doc. E6–16006 Filed 9–28–06; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6679–7]

### 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

<sup>1</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.



202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

#### Draft EISs

EIS No. 20060233, ERP No. D–FHW–C40336–NY, Long Island Expressway (LIE) Rest Area Upgrade Project, Upgrading the Existing Rest Area from Route 1–495/Long Island Expressway between Exits 51 and 52, Funding, Suffolk County, NY

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20060246, ERP No. D–NRC–C06016–NJ, GENERIC—License Renewal of Nuclear Plants Regarding Oyster Creek Nuclear Generating Station Supplement 28 to NUREG–1437, Located adjacent to Barnegat Bay, Lacy and Ocean Townships, Ocean County, NJ

Summary: EPA expressed environmental concerns regarding compliance with Section 316 of the Clean Water Act, impacts due to entrainment and impingement of fish and shellfish, and impacts to aquatic systems from heat shock. Rating EC2.

EIS No. 20060262, ERP No. D–SFW–K65313–CA, San Joaquin Valley Operations and Maintenance Program Habitat Conservation Plan, Application for Incidental Take Permits, San Joaquin, Stanislaus, Merced, Fresno, Kings, Kern Mariposa, Madera and Tulare Counties, CA

Summary: EPA expressed environmental concerns about impacts to listed species due to temporary disturbances and recommended the use of enhanced compensation ratios. Rating EC2.

EIS No. 20060264, ERP No. D–AFS–J65465–WY, Lower Valley Energy (LVE) Natural Gas Pipeline Project, Construction and Operation of a Pressurized Natural Gas Pipeline, Special-Use-Authorization, Big Piney and Jackson Ranger Districts, Bridger-Teton National Forest, Sublette and Teton Counties, WY

Summary: EPA expressed environmental concerns about potential adverse impacts to wetlands, vegetation, and riparian habitat in the pipeline disturbance corridor. EPA suggests that the Final EIS include additional BMPs that avoid or reduce impacts to wetlands and that controls on compressor engines or the use of electric motors be considered to reduce potential air quality impacts. Rating EC2.

EIS No. 20060272, ERP No. D–COE–E11060–NC, West Onslow Beach and

New River Inlet (Topsail Beach) Shore Protection Project, Storm Damages and Beach Erosion Reduction, Funding, Pender County, NC

Summary: EPA expressed environmental concerns about the long-term consequences of the proposal to dredge sand onto the eroding shoreline of Top Sail Beach. Rating EC1.

EIS No. 20060317, ERP No. D–FHW–C40168–NY, NY Route 347 Safety and Mobility Improvement Project, from Northern State Parkway to NY Route 25A, Funding, Towns of Smithtown, Islip and Brookhaven, Suffolk County, NY

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20060318, ERP No. D–FHW–E40810–NC, Greenville Southwest Bypass Study, Transportation Improvements to NC 11 and U.S. 264 Business, U.S. Army COE Section 404 Permit, Pitt County, NC

Summary: EPA expressed environmental concerns about high stream and wetland impacts, potential impact to a historic district, potential indirect and cumulative impacts to water quality, and socio-economic impacts to farmlands and residential relocations. Rating EC2.

EIS No. 20060270, ERP No. DA–COE–E39054–FL, Cape Sable Seaside Sparrow Protection, Interim Operation Plan (IOP), Additional Information Alternative 7, Providing Additional Flood Control Capacity, Implementation, Everglades National Park, Miami-Dade County, FL

Summary: EPA expressed environmental concerns about long-term compliance with state/federal water quality standards. Rating EC2.

#### Final EISs

EIS No. 20060314, ERP No. F–SFW–K39087–CA, Bair Island Restoration and Management Plan, Tidal Action Restoration, Don Edwards San Francisco Bay National Wildlife Refuge, Bair Island State Ecological Reserve, South San Francisco Bay, San Mateo County, CA

Summary: EPA does not object to the proposed action.

EIS No. 20060351, ERP No. F–FRC–G03031–00, Carthage to Perryville Project, Construction and Operation of a Natural Gas Pipeline Facilities, Center Point Energy Gas Transmission, Located in various counties and parishes in eastern Texas and northern Louisiana

Summary: No formal comment letter was sent to the preparing agency.

Dated: September 25, 2006.

**Robert W. Hargrove,**

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–16056 Filed 9–28–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6679–6]

### Environmental Impacts 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 09/18/2006 Through 09/22/2006 Pursuant to 40 CFR 1506.9.

EIS No. 20060387, Final EIS, AFS, UT, West Fork Blacks Fork Allotment Management Plan, Proposes to Authorize Continued Livestock Grazing, Township 1 North, Range 11 East, Salt Lake Principle Meridan, Evanston Ranger District, Wasatch-Cache National Forest, Summit County, UT, *Wait Period Ends:* 10/30/2006, *Contact:* Amy Barker 307–789–3194

EIS No. 20060388, Final EIS, NOA, ME, Atlantic Herring Fishery Management Plan (FWP), Amendment 1, Management Measure Adjustment, Implementation, Gulf of Maine, George Bank, ME, *Wait Period Ends:* 10/30/2006, *Contact:* Paul Howard 978–465–3116

EIS No. 20060389, Final EIS, AFS, CA, Slapjack Project, Protect Rural Communities from Fire Hazards by Constructing Defensible Fuel Profile Zones (DFPZS), Feather River Ranger District, Plumas National Forest, Butte and Yuba Counties, CA, *Wait Period Ends:* 10/30/2006, *Contact:* Susan Joyce 530–534–6500

EIS No. 20060390, Final EIS, FHW, PA, Southern Beltway Transportation Project, Improvement from US–22 in Robinson Township to Interstate 79 in South Fayette Township and Cecil Township, Funding and U.S. Army COE Section 404 Permit, Washington, Allegheny Counties, PA, *Wait Period Ends:* 10/30/2006, *Contact:* Karyn E. Vandervoort 717–221–2276

EIS No. 20060391, Final EIS, NRC, MN, GENERIC—License Renewal of Nuclear Plants, Supplement 26 to NUREG 1437, Regarding Monticello Nuclear Generating Plant (TAC NO. MC6441) Renewal of Operating License DRP–22 for Additional 20–

Years of Operation, Mississippi River, City of Monticello, Wright County, MN, *Wait Period Ends:* 10/30/2006, *Contact:* Laura Quinn 301-415-2220

EIS No. 20060392, Draft EIS, FRC, 00, North Baja Pipeline Expansion Project, Docket Nos. CP06-61-000 and CP01-23-000, Construction and Operation a Natural Gas Pipeline System, Land Use Plan Amendment, Right-of-Way Grant, Temporary Use Permits and U.S. Army COE Section 10 and 404 Permits, La Paz County, AZ and Riverside and Imperial Counties, CA, *Comment Period Ends:* 12/28/2006, *Contact:* Todd Sedmak 1-866-209-FERC

EIS No. 20060393, Final EIS, COE, 00, Kansas City's Levees, Missouri and Kansas Flood Damage Reduction Study, Improvements to the Existing Line of Protection, Birmingham, Jackson, Clay Counties, MO and Wyandotte County, KS, *Wait Period Ends:* 10/30/2006, *Contact:* Christopher M. White 816-389-3158

#### Amended Notices

EIS No. 20060131, Draft EIS, AFS, OR, *Withdrawn*—Kelsey Vegetation Management Project, Moving Resource Conditions Closer to the Goals and Desired Future Condition, Deschutes National Forest Land Resource Management Plan, Bend-Fort Rock Ranger District, Deschutes County, OR, *Comment Period Ends:* 05/30/2006, *Contact:* David Frantz 541-383-4721

Revision of FR Notice Published 04/14/2006: Officially Withdrawn by the Preparing Agency

EIS No. 20060337, Draft Supplement, COE, FL, Lake Okeechobee Regulation Schedule Study, Updated Information on Operational Changes to the Current Water Control Plan, Caloosahatchee and St. Lucie River Estuaries, Lake Okeechobee, FL, *Comment Period Ends:* 10/16/2006, *Contact:* Yvonne Haberer 904-232-1701

Revision of FR Notice Published 08/18/2006: Extend Comment Period from 10/02/2006 to 10/16/2006

EIS No. 20060348, Draft EIS, NPS, MN, Disposition of Bureau of Mines Property, Twin Cities Research Center Main Campus, Implementation, Hennepin County, MN, *Comment Period Ends:* 10/24/2006, *Contact:* Kim M. Berns 651-290-3030-x244

Revision of FR Notice Published 08/25/2006: Correction to Comment Period from 10/09/2006 to 10/24/2006

Dated: September 26, 2006.

**Robert W. Hargrove,**  
*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E6-16055 Filed 9-28-06; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2005-0123; FRL-8095-9]

### Methyl Bromide; Tolerance Reassessment and Risk Management Decision for Methyl Bromide, and Reregistration Eligibility Decision for Methyl Bromide's Commodity Uses; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of comment period.

**SUMMARY:** On August 9, 2006, EPA announced the availability of EPA's Tolerance Reassessment and Risk Management Decision (TRED) for Methyl Bromide, and Reregistration Eligibility Decision (RED) for Methyl Bromide's Commodity Uses, and opened a 60-day public comment period on the document. This document announces the extension of the comment period for an additional 45 days.

**DATES:** Comments, identified by docket identification (ID) number EPA-HQ-OPP-2005-0123 must be received on or before November 24, 2006.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of August 9, 2006.

**FOR FURTHER INFORMATION CONTACT:** Steven Weiss, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8293; fax number: (703) 308-8005; e-mail address: [weiss.steven@epa.gov](mailto:weiss.steven@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

The Agency included in the earlier notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

##### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://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:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

##### C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in the **ADDRESSES** Unit of the August 9, 2006 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### II. What Action is EPA taking?

This document extends the public comment period established in the

**Federal Register** issued on August 9, 2006 (71 FR 45546) (FRL-8083-1). In that document, EPA announced the availability of EPA's Tolerance Reassessment and Risk Management Decision (TRED) for Methyl Bromide, and Reregistration Eligibility Decision (RED) for Methyl Bromide's Commodity Uses, and opened a public comment period on the document. EPA is hereby extending the comment period, which was set to end on October 10, 2006 for an additional 45 days.

The reason for this extension is so the public can comment on the buffer zone look-up table document that the Agency has placed in the docket. This document contains buffer zone look up tables for treatment and aeration periods that were described in the August 9, 2006 decision document and that are based on information already available in the docket. The Agency believes that providing the buffer zone document and extending the comment period will ensure that stakeholders will have a better understanding of the impacts of the decision document and will be able to provide more informed comments for the Agency to consider.

In addition to providing the look-up tables in the docket, the Agency has identified two issues that were included in supporting documents but inadvertently omitted or not clearly articulated in the decision document. The first issue was the omission of rates for several uses in "Table 2, Summary of Labeling Changes for Methyl Bromide Fumigation." An updated version of the table is included in the docket. The second issue was that the decision document states that all buffer zone distances modeled with PERFUM were based on limiting bystander exposure to 1 part per million (ppm) for an 8 hour time weighted average (TWA). Although not stated in the decision document, exposures of durations lasting more than 8 hours were based on limiting exposures to 0.33 ppm for a 24-hour TWA. The reason for having two different exposure limits is to match the most appropriate toxicity endpoint to the expected duration of exposure.

### III. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action." Section 408(q) of the

Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 25, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6-16063 Filed 9-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2004-0202; FRL-8096-6]

### Pentachloronitrobenzene (PCNB) RED; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA issued a notice in the **Federal Register** of August 2, 2006, concerning the availability of the pentachloronitrobenzene (PCNB) reregistration eligibility decision (RED) and the opening of the 60-day public comment period on the RED. This document is extending the comment period for 30 days, from October 2, 2006 to November 1, 2006.

**DATES:** Comments, identified by docket identification (ID) number EPA-HQ-OPP-2004-0202 must be received on or before November 1, 2006.

**ADDRESSES:** Follow the detailed instructions for submitting comments as provided in the **SUPPLEMENTARY INFORMATION** of the August 2, 2006 FR Notice. In addition, comments may be submitted through the Federal Document Management System Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Jill Bloom, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8019; e-mail address: [bloom.jill@epa.gov](mailto:bloom.jill@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### A. Does this Action Apply to Me?

The Agency included in the August 2, 2006 notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://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:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

### C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the

detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** of the August 2, 2006 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

## II. What Action is EPA Taking?

This document extends the public comment period established in the **Federal Register** of August 2, 2006 (70 FR 10090) (FRL-7697-1). In that document, the Agency provided a 60-day comment period for public input on the reregistration decision for PCNB, particularly on the benefits associated with particular minor uses of PCNB. EPA is hereby extending the comment period, which was set to end on October 2, 2006, to November 1, 2006.

## III. What is the Agency's Authority for Taking this Action?

In accordance with 40 CFR part 166, the Administrator shall issue a notice of receipt for a quarantine exemption request when the application proposes the use of a new chemical. Further provisions are made to give the public 15 days to comment. However, the Administrator may extend the comment period, if additional time for comment is requested.

### List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 25, 2006.

**Debra Edwards,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E6-16062 Filed 9-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2006-0785; FRL-8094-1]

### Notice of Filing of a Pesticide Petition for Establishment of Tolerances for Residues of the Herbicide Pyroxsulam on Wheat, Hay, and Straw

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of the herbicide pyroxsulam on wheat, hay, and straw.

**DATES:** Comments must be received on or before October 30, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID)

number EPA-HQ-OPP-2006-0785 and pesticide petition number PP6F7101, by one of the following methods:

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

- **Mail:** Office of Pesticide Programs (OPP) Public Regulatory Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Public Regulatory Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2006-0785. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The Federal [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Public Regulatory Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are 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:** Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6224; e-mail address: [miller.joanne@epa.gov](mailto:miller.joanne@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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.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:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

## II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical

residues is available on EPA's Electronic Docket at <http://www.regulations.gov>. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

### New Tolerances

*PP 6F7101.* Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268-1054, proposes to establish tolerances for residues of the herbicide pyroxsulam, N-(5,7-dimethoxy[1,2,4]triazolo[1,5-a]pyrimidin-2-yl)-2-methoxy-4-(trifluoromethyl)-3-pyridinesulfonamide in or on the food/feed commodities wheat, forage at 0.04 parts per million (ppm); wheat, grain at 0.01 ppm; wheat, hay at 0.01 ppm; and wheat, straw at 0.01 ppm. An analytical method was developed to measure the pyroxsulam in wheat by liquid chromatography with positive-ion electrospray ionization (ESI) tandem mass spectrometry (LC/MS/MS).

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 2006.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 06-8383 Filed 9-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[Docket ID No. EPA-HQ-ORD-2004-0018; FRL-8225-9]

### Air Quality Criteria for Lead

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA is announcing the availability of a document titled, "Air Quality Criteria for Lead" (EPA/600/R-05/144aC-bC) (AQCD for Lead). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

**ADDRESSES:** The "Air Quality Criteria for Lead" will be available primarily via the Internet on the National Center for

Environmental Assessment's home page under the Recent Additions and Publications menus at <http://www.epa.gov/ncea>. A limited number of CD-ROM or paper copies will be available. Contact Ms. Diane Ray by phone (919-541-3637), fax (919-541-1818), or e-mail ([ray.diane@epa.gov](mailto:ray.diane@epa.gov)) to request either of these, and please provide your name, your mailing address, and the document title, "Air Quality Criteria for Lead" (EPA/600/R-05/144aC-bC) to facilitate processing of your request.

**FOR FURTHER INFORMATION CONTACT:** For technical information, contact Lori White, PhD, NCEA; telephone: 919-541-3146; facsimile: 919-541-1818; or e-mail: [white.lori@epa.gov](mailto:white.lori@epa.gov).

**SUPPLEMENTARY INFORMATION:** Section 108(a) of the Clean Air Act directs the Administrator to identify certain air 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 \* \* \*." Under section 109 of the Act, 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 subsequent periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised criteria.

Lead is one of six "criteria" pollutants for which EPA has established air quality criteria and NAAQS. On November 9, 2004 (69 FR 64926), EPA formally initiated its current review of the criteria and NAAQS for lead, requesting the submission of recent scientific information on specified topics. A draft of EPA's "Project Work Plan for Revised Air Quality Criteria for Lead" (NCEA-R-1465) was released on January 7, 2005, for public comment (70 FR 1439) and was discussed by the Clean Air Scientific Advisory Committee (CASAC) via a publicly accessible teleconference consultation on March 28, 2005 (70 FR 11629). On July 15, 2005 (70 FR 41007), several workshops were announced to discuss, with invited recognized scientific experts, initial draft materials that dealt with various lead-related issues being addressed in the draft AQCD for lead.

These workshops were held August 4–5, 16–18, and 17–19, 2005. Availability of the first external review draft of the Air Quality Criteria for Lead (EPA/600/R-05/144aA–bA), was announced in the **Federal Register** on December 2, 2005 (70 FR 72300). The CASAC Lead Review Panel reviewed the first external review draft at a public meeting on February 28 and March 1, 2006.

EPA considered comments of the CASAC review panel and the public in revising the draft AQCD for lead. Availability of the second external review draft of the Air Quality Criteria for Lead (EPA/600/R-05/144aB–bB), was announced in the **Federal Register** on May 19, 2006 (71 FR 29152). The CASAC Lead Review Panel reviewed the second external review draft at a public meeting on June 28, 2006. EPA provided revised Integrative Synthesis and Executive Summary chapters of the draft AQCD for Lead to the public and CASAC for review in July 2006. The CASAC Lead Review Panel met via a publicly accessible teleconference on August 15, 2006, to review these revised chapters (71 FR 40516). EPA has considered the comments of the CASAC Lead Review Panel and of the public in preparing the final Air Quality Criteria for Lead.

Dated: September 25, 2006.

**George W. Alapas,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. E6–16060 Filed 9–28–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0291; FRL–8097–2]

### Pesticides; Draft Guidance for Pesticide Registrants on Small-Scale Field Testing and Low-level Intermittent Presence in Food of Plant-Incorporated Protectants (PIPs)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The Agency is announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PRN) entitled “Guidance on Small-Scale Field Testing and Low-level Intermittent Presence in Food of Plant-Incorporated Protectants (PIPs).” PRNs are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide

guidance to pesticide registrants and OPP personnel. This particular draft PRN provides guidance to the registrant concerning clarification on the process by which EPA reviews and ensures the safety of low-level intermittently-present residues of plant-incorporated protectants (PIPs) in food or feed, and the conditions under which a tolerance or exemption from the requirement of a tolerance would be required for field tests for biotechnology-derived food and feed crop plants containing plant-incorporated protectants.

**DATES:** Comments must be received on or before November 28, 2006.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0291, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket’s normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

*Instructions:* Direct your comments to docket ID number EPA–HQ–OPP–2006–0291. EPA’s policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The Federal [www.regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit

an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are 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:

Patricia Moe, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0744; fax number: (703) 308–7026; e-mail address: [moe.patricia@epa.gov](mailto:moe.patricia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me

This action is directed to the public in general. Although this action may be of particular interest to those persons who are involved in plant breeding using plant-incorporated protectants including but not limited to academic researchers, seed companies, and PIP registrants. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://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:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0291. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S.

Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

**II. What Guidance Does this PRN Provide?**

This draft PRN provides guidance to the registrant concerning the policies described in the August 2, 2002 **Federal Register** (67 FR 50578) Notice on "*Proposed Federal Actions to Update Field Test Requirements for Biotechnology Derived Plants and to Establish Early Food Safety Assessments for New Proteins Produced by Such Plants*" issued under the auspices of the Office of Science and Technology Policy (OSTP). The OSTP notice was issued to outline what measures federal agencies would take to prevent low levels of biotechnology derived genes and gene products from being found in commercial food and feed. The OSTP notice stated that EPA would rely on existing processes and publish guidance for individuals and organizations conducting field testing of Plant-Incorporated Protectants (PIPs). The proposed PRN describes those existing rules along with the existing procedures related to them. Additionally, the PRN provides guidance on residue containment in small-scale field testing and the kinds of information that EPA has received to support the PIP tolerances issued thus far.

No actions are required of registrants or other individuals involved in small scale field testing of PIPs as a result of this PRN. The PRN provides guidance and helps explain the existing rules and regulations pertinent to this topic and provides a point of contact for those wishing to discuss the issue or ask questions related to specific test parameters. The PRN is also intended to reinforce coordination of EPA regulatory efforts related to biotechnology products with those of the Food and Drug Administration (FDA) and of the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), as outlined under the Coordinated Framework for the Regulation of the Products of Biotechnology.

**III. Do PRNs Contain Binding Requirements?**

The PRN discussed in this document is intended to provide guidance to EPA

personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PRN is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 22, 2006.

**James Jones,**

*Director, Office of Pesticide Programs.*

[FR Doc. E6-16072 Filed 9-28-06; 8:45 am]

**BILLING CODE 6560-50-S**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8225-4]

**Proposed Agreement for Recovery of Allocated Past Costs, and Covenant Not to Sue for the Richardson Flat Tailing Site, Park City, UT**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i)(1), notice is hereby given of the proposed settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h), between the U.S. Environmental Protection Agency ("EPA") and the following (collectively, "Settling Defendants"): United Park City Mines, Atlantic Richfield Company, Falconbridge Limited, and Noranda Mining Inc.

The proposed settlement would reimburse EPA for costs incurred in response to the release or threatened release of hazardous substances at the Richardson Flat Tailings Site located approximately 1.5 miles northeast of Park City, Utah (the "Site"). EPA alleges that each of the Settling Defendants is jointly and severally liable for all response costs incurred by EPA at or in connection with the Site, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

The EPA's response costs total approximately \$607,294.89 through November 30, 2001. The Settling Defendants have agreed to pay \$460,000, with the allocation to each party described in a proposed Consent Decree and Partial Consent Decree. All subsequent costs incurred have been paid pursuant to Administrative Orders on Consent with United Park City Mines.

Under the proposed settlement, the Settling Defendants have agreed not to contest the authority of the United States to enter into the settlement or to implement or enforce its terms. In return, and upon payment of the amounts agreed upon, the Settling Defendants will receive a covenant from EPA not to sue them for additional past response costs at the Site.

**DATES:** For thirty (30) days following the date of publication of this Notice, the EPA will receive written comments relating to the past costs allocated settlement agreement for the Site. The EPA will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

**ADDRESSES:** The EPA's response to any comments, the proposed agreement and additional background information relating to the agreement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, Suite 300, 5th Floor, in Denver, Colorado. Comments and requests for copies of the proposed Consent Decree and Partial Consent Decree should be addressed to Maureen O'Reilly, Enforcement Specialist, Environmental Protection Agency—Region 8, Mail Code 8ENF-RC, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, and should reference the Richardson Flat Tailings Site, Park City, Utah.

**FOR FURTHER INFORMATION CONTACT:** Margaret J. ("Peggy") Livingston, Enforcement Attorney, Legal Enforcement Program, Environmental Protection Agency—Region 8, Mail Code 8ENF-L, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, (303) 312-6858.

Dated: September 19, 2006.

**Carol Rushin,**

*Assistant Regional Administrator Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.*

[FR Doc. E6-16061 Filed 9-28-06; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 2006.

**A. Federal Reserve Bank of Cleveland** (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *Park National Corporation*, Newark, Ohio; to acquire 100 percent of the voting shares of Anderson Bank Company, Cincinnati, Ohio.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *AFNB Holdings, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of American First National Bank, Houston, Texas.

2. *Highlands Bancshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Jacksboro Bancshares, Inc., Jacksboro, Texas, and

thereby indirectly acquire voting shares of First Jacksboro Bancshares of Delaware, Inc., Wilmington, Delaware, and The First National Bank of Jacksboro, Jacksboro, Texas.

Board of Governors of the Federal Reserve System, September 26, 2006.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E6-16027 Filed 9-28-06; 8:45 am]

**BILLING CODE 6210-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

[Document Identifier: OS-0937-0025; 60-day notice]

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension.

*Title of Information Collection:* Application for Appointment as a Commissioned Officer in the U.S. Public Health Service Commissioned Corps and Reference Request for Applicants to the U.S. Public Health Service Commissioned Corps.

*Form/OMB No.:* 0937-0025.

*Use:* The purpose of this collection is to enable individuals to obtain forms and apply for an appointment in the U.S. Public Health Service Commissioned Corps and to obtain references as part of the application process. Information supplied on the forms will be used by appropriate Department officials to evaluate candidates for appointment.



If the applicant is appointed, the information collected will be used for subsequent personnel actions such as transfer, promotion, and in determining eligibility for benefits. If the applicant is not appointed, the records are retained for 2 years (4 years for an applicant to the Medical category) and then destroyed.

*Frequency:* On Occasion.

*Affected Public:* Individuals or Households.

*Annual Number of Respondents:* 1,665.

*Total Annual Responses:* 1,665.

*Average Burden per Response:* 1.25.

*Total Annual Hours:* 3,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to

Sherette.funncoleman@hhs.gov, or call the Reports Clearance Office on (202) 690-6162. Written comments and recommendations for the proposed information collections must be received within 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Research and Technology, Office of Resource Management, Attention: Sherette Funn-Coleman (0937-0025), Room 537-H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: September 20, 2006.

**Alice Bettencourt,**

*Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.*

[FR Doc. E6-15994 Filed 9-28-06; 8:45 am]

**BILLING CODE 4150-28-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention**

**[60Day-06-0612]**

#### **Proposed Data Collections Submitted for Public Comment and Recommendations**

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and

Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have 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. Written comments should be received within 60 days of this notice.

#### **Proposed Project**

Well-Integrated Screening and Evaluation for Women across the Nation (WISEWOMAN) Reporting System—Extension—(0920-0612) National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

#### *Background and Brief Description*

In response to the Secretary of Health and Human Services' Continuous Improvement Initiative, the WISEWOMAN program examines ways in which service delivery can be improved for select populations. WISEWOMAN focuses on reducing cardiovascular disease risk factors among at-risk women. Title XV of the Public Health Service Act, Section 1509, originally authorized the Secretary of the Department of Health and Human Services to establish up to three WISEWOMAN demonstration projects for this purpose. Through Congressional appropriations language, the CDC WISEWOMAN program is now allowed to fund up to 15 projects. Currently, WISEWOMAN funds 15 projects, which at full implementation are expected to screen approximately 30,000 women annually for cardiovascular disease risk factors. The program targets women already participating in the National

Breast and Cervical Cancer Early Detection Program (NBCCEDP) and provides screening for select cardiovascular disease risk factors (including elevated cholesterol, hypertension and abnormal blood glucose levels), lifestyle interventions, and medical referrals as required in an effort to improve cardiovascular health among participants.

The CDC proposes to collect and analyze baseline and follow-up data (12 months post enrollment) from the 15 funded projects. These data, called the minimum data elements (MDE's), include demographic and risk factor information about the women served in each of the funded projects and information concerning the number and type of intervention sessions attended. Funded projects will compile the data from their existing databases and report the MDE's to CDC in April and October of each year. The MDE provides an assessment of how effective WISEWOMAN is at reducing the burden of cardiovascular disease risk factors among participants. All information collected as part of the WISEWOMAN evaluation will be used to assess the cost-effectiveness and the impact WISEWOMAN has on reducing cardiovascular disease risk factors. The evaluation will demonstrate how WISEWOMAN can obtain more complete health data on vulnerable populations, promote public education of disease incidence and risk-factors, improve the availability of screening and diagnostic services for under-served women, ensure the quality of services provided to women and develop strategies for improved interventions.

The CDC also proposes to collect programmatic data for all WISEWOMAN programs. Programmatic data includes information related to grantee management, public education and outreach professional education service delivery, cost, and an assessment of how well each program is meeting their stated objectives.

All required data will be submitted electronically to RTI International, the contractor that is conducting the WISEWOMAN evaluation. MDE and cost data will be submitted to RTI twice a year. Because certain demographic data has already been collected as part of NBCCEDP, the additional burden on grantees will be modest. There is no cost to the respondents other than their time.

*Estimated Annualized Burden Hours:*

Report	Number of respondents	Responses per respondent	Average burden per response (in hours)	Total burden (hours)
Screening MDE Report .....	15	2	16	480
Intervention MDE Report .....	15	2	8	240
Cost Report .....	15	2	16	480
Quarterly Report .....	15	4	16	960
Total .....	.....	.....	.....	2,160

Dated: September 21, 2006.

**Joan F. Karr,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E6-16048 Filed 9-28-06; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10109]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital Reporting Initiative—Hospital Quality Measures; *Use:* The recently enacted section 5001(a) of the Deficit Reduction Act (DRA) sets out new requirements for the Reporting Hospital Quality Data for Annual Payment Update (RHQDAPU) program. The RHQDAPU program was established to implement section 501(b)

of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The DRA builds on our ongoing voluntary Hospital Quality Initiative, which is intended to empower consumers with quality of care information to make more informed decisions about their health care, while also encouraging hospitals and clinicians to improve the quality of care provided to Medicare beneficiaries. The DRA revises the current hospital reporting initiative by stipulating new data collection requirements. The law provides a 2.0 percent reduction in points to the update percentage increase for any hospital that does not submit the quality data in the form, and manner, and at a time, specified by the Secretary. The Act also requires that we expand the "starter set" of 10 quality measures that we have used since 2003. To comply with these new requirements we must make changes to the Hospital Reporting Initiative. *Form Number:* CMS-10109 (OMB#: 0938-0918); *Frequency:* Recordkeeping, Third party disclosure, and Reporting—Quarterly; *Affected Public:* State, local or tribal Government; *Number of Respondents:* 3,700; *Total Annual Responses:* 14,800; *Total Annual Hours:* 583,760.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, fax number: (202) 395-6974.

Dated: September 25, 2006.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. E6-15982 Filed 9-28-06; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1333-GNC]

**RIN: 0938-ZA94**

#### Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 2007

**AGENCY:** Centers for Medicare and Medicaid Services (CMS), HHS.

**ACTION:** General notice with comment period.

**SUMMARY:** This general notice with comment period describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries (FIs) and carriers in the administration of the Medicare program.

The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary agreement, carrier contract, or take other contract actions, for example, assigning or reassigning providers or services to an intermediary or designating regional or national intermediaries. We are requesting public comment on these criteria and standards.

**DATES:** *Effective Date:* The criteria and standards are effective on October 1, 2006.

*Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 28, 2006.

**ADDRESSES:** In commenting, please refer to file code CMS-1333-GNC. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1333-GNC, P.O. Box 8012, Baltimore, MD 21244-8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1333-GNC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section. **FOR FURTHER INFORMATION CONTACT:** Lee Ann Crochunis, (410) 786-3363. **SUPPLEMENTARY INFORMATION:** *Submitting Comments:* We welcome

comments from the public on all issues set forth in this notice to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-1333-GNC and the specific "issue identifier" that precedes the section on which you choose to comment.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

## I. Background

### A. Medicare Part A—Hospital Insurance

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with CMS. These agencies or organizations, known as fiscal intermediaries (FIs), determine whether medical services are covered under Medicare, determine correct payment amounts and then make payments to the health care providers (for example, hospitals, skilled nursing facilities (SNFs), and community mental health centers) on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an FI's performance of its functions under its agreement.

Section 1816(e)(4) of the Act requires us to designate regional agencies or organizations, which are already Medicare FIs under section 1816 of the Act, to perform claim processing functions for freestanding home health agency (HHA) claims. We refer to these organizations as Regional Home Health Intermediaries (RHHIs) (See § 421.117).

The evaluation of intermediary performance is part of our contract management process. These evaluations need not be limited to the current fiscal year (FY), other fixed term basis, or agreement term.

### B. Medicare Part B—Supplementary Medical Insurance

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B, Supplementary Medical Insurance of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the amount payable for the services or supplies, and then make payment to the appropriate party.

Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. Evaluations of Medicare fee-for-service (FFS) contractor performance need not be limited to the current FFY, other fixed term basis, or contract term. The evaluation of carrier performance is part of our contract management process.

### C. Development and Publication of Criteria and Standards

In addition to the statutory requirements, § 421.120, § 421.122 and § 421.201 of the regulations, provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries and carriers before the beginning of each evaluation period. We published the current criteria and standards for intermediaries, carriers, and DMEPOS regional carriers in the general notice with comment on September 23, 2005 (70 FR 55887).

To the extent possible, we make every effort to publish the criteria and standards before the beginning of the Federal Fiscal Year (FFY), which is October 1. If we do not publish a **Federal Register** notice before the new FFY begins, readers may presume that until and unless notified otherwise, the criteria and standards that were in effect for the previous FFY remain in effect.

In those instances in which we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the FFY, we may publish the criteria and standards notice at any subsequent time during the year. If we publish a notice in this manner, the evaluation period for the criteria and standards that are the subject of the notice will be effective beginning on the first day of the first month following

publication of this notice in the **Federal Register**. Any revised criteria and standards will measure performance prospectively; that is, any new criteria and standards in the notice will be applied only to performance after the effective date listed on the notice.

It is not our intention to revise the criteria and standards that will be used during the evaluation period once this information is published in a **Federal Register** notice. However, on occasion, either because of administrative action or statutory mandate, there may be a need for changes that have a direct impact on the criteria and standards previously published, or that require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. If we must make these changes, we will publish an amended **Federal Register** notice before implementation of the changes. In all instances, necessary manual issuances will be published to ensure that the criteria and standards are applied uniformly and accurately. Also, as in previous years, this **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108-173) was enacted on December 8, 2003. Section 911 of the MMA establishes the Medicare FFS Contracting Reform (MCR) initiative that will be implemented over the next several years. This provision requires that we use competitive procedures to replace our current FIs and carriers with Medicare Administrative Contractors (MACs). The MMA requires that we compete and transition all work to MACs by October 1, 2011.

FIs and carriers will continue administering Medicare FFS work until the final competitively selected MAC is up and operating. We will continue to develop and publish standards and criteria for use in evaluating the performance of FIs and carriers as long as these types of contractors exist.

## II. Analysis of and Response to Public Comments Received on FY 2006 Criteria and Standards

We received two comments in response to the September 23, 2005 **Federal Register** general notice with comment. All comments were reviewed, but none necessitated our reissuance of the FY 2006 Criteria and Standards. Comments submitted did not pertain specifically to the FY 2006 Criteria and Standards.

## III. Criteria and Standards—General

[If you choose to comment on issues in this section, please include the caption “CRITERIA AND STANDARDS—GENERAL” at the beginning of your comments.]

Basic principles of the Medicare program are to pay claims promptly and accurately, and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that contractors do what is required of them by statute, regulation, contract, and our directives.

We have developed a contractor oversight program for FY 2007 that outlines the expectations of the contractor; measures the performance of the contractor; evaluates the contractor's performance against those expectations; and provides for appropriate contract action based upon the evaluation of the contractor's performance.

As a means to monitor the accuracy of Medicare FFS payments, we have established the Comprehensive Error Rate Testing (CERT) program that measures and reports error rates for claims payment decisions made by carriers and FIs. Beginning in November 2003, the CERT program measures and reports claims payment error rates for each individual carrier. FI-specific rates became available November 2004. These rates measure not only how well contractors are doing at implementing automated review edits and identifying which claims to subject to manual medical review, but they also measure the impact of the contractor's provider outreach/education, as well as the effectiveness of the contractor's provider call center(s). We will use these contractor-specific error rates as a means to evaluate a contractor's performance.

Several times throughout this notice, we refer to the appropriate reading level of letters, decisions, or correspondence that are mailed or otherwise transmitted to Medicare beneficiaries from intermediaries or carriers. In those instances, appropriate reading level is defined as whether the communication is below the eighth grade reading level unless it is obvious that an incoming request from the beneficiary contains language written at a higher level. In these cases, the appropriate reading level is tailored to the capacities and circumstances of the intended recipient.

In addition to evaluating performance based upon our expectations for FY

2007, we may also conduct follow-up evaluations throughout FY 2007 of areas in which contractor performance was out of compliance with statute, regulations, and our performance expectations during prior review years where contractors were required to submit a Performance Improvement Plan (PIP).

We may also utilize Statement of Auditing Standards-70 (SAS-70) reviews as a means to evaluate contractors in some or all business functions.

In FY 2001, we established the Contractor Rebuttal Process as a commitment to continual improvement of contractor performance evaluation (CPE). We will continue the use of this process in FY 2007. The Contractor Rebuttal Process provides the contractors an opportunity to submit a written rebuttal of CPE findings of fact. Whenever we conduct an evaluation of contractor operations, contractors have 7 calendar days from the date of the CPE review exit conference to submit a written rebuttal. The CPE review team or, if appropriate, the individual reviewer considers the contents of the rebuttal before the issuance of the final CPE report to the contractor.

The FY 2007 CPE for intermediaries and carriers is structured into five criteria designed to meet the stated objectives. The first criterion, claims processing, measures contractual performance against claims processing, accuracy and timeliness requirements, as well as activities in handling appeals. Within the claims processing criterion, we have identified those performance standards that are mandated by legislation, regulation, or judicial decision. These standards include claims processing timeliness, the accuracy of Medicare Summary Notices (MSNs), the timeliness of intermediary and carrier redeterminations, and the appropriateness of the reading level and content of intermediary and carrier redetermination letters. Further evaluation in the claims processing criterion may include, but is not limited to, the accuracy of claims processing, the percent of claims paid with interest, the accuracy of redeterminations, forwarding to and effectuation of Qualified Independent Contractor (QIC) decisions, and effectuation of administrative law judge (ALJ) decisions.

The second criterion, customer service, assesses the adequacy of the service provided to customers by the contractor in its administration of the Medicare program. The mandated standard in the customer service criterion is the need to provide

beneficiaries with written replies that are responsive, that is, they provide in detail the reasons for a determination when a beneficiary requests this information, they have a customer-friendly tone and clarity, and they are at the appropriate reading level. Further evaluation of services under this criterion may include, but will not be limited to, the following:

(1) Timeliness and accuracy of all correspondence both to beneficiaries and providers; (2) monitoring of the quality of replies provided by the contractor's telephone customer service representatives (quality call monitoring);

(3) beneficiary and provider education, training, and outreach activities; and (4) service provided by the contractor's customer service representatives to beneficiaries and providers who come to the contractor's facility (walk-in inquiry service).

The third criterion, payment safeguards, evaluates whether the Medicare Trust Fund is safeguarded against inappropriate program expenditures. Intermediary and carrier performance may be evaluated in the areas of Medical Review (MR), Medicare Secondary Payer (MSP), Overpayments (OP), and Provider Enrollment (PE). In addition, intermediary performance may be evaluated in the area of Audit and Reimbursement (A&R).

In FY 1996, the Congress enacted the Health Insurance Portability and Accountability Act (HIPAA), Medicare Integrity Program, giving us the authority to contract with entities other than, but not excluding, Medicare carriers and intermediaries to perform certain program safeguard functions. In situations where one or more program safeguard functions are contracted to another entity, we may evaluate the flow of communication and information between a Medicare FFS contractor and the payment safeguard contractor. All benefit integrity functions have been transitioned from the intermediaries and carriers to the program safeguard contractors.

Mandated performance standards for intermediaries in the payment safeguards criterion include the accuracy of decisions on SNF demand bills and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. There are no mandated performance standards for carriers in the payment safeguards criterion. Intermediaries and carriers may also be evaluated on any Medicare Integrity Program (MIP) activities if performed under their agreement or contract.

The fourth criterion, fiscal responsibility, evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both the payment of benefits and the costs of administration under the Medicare program. Proper financial and budgetary controls, including internal controls, must be in place to ensure contractor compliance with its agreement with HHS and CMS.

Additional functions reviewed under this criterion may include, but are not limited to, adherence to approved budget, compliance with the Budget and Performance Requirements (BPRs), and compliance with financial reporting requirements.

The fifth and final criterion, administrative activities, measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations. Proper systems security (general and application controls), Automated Data Processing (ADP) maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the administrative activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls that are essential in all aspects of a contractor's operation, as well as the degree to which the contractor cooperates with us in complying with the Federal Managers' Financial Integrity Act of 1982 (FMFIA). Administrative activities evaluations may also include reviews related to contractor implementation of our general instructions and data and reporting requirements.

We have developed separate measures for RHHIs in order to evaluate the distinct RHHI functions. These functions include the processing of claims from freestanding HHAs, hospital-affiliated HHAs, and hospices. Through an evaluation using these criteria and standards, we may determine whether the RHHI is effectively and efficiently administering the program benefit or whether the functions should be moved from one intermediary to another in order to gain that assurance.

In sections IV through VI of this notice, we list the criteria and standards to be used for evaluating the performance of intermediaries, RHHIs, and carriers.

#### **IV. Criteria and Standards for Intermediaries**

[If you choose to comment on issues in this section, please include the caption "CRITERIA AND STANDARDS

FOR INTERMEDIARIES" at the beginning of your comments.]

##### *A. Claims Processing Criterion*

The claims processing criterion contains the following three mandated standards:

*Standard 1.* Not less than 95.0 percent of clean electronically submitted non-Periodic Interim Payment claims are paid within statutorily specified timeframes. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim Payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt.

*Standard 2.* Redetermination letters prepared in response to beneficiary initiated appeal requests are written in a manner calculated to be understood by the beneficiary. Letters must contain the required elements as specified in § 405.956.

*Standard 3.* All redeterminations must be concluded and mailed within 60 days of receipt of the request, unless the appellant submits documentation after the request, in which case the decision-making timeframe is extended for 14 calendar days for each submission.

Because intermediaries process many claims for benefits under the Part B portion of the Medicare Program, we also may evaluate how well an intermediary follows the procedures for processing appeals of any claims for Part B benefits.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Accuracy of claims processing.
- Remittance advice transactions.
- Establishment and maintenance of a relationship with Common Working File (CWF) Host.
- Accuracy of redeterminations.
- QIC case file requirements.
- Accuracy and timeliness of processing appeals as set forth in part 405, subpart I (§ 405.900 *et seq.*).

##### *B. Customer Service Criterion*

Functions that may be evaluated under this criterion include, but are not limited to, the following:

- Maintaining a properly programmed interactive voice response system to assist with inquiries.
- Performing quality call monitoring.
- Training customer service representatives.

- Entering valid call center performance data in the customer service assessment and management system.
- Providing timely and accurate written replies to beneficiaries and providers that address the concerns raised and are written with an appropriate customer-friendly tone and clarity; and those written to beneficiaries are at the appropriate reading level.
- Maintaining walk-in inquiry service for beneficiaries and providers.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an Internet Web site dedicated to furnishing providers and physicians timely, accurate, and useful Medicare program information.
- Ensuring written correspondence is evaluated for quality.

#### C. Payment Safeguards Criterion

The Payment Safeguard criterion contains the following two mandated standards:

*Standard 1.* Decisions on SNF demand bills are accurate.

*Standard 2.* TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated timeframes. Specifically, applications must be processed to completion within 75 days after receipt by the contractor or returned to the hospitals as incomplete within 60 days of receipt.

Intermediaries may also be evaluated on any MIP activities if performed under their Part A contractual agreement. These functions and activities include, but are not limited to, the following:

- Audit and Reimbursement
  - + Performing the activities specified in our general instructions for conducting audit and settlement of Medicare cost reports.
  - + Establishing accurate interim payments.
- Medical Review
  - + Increasing the effectiveness of medical review activities.
  - + Exercising accurate and defensible decision-making on medical reviews.
  - + Effectively educating and communicating with the provider community.
  - + Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.

- Medicare Secondary Payer
  - + Accurately following MSP claim development and edit procedures.
  - + Auditing hospital files and claims to determine that claims are being filed to Medicare appropriately.
  - + Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.
  - + Supporting all the Medicare Secondary Payer Recovery functions.
  - + Accurately reporting MSP savings.
- Overpayments
  - + Collecting and referring Medicare debts timely.
  - + Accurately reporting and collecting overpayments.
  - + Adhering to our instructions for management of Medicare Trust Fund debts.
- Provider Enrollment
  - + Complying with assignment of staff to the provider enrollment function and training the staff in procedures and verification techniques.
  - + Complying with the operational standards relevant to the process for enrolling providers.

#### D. Fiscal Responsibility Criterion

We may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with us.

Additional functions that may be reviewed under the fiscal responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

#### E. Administrative Activities Criterion

We may measure an intermediary's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure an intermediary's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. An intermediary must also test system changes to ensure the accurate implementation of our instructions.

Our evaluation of an intermediary under the administrative activities criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, and security).
- Implementation of the Electronic Data Interchange (EDI) standards adopted for use under HIPAA.
- Disaster recovery plan and systems contingency plan.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the contractor cooperates with the Secretary in complying with the FMFIA.
- Implementation of our general instructions.

#### V. Criteria and Standards for Regional Home Health Intermediaries (RHHIs)

[If you choose to comment on issues in this section, please include the caption "CRITERIA AND STANDARDS FOR RHHIs" at the beginning of your comments.]

The following three standards are mandated for the RHHI criterion:

*Standard 1.* Not less than 95.0 percent of clean electronically submitted non-Periodic Interim Payment home health and hospice claims are paid within statutorily specified timeframes. Clean claims are defined as claims that do not require Medicare intermediaries to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim Payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt.

*Standard 2.* Redetermination letters prepared in response to beneficiary initiated appeal requests are written in a manner calculated to be understood by the beneficiary. Letters must contain the required elements as specified in § 405.956.

*Standard 3:* All redeterminations must be concluded and mailed within 60 days of receipt of the request, unless the appellant submits documentation after the request, in which case the decision-making timeframe is extended for 14 calendar days for each submission.

We may use this criterion to review an RHHI's performance for handling the HHA and hospice workload. This includes processing HHA and hospice claims timely and accurately, properly paying and settling HHA cost reports,

and accurately processing redeterminations of initial determinations from beneficiaries, HHAs, and hospices.

#### VI. Criteria and Standards for Carriers

[If you choose to comment on issues in this section, please include the caption "CRITERIA AND STANDARDS FOR CARRIERS" at the beginning of your comments.]

##### A. Claims Processing Criterion

The claims processing criterion contains the following four mandated standards:

*Standard 1.* Not less than 95.0 percent of clean electronically submitted claims are processed within statutorily specified timeframes. Clean claims are defined as claims that do not require Medicare carriers to investigate or develop them outside of their Medicare operations on a prepayment basis. Specifically, the statute specifies that clean non-Periodic Interim payment electronic claims be paid no earlier than the 14th day after the date of receipt, and that interest is payable for any clean claims if payment is not issued by the 31st day after the date of receipt.

*Standard 2.* Ninety-eight percent of MSNs are properly generated. Our expectation is that MSN messages are accurately reflecting the services provided.

*Standard 3.* Redetermination letters prepared in response to beneficiary initiated appeal requests are written in a manner calculated to be understood by the beneficiary. Letters must contain the required elements as specified in § 405.956.

*Standard 4.* All redeterminations must be concluded and mailed within 60 days of receipt of the request, unless the appellant submits documentation after the request, in which case the decision-making timeframe is extended for 14 calendar days for each submission.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Accuracy of claims processing.
- Remittance advice transactions.
- Establishment and maintenance of relationship with Common Working File (CWF) Host.
- Accuracy of redetermination decisions.
- QIC case file requirements.
- Accuracy and timeliness of processing appeals as set forth in part 405, subpart I (§ 405.900 *et seq.*).

##### B. Customer Service Criterion

The customer service criterion contains the following mandated

standard: Replies to beneficiary written correspondence are responsive to the beneficiary's concerns; are written with an appropriate customer-friendly tone and clarity; and are written at the appropriate reading level.

Contractors must meet our performance expectations that beneficiaries and providers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, and our general instructions.

Additional functions that may be evaluated under this criterion include, but are not limited to, the following:

- Maintaining a properly programmed interactive voice response system to assist with inquiries.
- Performing quality call monitoring.
- Training customer service representatives.
- Entering valid call center performance data in the customer service assessment and management system.
- Providing timely and accurate written replies to beneficiaries and providers.
- Maintaining walk-in inquiry service for beneficiaries and providers.
- Conducting beneficiary and provider education, training, and outreach activities.
- Effectively maintaining an Internet Web site dedicated to furnishing providers timely, accurate, and useful Medicare program information.
- Ensuring written correspondence is evaluated for quality.

##### C. Payment Safeguards Criterion

Carriers may be evaluated on any MIP activities if performed under their contracts. In addition, other carrier functions and activities that may be reviewed under this criterion include, but are not limited to the following:

- Medical Review
  - + Increasing the effectiveness of medical review activities.
  - + Exercising accurate and defensible decision-making on medical reviews.
  - + Effectively educating and communicating with the provider community.
  - + Collaborating with other internal components and external entities to ensure the effectiveness of medical review activities.
- Medicare Secondary Payer
  - + Accurately following MSP claim development/edit procedures.
  - + Supporting the Coordination of Benefits Contractor's efforts to identify responsible payers primary to Medicare.
  - + Supporting all the Medicare Secondary Payer Recovery functions.

+ Accurately reporting MSP savings.

- Overpayments
  - + Collecting and referring Medicare debts timely.
  - + Accurately reporting and collecting overpayments.
  - + Compliance with our instructions for management of Medicare Trust Fund debts.
- Provider Enrollment
  - + Complying with assignment of staff to the provider enrollment function and training staff in procedures and verification techniques.
  - + Complying with the operational standards relevant to the process for enrolling suppliers.

##### D. Fiscal Responsibility Criterion

We may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their contracts.

Additional functions that may be reviewed under the Fiscal Responsibility criterion include, but are not limited to, the following:

- Adherence to approved program management and MIP budgets.
- Compliance with the BPRs.
- Compliance with financial reporting requirements.
- Control of administrative cost and benefit payments.

##### E. Administrative Activities Criterion

We may measure a carrier's administrative ability to manage the Medicare program. We may evaluate the efficiency and effectiveness of its operations, its system of internal controls, and its compliance with our directives and initiatives.

We may measure a carrier's efficiency and effectiveness in managing its operations. Proper systems security (general and application controls), ADP maintenance, and disaster recovery plans must be in place. Also, a carrier must test system changes to ensure accurate implementation of our instructions.

Our evaluation of a carrier under this criterion may include, but is not limited to, reviews of the following:

- Systems security.
- ADP maintenance (configuration management, testing, change management, and security).
- Disaster recovery plan/systems contingency plan.
- Data and reporting requirements implementation.
- Internal controls establishment and use, including the degree to which the

contractor cooperates with the Secretary in complying with the FMFIA.

- Implementation of the Electronic Data Interchange (EDI) standards adopted for use under the Health Insurance Portability and Accountability Act (HIPAA).
- Implementation of our general instructions.

## VII. Action Based on Performance Evaluations

[If you choose to comment on this section, please include the caption "ACTION BASED ON PERFORMANCE EVALUATIONS" at the beginning of your comments.]

We evaluate a contractor's performance against applicable program requirements for each criterion. Each contractor must certify that all information submitted to us relating to the contract management process, including, without limitation, all files, records, documents and data, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor is required to certify that its files, records, documents, and data are not manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information required to be submitted for the contract management process under the authority of applicable law(s), regulation(s), contract(s), or our manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal or civil prosecution, as well as appropriate administrative action. This administrative action may include debarment or suspension of the contractor, as well as the termination or nonrenewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. When we determine a contractor is not meeting performance requirements, we will use the terms "major nonconformance" or "minor nonconformance" to classify our findings. A major nonconformance is a nonconformance that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. A minor nonconformance is a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little

bearing on the effective use or operation of the supplies or services. The contractor will be required to develop and implement PIPs for findings determined to be either a major or minor nonconformance. The contractor will be monitored to ensure effective and efficient compliance with the PIP, and to ensure improved performance when requirements are not met.

The results of performance evaluations and assessments under all criteria applying to intermediaries, carriers, and RHHIs will be used for contract management activities and will be published in the contractor's annual Report of Contractor Performance (RCP). We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations when—

- Entering into, renewing, or terminating agreements or contracts with contractors, and
- Deciding other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, these decisions depend on the following:
  - + Relative overall performance compared to other contractors.
  - + Number of criteria in which nonconformance occurs.
  - + Extent of each nonconformance.
  - + Relative significance of the requirement for which nonconformance occurs within the overall evaluation program.
  - + Efforts to improve program quality, service, and efficiency.
  - + Deciding the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary, RHHI, or carrier to meet its contractual requirements exceeds the amount that we find to be reasonable and adequate to meet the cost that must be incurred by an efficiently and economically operated intermediary or carrier, these high costs may also be grounds for adverse action.

## VIII. Collection of Information Requirements

This document does not impose information collection and record

keeping requirements. Consequently, the Office of Management and Budget need not review it under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## IX. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "Comment Date" section of this notice, and, if we proceed with a subsequent document, we will respond to the comments in the section entitled as "Analysis of and Response to Public Comments Received on FY 2007 Criteria and Standards" of that document.

**Authority:** Sections 1816(f), 1834(a)(12), and 1842(b) of the Social Security Act (42 U.S.C. 1395h(f), 1395m(a)(12), and 1395u(b)) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 22, 2006.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E6–15991 Filed 9–28–06; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS–1530–CN]

RIN 0938–AM46

### Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Corrections

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction notice.

**SUMMARY:** This document corrects technical errors that appeared in the July 31, 2006 **Federal Register**, entitled "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice."

*Effective Date:* This correction is effective October 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Bill Ullman, (410) 786–5667.

**SUPPLEMENTARY INFORMATION:**



**I. Background**

In FR Doc. 06–6615 of July 31, 2006 (71 FR 43158), there were several technical errors that this notice serves to identify and correct. One correction involves Table 10, which we use to illustrate the skilled nursing facility (SNF) prospective payment system (PPS) payment rate computations for a fictitious “XYZ” SNF located in Cedar Rapids, IA. In the example that appears in this table, RUG Group “CC2” serves to illustrate the effect on the payment rates of applying the 128 percent add-on for SNF residents with AIDS under section 511 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA, P.L. 108–173). The table includes a footnote, marked with an asterisk that describes the MMA adjustment; however, we inadvertently omitted the corresponding asterisk within the table itself to identify the particular figure in the table to which this footnote refers. Accordingly, in section II of this document (“Correction of Errors”), we are restoring the asterisk that belongs next to the adjusted CC2 amount of “\$542.54” that appears in Table 10’s “Percent Adjustment” column.

In addition, in Table 12 (which displays the projected impact of the FY 2007 SNF PPS payment update, including the variation in impact by region and by certain other facility characteristics), we are correcting errors

pertaining to the rural Outlying region. In the projected impact for the rural Outlying region, we inadvertently entered the incorrect figures of “–2.9%” and “3.3%” in the columns entitled “Transition to CBSA” and “Total FY 2007 change,” respectively. In this notice, we correct these figures to read “0.0%” and “6.4%,” respectively, and we also make corresponding revisions in the text of the narrative that accompanies Table 12. We note that the effect on the corrected table is solely distributional in nature and, accordingly, there is no change in the estimated aggregate expenditures for FY 2007 as set forth in the July 31, 2006 update notice. A further discussion of the projected impact of the FY 2007 SNF PPS payment update appears in the July 31, 2006 update notice (71 FR 43173–43176).

Finally, we have determined that in the process of developing the most recent hospital wage index, we inadvertently used incorrect wage information for two providers. These two providers notified their fiscal intermediary in a timely fashion that their wage data were incorrect and we agreed to correct the wage data for these two providers. However, we inadvertently published the uncorrected wage data in the July 31, 2006 update notice. Incorporating their corrected data into our calculation of the national average hourly wage results in revised

wage index values for a number of Core-Based Statistical Areas (CBSAs). Accordingly, we are revising and republishing Tables 8 and 9, which appeared in an addendum to the July 31, 2006 update notice, to reflect the correct information.

**II. Correction of Errors**

In FR Doc. 06–6615 (71 FR 43158), make the following corrections:

1. On page 43170, Table 10, in the “Percent adj” column, the figure “\$542.54” is revised to read “\$542.54\*”.
2. On page 43174, third column,
  - a. In the first paragraph, line 10, the figure “3.2 percent” is revised to read “6.4 percent”.
  - b. In the final paragraph, the second sentence is revised to read as follows: “For example, though facilities in the rural Mountain region experience only a slight payment increase of 1.2 percent, some providers (such as those in the rural Outlying region) show a greater increase of 6.4 percent. “ In the third sentence, the phrase “urban Mountain” is revised to read “rural Outlying”.
3. On page 43175, Table 12, the entries displayed for the rural Outlying region in the columns entitled “Transition to full CBSA” and “Total FY 2007 change” are revised to read “0.0%” and “6.4%”, respectively.
4. On pages 43176 through 43198, Table 8 is revised to read as follows:

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA code	Urban area (constituent counties)	Wage index
10180 .....	Abilene, TX ..... Callahan County, TX. Jones County, TX. Taylor County, TX.	0.8000
10380 .....	Aguadilla-Isabela-San Sebastián, PR ..... Aguada Municipio, PR. Aguadilla Municipio, PR. Añasco Municipio, PR. Isabela Municipio, PR. Lares Municipio, PR. Moca Municipio, PR. Rincón Municipio, PR. San Sebastián Municipio, PR.	0.3915
10420 .....	Akron, OH ..... Portage County, OH. Summit County, OH.	0.8654
10500 .....	Albany, GA ..... Baker County, GA. Dougherty County, GA. Lee County, GA. Terrell County, GA. Worth County, GA.	0.8991
10580 .....	Albany-Schenectady-Troy, NY ..... Albany County, NY. Rensselaer County, NY. Saratoga County, NY. Schenectady County, NY. Schoharie County, NY.	0.8720
10740 .....	Albuquerque, NM .....	0.9458

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
10780	Bernalillo County, NM. Sandoval County, NM. Torrance County, NM. Valencia County, NM. Alexandria, LA .....	0.8006
10900	Grant Parish, LA. Rapides Parish, LA. Allentown-Bethlehem-Easton, PA-NJ .....	0.9947
11020	Warren County, NJ. Carbon County, PA. Lehigh County, PA. Northampton County, PA. Altoona, PA .....	0.8812
11100	Blair County, PA. Amarillo, TX .....	0.9169
11180	Armstrong County, TX. Carson County, TX. Potter County, TX. Randall County, TX. Ames, IA .....	0.9760
11260	Story County, IA. Anchorage, AK .....	1.2023
11300	Anchorage Municipality, AK. Matanuska-Susitna Borough, AK. Anderson, IN .....	0.8681
11340	Madison County, IN. Anderson, SC .....	0.9017
11460	Anderson County, SC. Ann Arbor, MI .....	1.0826
11500	Washtenaw County, MI. Anniston-Oxford, AL .....	0.7770
11540	Calhoun County, AL. Appleton, WI .....	0.9455
11700	Calumet County, WI. Outagamie County, WI. Asheville, NC .....	0.9216
12020	Buncombe County, NC. Haywood County, NC. Henderson County, NC. Madison County, NC. Athens-Clarke County, GA .....	0.9856
12060	Clarke County, GA. Madison County, GA. Oconee County, GA. Oglethorpe County, GA. Atlanta-Sandy Springs-Marietta, GA .....	0.9762
	Barrow County, GA. Bartow County, GA. Butts County, GA. Carroll County, GA. Cherokee County, GA. Clayton County, GA. Cobb County, GA. Coweta County, GA. Dawson County, GA. DeKalb County, GA. Douglas County, GA. Fayette County, GA. Forsyth County, GA. Fulton County, GA. Gwinnett County, GA. Haralson County, GA. Heard County, GA. Henry County, GA. Jasper County, GA. Lamar County, GA. Meriwether County, GA. Newton County, GA. Paulding County, GA. Pickens County, GA. Pike County, GA.	

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
12100 .....	Rockdale County, GA. Spalding County, GA. Walton County, GA. Atlantic City, NJ .....	1.1831
12220 .....	Atlantic County, NJ. Auburn-Opelika, AL .....	0.8096
12260 .....	Lee County, AL. Augusta-Richmond County, GA-SC .....	0.9667
12420 .....	Burke County, GA. Columbia County, GA. McDuffie County, GA. Richmond County, GA. Aiken County, SC. Edgefield County, SC. Austin-Round Rock, TX .....	0.9344
12540 .....	Bastrop County, TX. Caldwell County, TX. Hays County, TX. Travis County, TX. Williamson County, TX. Bakersfield, CA .....	1.0725
12580 .....	Kern County, CA. Baltimore-Towson, MD .....	1.0088
12620 .....	Anne Arundel County, MD. Baltimore County, MD. Carroll County, MD. Harford County, MD. Howard County, MD. Queen Anne's County, MD. Baltimore City, MD. Bangor, ME .....	0.9711
12700 .....	Penobscot County, ME. Barnstable Town, MA .....	1.2539
12940 .....	Barnstable County, MA. Baton Rouge, LA .....	0.8084
12980 .....	Ascension Parish, LA. East Baton Rouge Parish, LA. East Feliciana Parish, LA. Iberville Parish, LA. Livingston Parish, LA. Pointe Coupee Parish, LA. St. Helena Parish, LA. West Baton Rouge Parish, LA. West Feliciana Parish, LA. Battle Creek, MI .....	0.9762
13020 .....	Calhoun County, MI. Bay City, MI .....	0.9251
13140 .....	Bay County, MI. Beaumont-Port Arthur, TX .....	0.8595
13380 .....	Hardin County, TX. Jefferson County, TX. Orange County, TX. Bellingham, WA .....	1.1104
13460 .....	Whatcom County, WA. Bend, OR .....	1.0743
13644 .....	Deschutes County, OR. Bethesda-Frederick-Gaithersburg, MD .....	1.0903
13740 .....	Frederick County, MD. Montgomery County, MD. Billings, MT .....	0.8712
13780 .....	Carbon County, MT. Yellowstone County, MT. Binghamton, NY .....	0.8786
13820 .....	Broome County, NY. Tioga County, NY. Birmingham-Hoover, AL .....	0.8894
	Bibb County, AL. Blount County, AL. Chilton County, AL. Jefferson County, AL. St. Clair County, AL.	

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
13900	Shelby County, AL. Walker County, AL. Bismarck, ND ..... Burleigh County, ND. Morton County, ND.	0.7240
13980	Blacksburg-Christiansburg-Radford, VA ..... Giles County, VA. Montgomery County, VA. Pulaski County, VA. Radford City, VA.	0.8213
14020	Bloomington, IN ..... Greene County, IN. Monroe County, IN. Owen County, IN.	0.8533
14060	Bloomington-Normal, IL ..... McLean County, IL.	0.8944
14260	Boise City-Nampa, ID ..... Ada County, ID. Boise County, ID. Canyon County, ID. Gem County, ID. Owyhee County, ID.	0.9401
14484	Boston-Quincy, MA ..... Norfolk County, MA. Plymouth County, MA. Suffolk County, MA.	1.1679
14500	Boulder, CO ..... Boulder County, CO.	1.0350
14540	Bowling Green, KY ..... Edmonson County, KY. Warren County, KY.	0.8148
14740	Bremerton-Silverdale, WA ..... Kitsap County, WA.	1.0913
14860	Bridgeport-Stamford-Norwalk, CT ..... Fairfield County, CT.	1.2659
15180	Brownsville-Harlingen, TX ..... Cameron County, TX.	0.9430
15260	Brunswick, GA ..... Brantley County, GA. Glynn County, GA. McIntosh County, GA.	1.0164
15380	Buffalo-Niagara Falls, NY ..... Erie County, NY. Niagara County, NY.	0.9424
15500	Burlington, NC ..... Alamance County, NC.	0.8674
15540	Burlington-South Burlington, VT ..... Chittenden County, VT. Franklin County, VT. Grand Isle County, VT.	0.9474
15764	Cambridge-Newton-Framingham, MA ..... Middlesex County, MA.	1.0970
15804	Camden, NJ ..... Burlington County, NJ. Camden County, NJ. Gloucester County, NJ.	1.0392
15940	Canton-Massillon, OH ..... Carroll County, OH. Stark County, OH.	0.9031
15980	Cape Coral-Fort Myers, FL ..... Lee County, FL.	0.9342
16180	Carson City, NV ..... Carson City, NV.	1.0025
16220	Casper, WY ..... Natrona County, WY.	0.9145
16300	Cedar Rapids, IA ..... Benton County, IA. Jones County, IA. Linn County, IA.	0.8888
16580	Champaign-Urbana, IL ..... Champaign County, IL.	0.9644

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
16620	Ford County, IL. Piatt County, IL. Charleston, WV ..... Boone County, WV. Clay County, WV. Kanawha County, WV. Lincoln County, WV. Putnam County, WV.	0.8542
16700	Charleston-North Charleston, SC ..... Berkeley County, SC. Charleston County, SC. Dorchester County, SC.	0.9145
16740	Charlotte-Gastonia-Concord, NC-SC ..... Anson County, NC. Cabarrus County, NC. Gaston County, NC. Mecklenburg County, NC. Union County, NC. York County, SC.	0.9554
16820	Charlottesville, VA ..... Albemarle County, VA. Fluvanna County, VA. Greene County, VA. Nelson County, VA. Charlottesville City, VA.	1.0125
16860	Chattanooga, TN-GA ..... Catoosa County, GA. Dade County, GA. Walker County, GA. Hamilton County, TN. Marion County, TN. Sequatchie County, TN.	0.8948
16940	Cheyenne, WY ..... Laramie County, WY.	0.9060
16974	Chicago-Naperville-Joliet, IL ..... Cook County, IL. DeKalb County, IL. DuPage County, IL. Grundy County, IL. Kane County, IL. Kendall County, IL. McHenry County, IL. Will County, IL.	1.0751
17020	Chico, CA ..... Butte County, CA.	1.1053
17140	Cincinnati-Middletown, OH-KY-IN ..... Dearborn County, IN. Franklin County, IN. Ohio County, IN. Boone County, KY. Bracken County, KY. Campbell County, KY. Gallatin County, KY. Grant County, KY. Kenton County, KY. Pendleton County, KY. Brown County, OH. Butler County, OH. Clermont County, OH. Hamilton County, OH. Warren County, OH.	0.9601
17300	Clarksville, TN-KY ..... Christian County, KY. Trigg County, KY. Montgomery County, TN. Stewart County, TN.	0.8436
17420	Cleveland, TN ..... Bradley County, TN. Polk County, TN.	0.8109
17460	Cleveland-Elyria-Mentor, OH ..... Cuyahoga County, OH.	0.9400

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
17660	Geauga County, OH. Lake County, OH. Lorain County, OH. Medina County, OH. Coeur d'Alene, ID	0.9344
17780	Kootenai County, ID. College Station-Bryan, TX	0.9045
17820	Brazos County, TX. Burleson County, TX. Robertson County, TX. Colorado Springs, CO	0.9701
17860	El Paso County, CO. Teller County, CO. Columbia, MO	0.8542
17900	Boone County, MO. Howard County, MO. Columbia, SC	0.8933
17980	Calhoun County, SC. Fairfield County, SC. Kershaw County, SC. Lexington County, SC. Richland County, SC. Saluda County, SC. Columbus, GA-AL	0.8239
18020	Russell County, AL. Chattahoochee County, GA. Harris County, GA. Marion County, GA. Muscogee County, GA. Columbus, IN	0.9318
18140	Bartholomew County, IN. Columbus, OH	1.0107
18580	Delaware County, OH. Fairfield County, OH. Franklin County, OH. Licking County, OH. Madison County, OH. Morrow County, OH. Pickaway County, OH. Union County, OH. Corpus Christi, TX	0.8564
18700	Aransas County, TX. Nueces County, TX. San Patricio County, TX. Corvallis, OR	1.1546
19060	Benton County, OR. Cumberland, MD-WV	0.8446
19124	Allegany County, MD. Mineral County, WV. Dallas-Plano-Irving, TX	1.0075
19140	Collin County, TX. Dallas County, TX. Delta County, TX. Denton County, TX. Ellis County, TX. Hunt County, TX. Kaufman County, TX. Rockwall County, TX. Dalton, GA	0.9093
19180	Murray County, GA. Whitfield County, GA. Danville, IL	0.9266
19260	Vermilion County, IL. Danville, VA	0.8451
19340	Pittsylvania County, VA. Danville City, VA. Davenport-Moline-Rock Island, IA-IL Henry County, IL. Mercer County, IL. Rock Island County, IL. Scott County, IA.	0.8846

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
19380	Dayton, OH Greene County, OH. Miami County, OH. Montgomery County, OH. Preble County, OH.	0.9037
19460	Decatur, AL Lawrence County, AL. Morgan County, AL.	0.8159
19500	Decatur, IL Macon County, IL.	0.8172
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL.	0.9263
19740	Denver-Aurora, CO Adams County, CO. Arapahoe County, CO. Broomfield County, CO. Clear Creek County, CO. Denver County, CO. Douglas County, CO. Elbert County, CO. Gilpin County, CO. Jefferson County, CO. Park County, CO.	1.0930
19780	Des Moines-West Des Moines, IA Dallas County, IA. Guthrie County, IA. Madison County, IA. Polk County, IA. Warren County, IA.	0.9214
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI.	1.0281
20020	Dothan, AL Geneva County, AL. Henry County, AL. Houston County, AL.	0.7381
20100	Dover, DE Kent County, DE.	0.9847
20220	Dubuque, IA Dubuque County, IA.	0.9133
20260	Duluth, MN-WI Carlton County, MN. St. Louis County, MN. Douglas County, WI.	1.0042
20500	Durham, NC Chatham County, NC. Durham County, NC. Orange County, NC. Person County, NC.	0.9826
20740	Eau Claire, WI Chippewa County, WI. Eau Claire County, WI.	0.9630
20764	Edison, NJ Middlesex County, NJ. Monmouth County, NJ. Ocean County, NJ. Somerset County, NJ.	1.1190
20940	El Centro, CA Imperial County, CA.	0.9076
21060	Elizabethtown, KY Hardin County, KY. Larue County, KY.	0.8697
21140	Elkhart-Goshen, IN Elkhart County, IN.	0.9426
21300	Elmira, NY Chemung County, NY.	0.8240
21340	El Paso, TX El Paso County, TX.	0.9053
21500	Erie, PA Erie County, PA.	0.8827
21604	Essex County, MA Essex County, MA.	1.0418

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
21660	Eugene-Springfield, OR Lane County, OR.	1.0876
21780	Evansville, IN-KY Gibson County, IN. Posey County, IN. Vanderburgh County, IN. Warrick County, IN. Henderson County, KY. Webster County, KY.	0.9071
21820	Fairbanks, AK Fairbanks North Star Borough, AK.	1.1059
21940	Fajardo, PR Ceiba Municipio, PR. Fajardo Municipio, PR. Luquillo Municipio, PR.	0.4036
22020	Fargo, ND-MN Cass County, ND. Clay County, MN.	0.8250
22140	Farmington, NM San Juan County, NM.	0.8589
22180	Fayetteville, NC Cumberland County, NC. Hoke County, NC.	0.8945
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR. Madison County, AR. Washington County, AR. McDonald County, MO.	0.8865
22380	Flagstaff, AZ Coconino County, AZ.	1.1601
22420	Flint, MI Genesee County, MI.	1.0969
22500	Florence, SC Darlington County, SC. Florence County, SC.	0.8388
22520	Florence-Muscle Shoals, AL Colbert County, AL. Lauderdale County, AL.	0.7843
22540	Fond du Lac, WI Fond du Lac County, WI.	1.0063
22660	Fort Collins-Loveland, CO Larimer County, CO.	0.9544
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL.	1.0133
22900	Fort Smith, AR-OK Crawford County, AR. Franklin County, AR. Sebastian County, AR. Le Flore County, OK. Sequoyah County, OK.	0.7731
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL.	0.8643
23060	Fort Wayne, IN Allen County, IN. Wells County, IN. Whitley County, IN.	0.9517
23104	Fort Worth-Arlington, TX Johnson County, TX. Parker County, TX. Tarrant County, TX. Wise County, TX.	0.9569
23420	Fresno, CA Fresno County, CA.	1.0943
23460	Gadsden, AL Etowah County, AL.	0.8066
23540	Gainesville, FL Alachua County, FL. Gilchrist County, FL.	0.9277
23580	Gainesville, GA Hall County, GA.	0.8958
23844	Gary, IN	0.9334



TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
24020	Jasper County, IN. Lake County, IN. Newton County, IN. Porter County, IN. Glens Falls, NY ..... Warren County, NY. Washington County, NY.	0.8324
24140	Goldsboro, NC ..... Wayne County, NC.	0.9171
24220	Grand Forks, ND-MN ..... Polk County, MN. Grand Forks County, ND.	0.7949
24300	Grand Junction, CO ..... Mesa County, CO.	0.9668
24340	Grand Rapids-Wyoming, MI ..... Barry County, MI. Ionia County, MI. Kent County, MI. Newaygo County, MI.	0.9455
24500	Great Falls, MT ..... Cascade County, MT.	0.8598
24540	Greeley, CO ..... Weld County, CO.	0.9602
24580	Green Bay, WI ..... Brown County, WI. Kewaunee County, WI. Oconto County, WI.	0.9787
24660	Greensboro-High Point, NC ..... Guilford County, NC. Randolph County, NC. Rockingham County, NC.	0.8866
24780	Greenville, NC ..... Greene County, NC. Pitt County, NC.	0.9432
24860	Greenville, SC ..... Greenville County, SC. Laurens County, SC. Pickens County, SC.	0.9804
25020	Guayama, PR ..... Arroyo Municipio, PR. Guayama Municipio, PR. Patillas Municipio, PR.	0.3235
25060	Gulfport-Biloxi, MS ..... Hancock County, MS. Harrison County, MS. Stone County, MS.	0.8915
25180	Hagerstown-Martinsburg, MD-WV ..... Washington County, MD. Berkeley County, WV. Morgan County, WV.	0.9038
25260	Hanford-Corcoran, CA ..... Kings County, CA.	1.0282
25420	Harrisburg-Carlisle, PA ..... Cumberland County, PA. Dauphin County, PA. Perry County, PA.	0.9402
25500	Harrisonburg, VA ..... Rockingham County, VA. Harrisonburg City, VA.	0.9073
25540	Hartford-West Hartford-East Hartford, CT ..... Hartford County, CT. Litchfield County, CT. Middlesex County, CT. Tolland County, CT.	1.0894
25620	Hattiesburg, MS ..... Forrest County, MS. Lamar County, MS. Perry County, MS.	0.7430
25860	Hickory-Lenoir-Morganton, NC ..... Alexander County, NC. Burke County, NC.	0.9010

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
25980	Caldwell County, NC. Catawba County, NC. Hinesville-Fort Stewart, GA1 Liberty County, GA. Long County, GA.	0.9177
26100	Holland-Grand Haven, MI Ottawa County, MI.	0.9163
26180	Honolulu, HI Honolulu County, HI.	1.1096
26300	Hot Springs, AR Garland County, AR.	0.8782
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA. Terrebonne Parish, LA.	0.8082
26420	Houston-Sugar Land-Baytown, TX Austin County, TX. Brazoria County, TX. Chambers County, TX. Fort Bend County, TX. Galveston County, TX. Harris County, TX. Liberty County, TX. Montgomery County, TX. San Jacinto County, TX. Waller County, TX.	1.0008
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY. Greenup County, KY. Lawrence County, OH. Cabell County, WV. Wayne County, WV.	0.8997
26620	Huntsville, AL Limestone County, AL. Madison County, AL.	0.9007
26820	Idaho Falls, ID Bonneville County, ID. Jefferson County, ID.	0.9088
26900	Indianapolis-Carmel, IN Boone County, IN. Brown County, IN. Hamilton County, IN. Hancock County, IN. Hendricks County, IN. Johnson County, IN. Marion County, IN. Morgan County, IN. Putnam County, IN. Shelby County, IN.	0.9895
26980	Iowa City, IA Johnson County, IA. Washington County, IA.	0.9714
27060	Ithaca, NY Tompkins County, NY.	0.9928
27100	Jackson, MI Jackson County, MI.	0.9560
27140	Jackson, MS Copiah County, MS. Hinds County, MS. Madison County, MS. Rankin County, MS. Simpson County, MS.	0.8271
27180	Jackson, TN Chester County, TN. Madison County, TN.	0.8853
27260	Jacksonville, FL Baker County, FL. Clay County, FL. Duval County, FL. Nassau County, FL. St. Johns County, FL.	0.9165
27340	Jacksonville, NC	0.8231

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
27500	Onslow County, NC. Janesville, WI ..... Rock County, WI.	0.9655
27620	Jefferson City, MO ..... Callaway County, MO. Cole County, MO. Moniteau County, MO. Osage County, MO.	0.8332
27740	Johnson City, TN ..... Carter County, TN. Unicoi County, TN. Washington County, TN.	0.8043
27780	Johnstown, PA ..... Cambria County, PA.	0.8620
27860	Jonesboro, AR ..... Craighead County, AR. Poinsett County, AR.	0.7662
27900	Joplin, MO ..... Jasper County, MO. Newton County, MO.	0.8605
28020	Kalamazoo-Portage, MI ..... Kalamazoo County, MI. Van Buren County, MI.	1.0704
28100	Kankakee-Bradley, IL ..... Kankakee County, IL.	1.0083
28140	Kansas City, MO-KS ..... Franklin County, KS. Johnson County, KS. Leavenworth County, KS. Linn County, KS. Miami County, KS. Wyandotte County, KS. Bates County, MO. Caldwell County, MO. Cass County, MO. Clay County, MO. Clinton County, MO. Jackson County, MO. Lafayette County, MO. Platte County, MO. Ray County, MO.	0.9495
28420	Kennewick-Richland-Pasco, WA ..... Benton County, WA. Franklin County, WA.	1.0343
28660	Killeen-Temple-Fort Hood, TX ..... Bell County, TX. Coryell County, TX. Lampasas County, TX.	0.8901
28700	Kingsport-Bristol-Bristol, TN-VA ..... Hawkins County, TN. Sullivan County, TN. Bristol City, VA. Scott County, VA. Washington County, VA.	0.7985
28740	Kingston, NY ..... Ulster County, NY.	0.9367
28940	Knoxville, TN ..... Anderson County, TN. Blount County, TN. Knox County, TN. Loudon County, TN. Union County, TN.	0.8249
29020	Kokomo, IN ..... Howard County, IN. Tipton County, IN.	0.9669
29100	La Crosse, WI-MN ..... Houston County, MN. La Crosse County, WI.	0.9426
29140	Lafayette, IN ..... Benton County, IN. Carroll County, IN.	0.8931

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
29180	Tippecanoe County, IN. Lafayette, LA ..... Lafayette Parish, LA. St. Martin Parish, LA.	0.8289
29340	Lake Charles, LA ..... Calcasieu Parish, LA. Cameron Parish, LA.	0.7914
29404	Lake County-Kenosha County, IL-WI ..... Lake County, IL. Kenosha County, WI.	1.0570
29460	Lakeland, FL ..... Polk County, FL.	0.8879
29540	Lancaster, PA ..... Lancaster County, PA.	0.9589
29620	Lansing-East Lansing, MI ..... Clinton County, MI. Eaton County, MI. Ingham County, MI.	1.0088
29700	Laredo, TX ..... Webb County, TX.	0.7811
29740	Las Cruces, NM ..... Dona Ana County, NM.	0.9273
29820	Las Vegas-Paradise, NV ..... Clark County, NV.	1.1430
29940	Lawrence, KS ..... Douglas County, KS.	0.8365
30020	Lawton, OK ..... Comanche County, OK.	0.8065
30140	Lebanon, PA ..... Lebanon County, PA.	0.8679
30300	Lewiston, ID-WA ..... Nez Perce County, ID. Asotin County, WA.	0.9853
30340	Lewiston-Auburn, ME ..... Androscoggin County, ME.	0.9126
30460	Lexington-Fayette, KY ..... Bourbon County, KY. Clark County, KY. Fayette County, KY. Jessamine County, KY. Scott County, KY. Woodford County, KY.	0.9181
30620	Lima, OH ..... Allen County, OH.	0.9042
30700	Lincoln, NE ..... Lancaster County, NE. Seward County, NE.	1.0092
30780	Little Rock-North Little Rock, AR ..... Faulkner County, AR. Grant County, AR. Lonoke County, AR. Perry County, AR. Pulaski County, AR. Saline County, AR.	0.8890
30860	Logan, UT-ID ..... Franklin County, ID. Cache County, UT.	0.9022
30980	Longview, TX ..... Gregg County, TX. Rusk County, TX. Upshur County, TX.	0.8788
31020	Longview, WA ..... Cowlitz County, WA.	1.0011
31084	Los Angeles-Long Beach-Glendale, CA ..... Los Angeles County, CA.	1.1760
31140	Louisville, KY-IN ..... Clark County, IN. Floyd County, IN. Harrison County, IN. Washington County, IN. Bullitt County, KY.	0.9118

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
31180	Henry County, KY. Jefferson County, KY. Meade County, KY. Nelson County, KY. Oldham County, KY. Shelby County, KY. Spencer County, KY. Trimble County, KY. Lubbock, TX .....	0.8613
31340	Crosby County, TX. Lubbock County, TX. Lynchburg, VA .....	0.8694
31420	Amherst County, VA. Appomattox County, VA. Bedford County, VA. Campbell County, VA. Bedford City, VA. Lynchburg City, VA. Macon, GA .....	0.9519
31460	Bibb County, GA. Crawford County, GA. Jones County, GA. Monroe County, GA. Twiggs County, GA. Madera, CA .....	0.8154
31540	Madera County, CA. Madison, WI .....	1.0840
31700	Columbia County, WI. Dane County, WI. Iowa County, WI. Manchester-Nashua, NH .....	1.0243
31900	Hillsborough County, NH. Merrimack County, NH. Mansfield, OH1 .....	0.9271
32420	Richland County, OH. Mayagüez, PR .....	0.3848
32580	Hormigueros Municipio, PR. Mayagüez Municipio, PR. McAllen-Edinburg-Pharr, TX .....	0.8773
32780	Hidalgo County, TX. Medford, OR .....	1.0818
32820	Jackson County, OR. Memphis, TN-MS-AR .....	0.9373
32900	Crittenden County, AR. DeSoto County, MS. Marshall County, MS. Tate County, MS. Tunica County, MS. Fayette County, TN. Shelby County, TN. Tipton County, TN. Merced, CA .....	1.1471
33124	Merced County, CA. Miami-Miami Beach-Kendall, FL .....	0.9812
33140	Miami-Dade County, FL. Michigan City-La Porte, IN .....	0.9118
33260	LaPorte County, IN. Midland, TX .....	0.9786
33340	Midland County, TX. Milwaukee-Waukesha-West Allis, WI .....	1.0218
33460	Milwaukee County, WI. Ozaukee County, WI. Washington County, WI. Waukesha County, WI. Minneapolis-St. Paul-Bloomington, MN-WI .....	1.0946
	Anoka County, MN. Carver County, MN. Chisago County, MN. Dakota County, MN. Hennepin County, MN. Isanti County, MN.	

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Ramsey County, MN. Scott County, MN. Sherburne County, MN. Washington County, MN. Wright County, MN. Pierce County, WI. St. Croix County, WI.	
33540 .....	Missoula, MT .....	0.8928
	Missoula County, MT.	
33660 .....	Mobile, AL .....	0.7913
	Mobile County, AL.	
33700 .....	Modesto, CA .....	1.1729
	Stanislaus County, CA.	
33740 .....	Monroe, LA .....	0.7997
	Ouachita Parish, LA. Union Parish, LA.	
33780 .....	Monroe, MI .....	0.9707
	Monroe County, MI.	
33860 .....	Montgomery, AL .....	0.8009
	Autauga County, AL. Elmore County, AL. Lowndes County, AL. Montgomery County, AL.	
34060 .....	Morgantown, WV .....	0.8423
	Monongalia County, WV. Preston County, WV.	
34100 .....	Morristown, TN .....	0.7933
	Grainger County, TN. Hamblen County, TN. Jefferson County, TN.	
34580 .....	Mount Vernon-Anacortes, WA .....	1.0517
	Skagit County, WA.	
34620 .....	Muncie, IN .....	0.8562
	Delaware County, IN.	
34740 .....	Muskegon-Norton Shores, MI .....	0.9941
	Muskegon County, MI.	
34820 .....	Myrtle Beach-Conway-North Myrtle Beach, SC .....	0.8810
	Horry County, SC.	
34900 .....	Napa, CA .....	1.3374
	Napa County, CA.	
34940 .....	Naples-Marco Island, FL .....	0.9941
	Collier County, FL.	
34980 .....	Nashville-Davidson—Murfreesboro, TN .....	0.9847
	Cannon County, TN. Cheatham County, TN. Davidson County, TN. Dickson County, TN. Hickman County, TN. Macon County, TN. Robertson County, TN. Rutherford County, TN. Smith County, TN. Sumner County, TN. Trousdale County, TN. Williamson County, TN. Wilson County, TN.	
35004 .....	Nassau-Suffolk, NY .....	1.2662
	Nassau County, NY. Suffolk County, NY.	
35084 .....	Newark-Union, NJ-PA .....	1.1892
	Essex County, NJ. Hunterdon County, NJ. Morris County, NJ. Sussex County, NJ. Union County, NJ. Pike County, PA.	
35300 .....	New Haven-Milford, CT .....	1.1953
	New Haven County, CT.	
35380 .....	New Orleans-Metairie-Kenner, LA .....	0.8831
	Jefferson Parish, LA. Orleans Parish, LA.	

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
35644	Plaquemines Parish, LA. St. Bernard Parish, LA. St. Charles Parish, LA. St. John the Baptist Parish, LA. St. Tammany Parish, LA. New York-Wayne-White Plains, NY-NJ .....	1.3177
	Bergen County, NJ. Hudson County, NJ. Passaic County, NJ. Bronx County, NY. Kings County, NY. New York County, NY. Putnam County, NY. Queens County, NY. Richmond County, NY. Rockland County, NY. Westchester County, NY.	
35660	Niles-Benton Harbor, MI .....	0.8915
35980	Berrien County, MI. Norwich-New London, CT .....	1.1932
36084	New London County, CT. Oakland-Fremont-Hayward, CA .....	1.5819
36100	Alameda County, CA. Contra Costa County, CA. Ocala, FL .....	0.8867
36140	Marion County, FL. Ocean City, NJ .....	1.0472
36220	Cape May County, NJ. Odessa, TX .....	1.0073
36260	Ector County, TX. Ogden-Clearfield, UT .....	0.8995
36420	Davis County, UT. Morgan County, UT. Weber County, UT. Oklahoma City, OK .....	0.8843
36500	Canadian County, OK. Cleveland County, OK. Grady County, OK. Lincoln County, OK. Logan County, OK. McClain County, OK. Oklahoma County, OK. Olympia, WA .....	1.1081
36540	Thurston County, WA. Omaha-Council Bluffs, NE-IA .....	0.9450
36740	Harrison County, IA. Mills County, IA. Pottawattamie County, IA. Cass County, NE. Douglas County, NE. Sarpy County, NE. Saunders County, NE. Washington County, NE. Orlando, FL .....	0.9452
36780	Lake County, FL. Orange County, FL. Osceola County, FL. Seminole County, FL. Oshkosh-Neenah, WI .....	0.9315
36980	Winnebago County, WI. Owensboro, KY .....	0.8748
37100	Daviess County, KY. Hancock County, KY. McLean County, KY. Oxnard-Thousand Oaks-Ventura, CA .....	1.1546
37340	Ventura County, CA. Palm Bay-Melbourne-Titusville, FL .....	0.9443
37460	Brevard County, FL. Panama City-Lynn Haven, FL .....	0.8027
37620	Bay County, FL. Parkersburg-Marietta, WV-OH .....	0.7977

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
37700	Washington County, OH. Pleasants County, WV. Wirt County, WV. Wood County, WV. Pascagoula, MS .....	0.8215
37860	George County, MS. Jackson County, MS. Pensacola-Ferry Pass-Brent, FL .....	0.8000
37900	Escambia County, FL. Santa Rosa County, FL. Peoria, IL .....	0.8982
37964	Marshall County, IL. Peoria County, IL. Stark County, IL. Tazewell County, IL. Woodford County, IL. Philadelphia, PA .....	1.0996
38060	Bucks County, PA. Chester County, PA. Delaware County, PA. Montgomery County, PA. Philadelphia County, PA. Phoenix-Mesa-Scottsdale, AZ .....	1.0287
38220	Maricopa County, AZ. Pinal County, AZ. Pine Bluff, AR .....	0.8383
38300	Cleveland County, AR. Jefferson County, AR. Lincoln County, AR. Pittsburgh, PA .....	0.8674
38340	Allegheny County, PA. Armstrong County, PA. Beaver County, PA. Butler County, PA. Fayette County, PA. Washington County, PA. Westmoreland County, PA. Pittsfield, MA .....	1.0266
38540	Berkshire County, MA. Pocatello, ID .....	0.9400
38660	Bannock County, ID. Power County, ID. Ponce, PR .....	0.4842
38860	Juana Díaz Municipio, PR. Ponce Municipio, PR. Villalba Municipio, PR. Portland-South Portland-Biddeford, ME .....	0.9908
38900	Cumberland County, ME. Sagadahoc County, ME. York County, ME. Portland-Vancouver-Beaverton, OR-WA .....	1.1416
38940	Clackamas County, OR. Columbia County, OR. Multnomah County, OR. Washington County, OR. Yamhill County, OR. Clark County, WA. Skamania County, WA. Port St. Lucie-Fort Pierce, FL .....	0.9833
39100	Martin County, FL. St. Lucie County, FL. Poughkeepsie-Newburgh-Middletown, NY .....	1.0911
39140	Dutchess County, NY. Orange County, NY. Prescott, AZ .....	0.9836
39300	Yavapai County, AZ. Providence-New Bedford-Fall River, RI-MA .....	1.0783
	Bristol County, MA. Bristol County, RI. Kent County, RI. Newport County, RI.	



TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
39340	Providence County, RI. Washington County, RI. Provo-Orem, UT ..... Juab County, UT. Utah County, UT.	0.9537
39380	Pueblo, CO .....	0.8753
39460	Pueblo County, CO. Punta Gorda, FL .....	0.9405
39540	Charlotte County, FL. Racine, WI .....	0.9356
39580	Racine County, WI. Raleigh-Cary, NC .....	0.9864
39660	Franklin County, NC. Johnston County, NC. Wake County, NC. Rapid City, SD .....	0.8833
39740	Meade County, SD. Pennington County, SD. Reading, PA .....	0.9622
39820	Berks County, PA. Redding, CA .....	1.3198
39900	Shasta County, CA. Reno-Sparks, NV .....	1.1963
40060	Storey County, NV. Washoe County, NV. Richmond, VA .....	0.9177
40140	Amelia County, VA. Caroline County, VA. Charles City County, VA. Chesterfield County, VA. Cumberland County, VA. Dinwiddie County, VA. Goochland County, VA. Hanover County, VA. Henrico County, VA. King and Queen County, VA. King William County, VA. Louisa County, VA. New Kent County, VA. Powhatan County, VA. Prince George County, VA. Sussex County, VA. Colonial Heights City, VA. Hopewell City, VA. Petersburg City, VA. Richmond City, VA.	1.0904
40220	Riverside-San Bernardino-Ontario, CA ..... Riverside County, CA. San Bernardino County, CA.	0.8647
40340	Roanoke, VA .....	1.1408
40380	Botetourt County, VA. Craig County, VA. Franklin County, VA. Roanoke County, VA. Roanoke City, VA. Salem City, VA.	0.8994
40420	Rochester, MN .....	0.9989
40484	Dodge County, MN. Olmsted County, MN. Wabasha County, MN. Rochester, NY .....	1.0159
	Livingston County, NY. Monroe County, NY. Ontario County, NY. Orleans County, NY. Wayne County, NY. Rockford, IL .....	
	Boone County, IL. Winnebago County, IL. Rockingham County-Strafford County, NH .....	
	Rockingham County, NH.	

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
40580	Strafford County, NH. Rocky Mount, NC ..... Edgecombe County, NC. Nash County, NC.	0.8854
40660	Rome, GA .....	0.9193
40900	Floyd County, GA. Sacramento—Arden-Arcade—Roseville, CA ..... El Dorado County, CA. Placer County, CA. Sacramento County, CA. Yolo County, CA.	1.3372
40980	Saginaw-Saginaw Township North, MI .....	0.8874
41060	Saginaw County, MI. St. Cloud, MN ..... Benton County, MN. Stearns County, MN.	1.0362
41100	St. George, UT .....	0.9265
41140	Washington County, UT. St. Joseph, MO-KS ..... Doniphan County, KS. Andrew County, MO. Buchanan County, MO. DeKalb County, MO.	1.0118
41180	St. Louis, MO-IL ..... Bond County, IL. Calhoun County, IL. Clinton County, IL. Jersey County, IL. Macoupin County, IL. Madison County, IL. Monroe County, IL. St. Clair County, IL. Crawford County, MO. Franklin County, MO. Jefferson County, MO. Lincoln County, MO. St. Charles County, MO. St. Louis County, MO. Warren County, MO. Washington County, MO. St. Louis City, MO.	0.9005
41420	Salem, OR ..... Marion County, OR. Polk County, OR.	1.0438
41500	Salinas, CA .....	1.4337
41540	Monterey County, CA.	0.8953
41620	Salisbury, MD ..... Somerset County, MD. Wicomico County, MD. Salt Lake City, UT ..... Salt Lake County, UT. Summit County, UT. Tooele County, UT.	0.9402
41660	San Angelo, TX ..... Irion County, TX. Tom Green County, TX.	0.8362
41700	San Antonio, TX ..... Atascosa County, TX. Bandera County, TX. Bexar County, TX. Comal County, TX. Guadalupe County, TX. Kendall County, TX. Medina County, TX. Wilson County, TX.	0.8844
41740	San Diego-Carlsbad-San Marcos, CA .....	1.1354
41780	San Diego County, CA.	0.9302
41884	Sandusky, OH ..... Erie County, OH. San Francisco-San Mateo-Redwood City, CA ..... Marin County, CA.	1.5165

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
41900 .....	San Francisco County, CA. San Mateo County, CA. San Germán-Cabo Rojo, PR .....	0.4885
	Cabo Rojo Municipio, PR. Lajas Municipio, PR. Sabana Grande Municipio, PR. San Germán Municipio, PR.	
41940 .....	San Jose-Sunnyvale-Santa Clara, CA .....	1.5543
	San Benito County, CA. Santa Clara County, CA.	
41980 .....	San Juan-Caguas-Guaynabo, PR .....	0.4452
	Aguas Buenas Municipio, PR. Aibonito Municipio, PR. Arecibo Municipio, PR. Barceloneta Municipio, PR. Barranquitas Municipio, PR. Bayamón Municipio, PR. Caguas Municipio, PR. Camuy Municipio, PR. Canóvanas Municipio, PR. Carolina Municipio, PR. Cataño Municipio, PR. Cayey Municipio, PR. Ciales Municipio, PR. Cidra Municipio, PR. Comerio Municipio, PR. Corozal Municipio, PR. Dorado Municipio, PR. Florida Municipio, PR. Guaynabo Municipio, PR. Gurabo Municipio, PR. Hatillo Municipio, PR. Humacao Municipio, PR. Juncos Municipio, PR. Las Piedras Municipio, PR. Loíza Municipio, PR. Manatí Municipio, PR. Maunabo Municipio, PR. Morovis Municipio, PR. Naguabo Municipio, PR. Naranjito Municipio, PR. Orocovis Municipio, PR. Quebradillas Municipio, PR. Río Grande Municipio, PR. San Juan Municipio, PR. San Lorenzo Municipio, PR. Toa Alta Municipio, PR. Toa Baja Municipio, PR. Trujillo Alto Municipio, PR. Vega Alta Municipio, PR. Vega Baja Municipio, PR. Yabucoa Municipio, PR.	
42020 .....	San Luis Obispo-Paso Robles, CA .....	1.1598
	San Luis Obispo County, CA.	
42044 .....	Santa Ana-Anaheim-Irvine, CA .....	1.1473
	Orange County, CA.	
42060 .....	Santa Barbara-Santa Maria-Goleta, CA .....	1.1091
	Santa Barbara County, CA.	
42100 .....	Santa Cruz-Watsonville, CA .....	1.5457
	Santa Cruz County, CA.	
42140 .....	Santa Fe, NM .....	1.0824
	Santa Fe County, NM.	
42220 .....	Santa Rosa-Petaluma, CA .....	1.4464
	Sonoma County, CA.	
42260 .....	Sarasota-Bradenton-Venice, FL .....	0.9868
	Manatee County, FL. Sarasota County, FL.	
42340 .....	Savannah, GA .....	0.9351
	Bryan County, GA. Chatham County, GA. Effingham County, GA.	

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
42540	Scranton—Wilkes-Barre, PA Lackawanna County, PA. Luzerne County, PA. Wyoming County, PA.	0.8347
42644	Seattle-Bellevue-Everett, WA King County, WA. Snohomish County, WA.	1.1434
42680	Sebastian-Vero Beach, FL Indian River County, FL.	0.9573
43100	Sheboygan, WI Sheboygan County, WI.	0.9026
43300	Sherman-Denison, TX Grayson County, TX.	0.8502
43340	Shreveport-Bossier City, LA Bossier Parish, LA. Caddo Parish, LA. De Soto Parish, LA.	0.8865
43580	Sioux City, IA-NE-SD Woodbury County, IA. Dakota County, NE. Dixon County, NE. Union County, SD.	0.9200
43620	Sioux Falls, SD Lincoln County, SD. McCook County, SD. Minnehaha County, SD. Turner County, SD.	0.9559
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN. Cass County, MI.	0.9842
43900	Spartanburg, SC Spartanburg County, SC.	0.9174
44060	Spokane, WA Spokane County, WA.	1.0447
44100	Springfield, IL Menard County, IL. Sangamon County, IL.	0.8890
44140	Springfield, MA Franklin County, MA. Hampden County, MA. Hampshire County, MA.	1.0079
44180	Springfield, MO Christian County, MO. Dallas County, MO. Greene County, MO. Polk County, MO. Webster County, MO.	0.8469
44220	Springfield, OH Clark County, OH.	0.8593
44300	State College, PA Centre County, PA.	0.8784
44700	Stockton, CA San Joaquin County, CA.	1.1442
44940	Sumter, SC Sumter County, SC.	0.8083
45060	Syracuse, NY Madison County, NY. Onondaga County, NY. Oswego County, NY.	0.9691
45104	Tacoma, WA Pierce County, WA.	1.0789
45220	Tallahassee, FL Gadsden County, FL. Jefferson County, FL. Leon County, FL. Wakulla County, FL.	0.8942
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL. Hillsborough County, FL. Pasco County, FL. Pinellas County, FL.	0.9144

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
45460	Terre Haute, IN Clay County, IN. Sullivan County, IN. Vermillion County, IN. Vigo County, IN.	0.8765
45500	Texarkana, TX-Texarkana, AR Miller County, AR. Bowie County, TX.	0.8104
45780	Toledo, OH Fulton County, OH. Lucas County, OH. Ottawa County, OH. Wood County, OH.	0.9586
45820	Topeka, KS Jackson County, KS. Jefferson County, KS. Osage County, KS. Shawnee County, KS. Wabaunsee County, KS.	0.8730
45940	Trenton-Ewing, NJ Mercer County, NJ.	1.0835
46060	Tucson, AZ Pima County, AZ.	0.9202
46140	Tulsa, OK Creek County, OK. Okmulgee County, OK. Osage County, OK. Pawnee County, OK. Rogers County, OK. Tulsa County, OK. Wagoner County, OK.	0.8103
46220	Tuscaloosa, AL Greene County, AL. Hale County, AL. Tuscaloosa County, AL.	0.8542
46340	Tyler, TX Smith County, TX.	0.8811
46540	Utica-Rome, NY Herkimer County, NY. Oneida County, NY.	0.8396
46660	Valdosta, GA Brooks County, GA. Echols County, GA. Lanier County, GA. Lowndes County, GA.	0.8369
46700	Vallejo-Fairfield, CA Solano County, CA.	1.5137
47020	Victoria, TX Calhoun County, TX. Goliad County, TX. Victoria County, TX.	0.8560
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ.	0.9832
47260	Virginia Beach-Norfolk-Newport News, VA-NC Currituck County, NC. Gloucester County, VA. Isle of Wight County, VA. James City County, VA. Mathews County, VA. Surry County, VA. York County, VA. Chesapeake City, VA. Hampton City, VA. Newport News City, VA. Norfolk City, VA. Poquoson City, VA. Portsmouth City, VA. Suffolk City, VA. Virginia Beach City, VA. Williamsburg City, VA.	0.8790
47300	Visalia-Porterville, CA	0.9968

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
47380	Tulare County, CA. Waco, TX .....	0.8633
47580	McLennan County, TX. Warner Robins, GA .....	0.8380
47644	Houston County, GA. Warren-Troy-Farmington Hills, MI .....	1.0054
	Lapeer County, MI. Livingston County, MI. Macomb County, MI. Oakland County, MI. St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV .....	1.1054
	District of Columbia, DC. Calvert County, MD. Charles County, MD. Prince George's County, MD. Arlington County, VA. Clarke County, VA. Fairfax County, VA. Fauquier County, VA. Loudoun County, VA. Prince William County, VA. Spotsylvania County, VA. Stafford County, VA. Warren County, VA. Alexandria City, VA. Fairfax City, VA. Falls Church City, VA. Fredericksburg City, VA. Manassas City, VA. Manassas Park City, VA. Jefferson County, WV.	
47940	Waterloo-Cedar Falls, IA .....	0.8408
	Black Hawk County, IA. Bremer County, IA. Grundy County, IA.	
48140	Wausau, WI .....	0.9722
48260	Marathon County, WI. Weirton-Steubenville, WV-OH .....	0.8063
	Jefferson County, OH. Brooke County, WV. Hancock County, WV.	
48300	Wenatchee, WA .....	1.0346
	Chelan County, WA. Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL .....	0.9649
48540	Palm Beach County, FL. Wheeling, WV-OH .....	0.7010
	Belmont County, OH. Marshall County, WV. Ohio County, WV.	
48620	Wichita, KS .....	0.9063
	Butler County, KS. Harvey County, KS. Sedgwick County, KS. Sumner County, KS.	
48660	Wichita Falls, TX .....	0.8311
	Archer County, TX. Clay County, TX. Wichita County, TX.	
48700	Williamsport, PA .....	0.8139
48864	Lycoming County, PA. Wilmington, DE-MD-NJ .....	1.0684
	New Castle County, DE. Cecil County, MD. Salem County, NJ.	
48900	Wilmington, NC .....	0.9835
	Brunswick County, NC. New Hanover County, NC. Pender County, NC.	
49020	Winchester, VA-WV .....	1.0091

TABLE 8.— FY 2007 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
49180	Frederick County, VA. Winchester City, VA. Hampshire County, WV. Winston-Salem, NC Davie County, NC. Forsyth County, NC. Stokes County, NC. Yadkin County, NC.	0.9276
49340	Worcester, MA Worcester County, MA.	1.0722
49420	Yakima, WA Yakima County, WA.	0.9847
49500	Yauco, PR Guánica Municipio, PR. Guayanilla Municipio, PR. Peñuelas Municipio, PR. Yauco Municipio, PR.	0.3854
49620	York-Hanover, PA York County, PA.	0.9397
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH. Trumbull County, OH.	0.8802
49700	Mercer County, PA. Yuba City, CA Sutter County, CA.	1.0730
49740	Yuba County, CA. Yuma, AZ Yuma County, AZ.	0.9109

<sup>1</sup> At this time, there are no hospitals located in this urban area on which to base a wage index.

TABLE 9.—FY 2007 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

CBSA code	Nonurban area	Wage index
1	Alabama	0.7591
2	Alaska	1.0661
3	Arizona	0.8908
4	Arkansas	0.7307
5	California	1.1454
6	Colorado	0.9325
7	Connecticut	1.1709
8	Delaware	0.9705
10	Florida	0.8594
11	Georgia	0.7593
12	Hawaii	1.0448
13	Idaho	0.8120
14	Illinois	0.8320
15	Indiana	0.8538
16	Iowa	0.8681
17	Kansas	0.7998
18	Kentucky	0.7768
19	Louisiana	0.7438
20	Maine	0.8443
21	Maryland	0.8926
22	Massachusetts <sup>1</sup>	1.0216
23	Michigan	0.9062
24	Minnesota	0.9153
25	Mississippi	0.7738
26	Missouri	0.7927
27	Montana	0.8590
28	Nebraska	0.8677
29	Nevada	0.8944
30	New Hampshire	1.0853
31	New Jersey <sup>1</sup>	.....
32	New Mexico	0.8332
33	New York	0.8232
34	North Carolina	0.8588

TABLE 9.—FY 2007 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

CBSA code	Nonurban area	Wage index
35	North Dakota	0.7215
36	Ohio	0.8658
37	Oklahoma	0.7629
38	Oregon	0.9753
39	Pennsylvania	0.8320
40	Puerto Rico <sup>1</sup>	0.4047
41	Rhode Island <sup>1</sup>	.....
42	South Carolina	0.8566
43	South Dakota	0.8480
44	Tennessee	0.7827
45	Texas	0.7965
46	Utah	0.8140
47	Vermont	0.9744
48	Virgin Islands	0.8467
49	Virginia	0.7940
50	Washington	1.0263
51	West Virginia	0.7607
52	Wisconsin	0.9553
53	Wyoming	0.9295
65	Guam	0.9611

<sup>1</sup> All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2007. Because more recent data are not available for those areas, we are using last year's wage index value.

**III. Waiver of Proposed Rulemaking and Delayed Effective Date**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find for good cause that it is unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections to the 2007 SNF PPS update notice. We are not making substantive changes to our payment methodologies or policies, but rather, are simply implementing correctly the payment methodologies and policies that we previously proposed, received comment on, and subsequently finalized. The public has already had the opportunity to comment on these payment

methodologies and policies, and this correction notice is intended solely to ensure that the FY 2007 SNF PPS update notice accurately reflects them. Therefore, we believe that undertaking further notice and comment procedures to incorporate these corrections into the update notice is unnecessary and contrary to the public interest.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical errors. The changes noted above do not make any substantive changes to the SNF PPS payment methodologies or policies. Moreover, we regard imposing a delay in the effective date as being contrary to the public interest. We believe that it is in the public interest for providers to receive appropriate SNF PPS payments in as timely a manner as possible and to ensure that the FY 2007 SNF PPS update notice accurately reflects our payment methodologies, payment rates, and policies. Therefore, we find good cause to waive notice and comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 22, 2006.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. E6-15979 Filed 9-28-06; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1481-N2]

#### Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) Meeting—November 2-3, 2006

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the fifth meeting of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG). The purpose of the EMTALA TAG is to review regulations affecting hospital and physician responsibilities under EMTALA to individuals who come to a hospital seeking examination or

treatment for medical conditions. The primary purpose of the fifth meeting is to enable the EMTALA TAG to hear additional testimony and further consider written responses from medical societies and other organizations on specific issues considered by the TAG at previous meetings. The public is permitted to attend this meeting and, to the extent that time permits and at the discretion of the Chairperson, the EMTALA TAG may hear comments from the floor.

**DATES:** *Meeting Date:* The meetings of the EMTALA TAG announced in this notice are as follows:

Thursday, November 2, 2006, 9 a.m. to 5 p.m. EST.

Friday, November 3, 2006, 9 a.m. to 5 p.m. EST.

*Registration Deadline:* All individuals must register in order to attend this meeting. Individuals who wish to attend the meeting but do not wish to present testimony must register by October 25, 2006. Individuals who wish to attend the meeting and to present their testimony must register by October 11, 2006 and must submit copies of their testimony in writing by October 18, 2006. See Section IV for more detailed registration instructions.

*Comment Deadline:* Written comments/statements to be presented to the EMTALA TAG must be received by October 18, 2006.

*Special Accommodations:* Individuals requiring sign-language interpretation or other special accommodations should send a request for these services to Eric Ruiz by 5 p.m. on October 18, 2006 at the address listed below.

**ADDRESSES:** *Meeting Address:* The EMTALA TAG meeting will be held in Room 705A of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20001.

*Mailing and E-mail Addresses for Inquiries or Comments:* Inquiries or comments regarding this meeting may be sent to—Eric Ruiz, Division of Acute Care, Centers for Medicare & Medicaid Services, Mail Stop C4-08-06, 7500 Security Boulevard, Baltimore, MD 21244-1850. Inquiries or comments may also be e-mailed to

[Eric.Ruiz@cms.hhs.gov](mailto:Eric.Ruiz@cms.hhs.gov) or

[EMTALATAG@cms.hhs.gov](mailto:EMTALATAG@cms.hhs.gov).

*Web Site Address for Additional Information:* For additional information on the EMTALA TAG meeting agenda topics, updated activities, and to obtain Charter copies, please search our Internet Web site at ([http://www.cms.hhs.gov/faca/07\\_emptalatag.asp](http://www.cms.hhs.gov/faca/07_emptalatag.asp)).

**FOR FURTHER INFORMATION CONTACT:** Eric Ruiz 410-786-0247.

George Morey (410) 786-4653.

Press inquiries are handled through the CMS Press Office at (202) 690-6145.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request or have a request made on their behalf for examination or treatment for a medical condition. The Emergency Medical Treatment and Labor Act (EMTALA) applies to all these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for medical conditions, as well as necessary stabilizing treatment or appropriate transfer.

Regulations implementing the EMTALA legislation are set forth at 42 CFR sections 489.20(l), (m), (q) and (r) and sections 489.24. Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173), mandates that the Secretary establish a Technical Advisory Group (TAG) for advice concerning issues related to EMTALA regulations and implementation.

Section 945 of the MMA specifies that the EMTALA TAG—

- Shall review the EMTALA regulations;
- May provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians;
- Shall solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of such regulations; and
- May disseminate information concerning the application of these regulations to hospitals, physicians, and the public.

The EMTALA TAG, as chartered under section 945 of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2) for the selection of members and the conduct of all meetings.

In the May 28, 2004 **Federal Register** (69 FR 30654), we specified the statutory requirements regarding the charter, general responsibilities, and structure of the EMTALA TAG. That notice also solicited nominations for members based on the statutory requirements for the EMTALA TAG. In



the August 27, 2004 **Federal Register** (69 FR 52699), we solicited nominations again for members in two categories (patient representatives and a State survey agency representative) for which no nominations were received in response to the May 28, 2004 **Federal Register** notice. In the March 15, 2005 **Federal Register** (70 FR 12691), we announced the inaugural meeting of the EMTALA TAG and the membership selection. In the May 18, 2005 **Federal Register** (70 FR 28541), the September 23, 2005 **Federal Register** (70 FR 55903), and the April 7, 2006 **Federal Register** (71 FR 17888) we announced the second, third, and fourth meetings of the EMTALA TAG, respectively, with a purpose to hear public testimony and consider written responses from medical societies and other organizations on specific issues considered by the EMTALA TAG at its previous meetings. The EMTALA TAG has established the following three subcommittees:

- *On-Call Subcommittee* (Chairperson, John Kusske, M.D.) charged with reviewing the testimony and other materials provided to the TAG to identify some specific issues related to on-call requirements.

- *Action Subcommittee* (Chairperson, Julie Nelson, J.D.) charged with identifying issues other than on-call issues.

- *Framework Subcommittee* (Chairperson, Charlotte Yeh, M.D.) charged with clarifying the historical context and conceptual basis for the TAG's recommendations and developing a document for review and approval by the TAG.

## II. Meeting Format, Agenda, and Presentation Topics

### A. Meeting Format

The initial portion of the meeting, which will convene at 9 a.m. on November 2, will involve opening remarks, and a limited period of public testimony on issues related to EMTALA and its implementation. TAG members will have the opportunity to ask questions, prioritize the topics presented, and to conduct other necessary business. At the conclusion of each day's meeting, to the extent that time is available and at the discretion of the Chairperson, the public will be permitted a reasonable time to comment on issues being considered by the TAG.

### B. Tentative Meeting Agenda

The tentative agenda for the EMTALA TAG meetings is as follows:

#### Day 1

Convenes at 9 a.m.

- Welcome, Call to Order, and Opening Remarks
- Administrative and Housekeeping Issues
- Public Testimony on issues related to EMTALA and its implementation
- Subcommittee Reports
- Public Comment.

#### Day 2

- Convenes at 9 a.m.
- Subcommittee Reports (cont.)
- Public Comment.

### C. Public Presentations

Only individuals who register and submit written testimony as specified in the *Registration* section of this notice will be considered registered presenters. The time allotted for each presentation will be approximately 5 minutes and will be based on the number of registered presenters. Presenters will speak in their assigned order. If registered presenters are not given an opportunity to speak because of time restrictions, we will accept and present their written testimony to the TAG members. Time permitting, comments from other participants (individuals who are not registered presenters) may be heard after the scheduled testimonies.

If there are individuals who cannot attend the meeting but wish to submit comments/statements regarding issues related to the EMTALA TAG, we will accept and present their written comments/statements at the meeting if their comments/statements are received by postal mail or email at the address listed in the **ADDRESSES** section of this notice by October 18, 2006.

### III. Registration Instructions

The Center for Medicare Management of CMS is coordinating meeting registration. While there is no registration fee, all individuals must register to attend due to limited seating. As specified in the **DATES** section of this notice, individuals who wish to attend the meeting but do not plan to present testimony must register by October 25, 2006. Individuals who would like both to attend and to present testimony on issues relating to the EMTALA TAG must register by October 11, 2006 and must state specifically in their registration request that they wish to present testimony for EMTALA TAG consideration. A copy of the presenter's written testimony must be received by CMS at the address specified in the **ADDRESSES** section of this notice by October 18, 2006.

You may register by e-mail to Marianne Myers at [Marianne.Myers@cms.hhs.gov](mailto:Marianne.Myers@cms.hhs.gov), by fax to

the attention of Marianne Myers at (410) 786-0681, or by telephone at (410) 786-5962. All registration requests must include your name, name of the organization (if applicable), address, telephone and fax numbers, e-mail address (if available). Individuals will receive a registration confirmation with instructions for your arrival at the Hubert Humphrey Building. If seating capacity has been reached, registrants will be notified that the meeting has reached capacity. All registrants are asked to arrive at the Hubert Humphrey Building no later than 20 minutes before the scheduled starting time of each meeting session they wish to attend.

### IV. Security Information

Since this meeting will be held in a Federal government building, Federal security measures are applicable. As noted above, in planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building, participants must bring a government-issued photo identification such as a driver's license or a passport and a copy of your registration information for the meeting. Access may be denied to persons without proper identification.

All persons entering the building must pass through a metal detector. In addition, all items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

**Authority:** Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 21, 2006.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E6-15996 Filed 9-28-06; 8:45 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2006E-0005]

**Determination of Regulatory Review Period for Purposes of Patent Extension; LYRICA (New Drug Application 21-723)**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for LYRICA (new drug application (NDA) 21-723) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD-007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market

the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LYRICA (NDA 21-723) (pregabalin). LYRICA (NDA 21-723) is indicated for management of postherpetic neuralgia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LYRICA (NDA 21-723) (U.S. Patent No. 6,001,876) from Warner-Lambert Company LLC, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LYRICA (NDA 21-723) represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LYRICA (NDA 21-723) is 3,279 days. Of this time, 2,852 days occurred during the testing phase of the regulatory review period, while 427 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* January 10, 1996. The applicant claims August 24, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 10, 1996, which was 30 days after FDA receipt of the initial IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* October 31, 2003. The applicant claims October 30, 2003, as the date the new drug application (NDA) for LYRICA (NDA 21-723) was initially submitted. However, FDA records indicate that NDA 21-723 was submitted on October 31, 2003.

3. *The date the application was approved:* December 30, 2004. FDA has

verified the applicant's claim that NDA 21-723 was approved on December 30, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 533 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 28, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 28, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 15, 2006.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6-15962 Filed 9-28-06; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2004E-0425]

**Determination of Regulatory Review Period for Purposes of Patent Extension; PLENAXIS**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for PLENAXIS and is publishing this notice of that determination as required by

law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD-007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PLENAXIS (abarelix). PLENAXIS is indicated for the palliative treatment of men with advanced symptomatic prostate cancer, in whom luteinizing hormone releasing hormone agonist therapy is not appropriate and who refuse surgical

castration, and have one or more of the following: (1) Risk of neurological compromise due to metastases, (2) ureteral or bladder outlet obstruction due to local encroachment or metastatic disease, or (3) severe bone pain from skeletal metastases persisting on narcotic analgesia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PLENAXIS (U.S. Patent No. 5,843,901) from Praecis Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 19, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PLENAXIS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PLENAXIS is 2,566 days. Of this time, 1,487 days occurred during the testing phase of the regulatory review period, while 1,079 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* November 17, 1996. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 17, 1996.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* December 12, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for Plenaxis (NDA 21-320) was initially submitted on December 12, 2000.

3. *The date the application was approved:* November 25, 2003. FDA has verified the applicant's claim that NDA 21-320 was approved on November 25, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 725 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets

Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 28, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 28, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6-15969 Filed 9-28-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2005E-0253]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; TARCEVA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for TARCEVA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product. **ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory

Policy (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TARCEVA (erlotinib). TARCEVA is indicated for the treatment of patients with locally advanced or metastatic non-small cell lung cancer after failure of at least one prior chemotherapy regimen. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TARCEVA (U.S. Patent No. 5,747,498) from Pfizer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TARCEVA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested

that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TARCEVA is 2,653 days. Of this time, 2,541 days occurred during the testing phase of the regulatory review period, while 112 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* August 16, 1997. The applicant claims October 10, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 16, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* July 30, 2004. The applicant claims January 20, 2004, as the date the new drug application (NDA) for TARCEVA (NDA 21-743) was initially submitted. The applicant claims this is the date it submitted the first module of NDA 21-743, which was submitted in several modules as part of a rolling NDA submission procedure. It is FDA's position that the approval phase begins when the marketing application is complete. A review of FDA records reveals that the final module of the marketing application was submitted on July 30, 2004, which is considered to be the NDA initially submitted date.

3. *The date the application was approved:* November 18, 2004. FDA has verified the applicant's claim that NDA 21-743 was approved on November 18, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,261 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 28, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 28, 2007. To meet its burden, the petition must contain sufficient facts to

merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 3, 2006.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E6-15987 Filed 9-28-06; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2006D-0383]

#### **Draft Guidance for Industry on Characterization and Qualification of Cell Substrates and Other Biological Starting Materials Used in the Production of Viral Vaccines for the Prevention and Treatment of Infectious Diseases; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Characterization and Qualification of Cell Substrates and Other Biological Starting Materials Used in the Production of Viral Vaccines for the Prevention and Treatment of Infectious Diseases," dated September 2006. This guidance provides recommendations to manufacturers of viral vaccines for the characterization and qualification of cell substrates and viral seeds used in the production of viral vaccines for human use. This draft guidance, when finalized, will replace the information specific to viral vaccines contained in the 1993 document, entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals."

**DATES:** Submit written or electronic comments on the draft guidance by December 28, 2006 to ensure their adequate consideration in preparation of the final guidance. General comments

on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance 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:** Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-827-6210.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Characterization and Qualification of Cell Substrates and Other Biological Starting Materials Used in the Production of Viral Vaccines for the Prevention and Treatment of Infectious Diseases," dated September 2006. This draft guidance provides manufacturers of viral vaccines with recommendations for the characterization and qualification of cell substrates and viral seeds used for the production of viral vaccines for human use. These recommendations may be used to support a Biologics License Application or an application for an Investigational New Drug.

This draft guidance, when finalized, is intended to replace the information specific to viral vaccines, but does not replace information on other biological products, contained in the 1993 document entitled, "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals." This draft guidance, when finalized, is also intended to supplement recommendations on the production of viral vaccines for the prevention and treatment of infectious diseases, provided in the International Conference on Harmonisation (ICH) documents entitled "Guidance for

Industry: Q5A Viral Safety Evaluation of Biotechnology Products Derived from Cell Lines of Human or Animal Origin" dated September 1998 (63 FR 51074; September 24, 1998) and "Q5D Derivation and Characterisation of Cell Substrates Used for Production of Biotechnological/Biological Products" (63 FR 50244; September 21, 1998).

The scope of this draft guidance document is limited to cell substrates of human and animal origins and does not cover characterization of unicellular organisms, such as bacteria or yeast. This draft guidance also applies to the characterization and qualification of viral seeds. This draft guidance does not supersede the general requirements for biologicals described in Title 21 Code of Federal Regulations (CFR), part 210, part 211, part 601, nor part 610.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent FDA's current thinking on the identified topic. It does not create nor 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 statutes and regulations.

**II. Paperwork Reduction Act**

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Most of the collections of information to which this draft guidance refers are covered by parts 601 (on BLAs) and 21 CFR part 312 (on INDs), and were approved under OMB Control No. 0910-0338 and 0910-0014, respectively. For the remaining referenced collections of information, those in 21 CFR 640.3 and 640.63 have been approved under OMB control numbers 0910-0116; those in part 211, including § 211.160(b), have been approved under OMB control number 0910-0139; and those in 21 CFR part 58 have been approved under OMB Control No. 0910-0119.

**III. Comments**

This draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. 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 the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**IV. Electronic Access**

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/cber/guidelines.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: September 22, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6-15963 Filed 9-28-06; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket Nos. 1999D-0054, 2001D-0475, and 2003D-0364] (formerly Docket Nos. 99D-0054, 01D-0475, and 03D-0364, respectively)

**Guidances on Providing Regulatory Submissions in Electronic Format; Withdrawal of Guidances**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research is announcing the withdrawal of three guidances for industry: "Providing Submissions in Electronic Format—NDAs," "Providing Regulatory Submissions in Electronic Format—ANDAs," and "Providing Regulatory Submissions in Electronic Format: Annual Reports for NDAs and ANDAs." These guidances are being withdrawn because they are no longer consistent with more recent guidance and no longer reflect the agency's preferred format for receiving electronic submissions.

**DATES:** September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Armando Oliva, Center for Drug Evaluation and Research (HF-18), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1512, e-mail:

[armando.oliva@fda.hhs.gov](mailto:armando.oliva@fda.hhs.gov), or

Robert Yetter, Center for Biologics Evaluation and Research (HFM-25), Food and Drug Administration, 1401

Rockville Pike, Rockville, MD 20852,  
301-827-0373, e-mail:  
[robert.yetter@fda.hhs.gov](mailto:robert.yetter@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

During the past decade, FDA has been working to expand its ability to receive and review marketing applications electronically. In addition, the agency has been working through the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) to harmonize the formats being used for marketing applications.

Beginning in 1999, FDA issued two guidances and one draft guidance for industry that made recommendations to applicants wishing to submit applications to FDA in electronic format: (1) "Providing Regulatory Submissions in Electronic Format—NDAs" (e-NDA guidance) (64 FR 4432, January 28, 1999), (2) "Providing Regulatory Submissions in Electronic Format—ANDAs" (e-ANDA guidance) (67 FR 43331, June 27, 2002), and (3) "Providing Regulatory Submissions in Electronic Format—Annual Reports for New Drug Applications and Abbreviated New Drug Applications" (draft) (68 FR 51788, August 28, 2003). In general, these guidances recommended submitting documents as portable document files (PDF), electronic data/case report tabulations as SAS transport files, and the NDA table of contents in PDF format. In the meantime, however, the FDA adopted the ICH Common Technical Document (CTD) headings and subheadings for marketing applications. ICH then issued specifications for the electronic version of the CTD (e-CTD).

In October 2005, FDA issued the guidance "Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions Using the e-CTD Specifications" (the e-CTD guidance) (70 FR 60842; October 19, 2005). This guidance differs from the e-NDA and e-ANDA guidances in one significant aspect: The application table of contents is no longer submitted as a PDF file, but is submitted as an XML (extensible markup language) file. This XML file has numerous advantages over the older PDF format, most significant of which is the ability to update the application table of contents automatically as new amendments are received. With the e-CTD format, sponsors and reviewers now have access to a real-time, up-to-date, cumulative table of contents that provides easy and

immediate access to all files included in an application, regardless of when they were included, or in what submission they are located. This has never previously been possible. Another advantage is that the table of contents can be displayed in various ways, allowing discipline-specific views of an application, further promoting review efficiency. This is especially important for agency review staff. For example, although all portions of an application are always available to all reviewers, a chemist would be interested in different portions of the application than a clinical reviewer. The XML table of contents permits reviewers to view the application in a manner that makes the most sense to support their particular review activity.

Despite the release of the e-CTD guidance describing the use of the XML format, FDA has continued to make all three guidances available with their differing recommendations. As a result, applicants have had three choices when submitting a marketing application electronically: (1) Use the e-NDA/e-ANDA format, (2) use the e-CTD format, or (3) use what we call a "hybrid" submission (the older e-NDA format with the table of contents organized using the newer CTD headings). In addition, FDA still receives submissions that are a combination of paper and electronic formats. Of course, this would not be appropriate for sponsors who are using the e-CTD format, as doing this would negate the intent of having all portions of the application readily available for review via the XML table of contents. A result of having this variety of choices is confusion and frustration for industry, who are not receiving consistent recommendations about how to submit marketing applications. It is also confusing and frustrating for our review staff. In addition, our willingness to receive applications in a variety of different forms has forced the agency to maintain expensive and duplicative processes and systems for receiving and archiving these various application types.

##### II. Withdrawal of Guidances

The e-CTD format is preferred by FDA because it is more efficient than the other choices and consistent with FDA's technical capabilities. The e-CTD format is also the preferred ICH format. As a result, the agency is withdrawing the earlier guidances. In addition, we will remove references to these guidances from the electronic submissions docket on December 31, 2007. Further information on providing regulatory submissions in electronic format can be found on Docket No. 1992S-0251

(formerly Docket No. 92S-0251) (<http://www.fda.gov/ohrms/dockets/dockets/92s0251/92s0251.htm>). We are recommending that sponsors wishing to submit applications electronically use the most efficient and internationally agreed to formats recommended in our most recent guidance.

Although the Center for Biologics Evaluation and Research (CBER) supports the use of the e-CTD format and encourages its sponsors to use this format when creating its submissions, CBER also recognizes that in certain situations a sponsor may not be capable of providing submissions in that format at this time. Therefore, CBER recommends that sponsors who cannot use the e-CTD format consult guidance for industry "Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format—Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA) / Establishment License Application (ELA) and New Drug Application (NDA)]" (11/12/1999) (available online at <http://www.fda.gov/cber/esub/esubguid.htm>).

Dated: September 22, 2006.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E6-15966 Filed 9-28-06; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

#### Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915-0043 Extension)

The Health Education Assistance Loan (HEAL) program continues to administer and monitor outstanding

loans which were provided to eligible students to pay for educational costs in a number of health professions. HEAL forms collect information that is required for responsible program management. The HEAL Repayment Schedule, Fixed and Variable, provides the borrower with the cost of a HEAL loan, the number and amount of

payments, and the Truth-in-Lending disclosures. The Lender's Report on HEAL Student Loans Outstanding (Call Report), provides information on the status of loans outstanding by the number of borrowers and total number of loans whose loan payments are in various stages of the loan cycle, such as student education and repayment, and

the corresponding dollar amounts. These forms are needed to provide borrowers with information on the cost of their loan(s) and to determine which lenders may have excessive delinquencies and defaulted loans.

The estimate of burden for the forms is as follows:

Form and number	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Disclosure: Repayment Schedule HRSA 502-1,2 .....	8	666	5,328	0.50	2,664
Reporting: Call Report HRSA 512 .....	20	4	80	0.75	60
Total Reporting and Disclosure .....	28	.....	5,408	.....	2,724

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 22, 2006.

**Cheryl R. Dammons,**  
*Director, Division of Policy Review and Coordination.*

[FR Doc. E6-15960 Filed 9-28-06; 8:45 am]

BILLING CODE 4165-15-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Comment Request**

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104-13), the Health Resources and

Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443-1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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.

**Proposed Project: Web-Based Semi Annual Report (SAR) (OMB No. 0915-0262)—Extension**

The HRSA's Bureau of Primary Health Care (BPHC) collects the annual

reporting requirements for the primary care grantees funded by BPHC using the Web-based Semi Annual Report (SAR). The SAR includes reporting requirements for grantees of the following primary care programs: State Primary Care Associations and State Primary Care Offices. Authorizing legislation is found in Section 330(m) of the Public Health Service Act, as amended.

BPHC collects data on its programs to ensure compliance with legislative mandates and to monitor and report on program accomplishments. To meet these objectives, BPHC requires a core set of information collected semi-annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The SAR has been a valuable instrument for collecting this information from grantees. The SAR provides data on services, characteristics of populations, leveraged funds, and services that fall within the scope of the grant.

Estimates of annualized burden are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
SAR .....	103	1	103	18	1,854

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10-33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 21, 2006.

**Cheryl R. Dammons,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E6-15970 Filed 9-28-06; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, K99/R00 Review Committee.

*Date:* October 16-17, 2006.

*Time:* 3 p.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jeannette F. Korczak, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301-496-9767. [korczak@mail.nih.gov](mailto:korczak@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 21, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8342 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, RFP NHLBI-RR-07-08 C. Elegans Contract Proposal SEP.

*Date:* October 17, 2006.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Executive Board Room, Bethesda, MD 20817.

*Contact Person:* Linda C. Duffy, PhD, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Blvd., Room 1082, Bethesda, MD 20892, (301) 435-0810, [duffy@mail.nih.gov](mailto:duffy@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure; 93.306, 93.333, National Institutes of Health, HHS)

Dated: September 20, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8345 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Causes and Mechanisms of COPD Exacerbations.

*Date:* October 10, 2006.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Holly Patton, PhD, Scientific Review Administrator, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, Two Rockledge Center, 7188, 6701 Rockledge Dr, Bethesda, MD 20892, 301-435-0280, [pattonh@nhlbi.nih.gov](mailto:pattonh@nhlbi.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 20, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8348 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Human Genome Research Institute; Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Human Genome Research Institute.

*Date:* November 5–7, 2006.

*Open:* November 5, 2006, 6:30 p.m. to 8 p.m.

*Agenda:* To discuss matters of program relevance.

*Place:* Eisenhower Inn and Conference Center, 2634 Emmitsburg Road, Gettysburg, PA 17325.

*Closed:* November 5, 2006, 8:15 p.m. to Adjournment on November 7, 2006.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Eisenhower Inn and Conference Center, 2634 Emmitsburg Road, Gettysburg, PA 17325.

*Contact Person:* Claire Kelso, Intramural Program Specialist, Division of Intramural Research, Office of the Scientific Director, National Human Genome Research Institute, 50 South Drive, Building 50, Room 5222, Bethesda, MD 20892–8002. 301–435–5802. [claire@nhgri.nih.gov](mailto:claire@nhgri.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

*Dated:* September 21, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–8343 Filed 9–28–06; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

*Date:* October 26–27, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Savoy Suites Georgetown Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C NSD–C.

*Date:* October 30–31, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. (301) 496–5390, [aw135y@nih.gov](mailto:aw135y@nih.gov).

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

*Date:* November 2–3, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

*Contact Person:* Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

*Dated:* September 21, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–8344 Filed 9–28–06; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary study to TODAY Diabetes Clinical Study.

*Date:* October 24, 2006.

*Time:* 11 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Xiaoduo Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, [guox@extra.niddk.nih.gov](mailto:guox@extra.niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary R01 Application Review Meeting.

*Date:* November 1, 2006.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

*Contact Person:* Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-4719, [guox@extra.niddk.nih.gov](mailto:guox@extra.niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Macrovascular Disease in Diabetes.

*Date:* November 21, 2006.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Xiaodu Guo, MD, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 910, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-4719, [guox@extra.niddk.nih.gov](mailto:guox@extra.niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Renal Physiology and Pathophysiology.

*Date:* November 30, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Atul Sahai, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 908, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-2242, [sahaia@niddk.nih.gov](mailto:sahaia@niddk.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 20, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8346 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Mental Health, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Interventions Conflicts Meeting.

*Date:* October 11, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892-9608, 301-443-1959, [csarampo@mail.nih.gov](mailto:csarampo@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Implicating Noncoding RNAs in the Genetics of Mental Disorders.

*Date:* October 20, 2006.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* A. Roger Little, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6157, MSC 9609, Rockville, MD 20852-9609, 301-402-5844, [alittle@mail.nih.gov](mailto:alittle@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Advanced Centers for MH Disparities Research.

*Date:* November 16, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, Rm. 6150, MSC 9608, Bethesda, MD 20892-9608, 301-443-7216, [hhaigler@mail.nih.gov](mailto:hhaigler@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research

Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 20, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8347 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Institutional Training Grants.

*Date:* November 15, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892-9304. 301-443-2369. [lgunzera@mail.nih.gov](mailto:lgunzera@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 20, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8349 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Grant Review of DNA Damage Response.

*Date:* October 13, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Par, NC 27709.

*Contact Person:* Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30/Room 3171, Research Triangle Park, NC 27709. 919/541-0670. [worth@niehs.nih.gov](mailto:worth@niehs.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 20, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8350 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Family Process and Child Development.

*Date:* October 11, 2006.

*Time:* 8 p.m. to 10 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

*Contact Person:* Victoria S. Levin, MSW., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, 301-435-0912, [levin@csr.nih.gov](mailto:levin@csr.nih.gov).

*Name of Committee:* Renal and Urological Studies Integrated Review Group, Cellular and Molecular Biology of the Kidney Study Section.

*Date:* October 16-17, 2006.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, 301-435-1198, [hilden@csr.nih.gov](mailto:hilden@csr.nih.gov).

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Oral, Dental and Craniofacial Sciences Study Section.

*Date:* October 17-18, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Premier at Tysons Corner, 8661 Leesburg Pike, Vienna, VA 22182.

*Contact Person:* Tamizchelvi Thyagarajan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301-451-1327, [tthyagar@csr.nih.gov](mailto:tthyagar@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict SEP: Host Defense and Innate Immunity.

*Date:* October 17-18, 2006.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Paek-Gyu Lee, PhD., Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 402-7391, [leepg@csr.nih.gov](mailto:leepg@csr.nih.gov).

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group, Microscopic Imaging Study Section.

*Date:* October 18, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Ross D. Shonat, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1115, MSC 7849, Bethesda, MD 20892, 301-435-2786, [shonatr@csr.nih.gov](mailto:shonatr@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Prion Diseases.

*Date:* October 18, 2006.

*Time:* 10:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Rossana Berti, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301-402-6411, [bertiros@csr.nih.gov](mailto:bertiros@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Ultrafast Optical Program Project Evaluation.

*Date:* October 18-20, 2006.

*Time:* 5 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Hilton Inn at Penn, 3600 Sansom Street, Philadelphia, PA 19104.

*Contact Person:* James W. Mack, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040I, MSC 7806, Bethesda, MD 20892, (301) 435-1747, [mackj2@csr.nih.gov](mailto:mackj2@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group, Bacterial Pathogenesis Study Section.

*Date:* October 19-20, 2006.

*Time:* 8 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Richard G. Kostriken, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301-402-4454, [kostrikr@csr.nih.gov](mailto:kostrikr@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hematology Small Business.

*Date:* October 20, 2006.

*Time:* 8 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

*Contact Person:* Delia Tang, MD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301-435-2506, [tangd@csr.nih.gov](mailto:tangd@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Polymers and Probes.

*Date:* October 20, 2006.

*Time:* 11 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301-435-1159, [ameros@csr.nih.gov](mailto:ameros@csr.nih.gov).

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

*Date:* October 23, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Sooja K. Kim, PhD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301-435-1780, [kims@csr.nih.gov](mailto:kims@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Autoimmune Disease Special Emphasis Panel.

*Date:* October 24, 2006.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Patrick K. Lai, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301-435-1052, [laip@csr.nih.gov](mailto:laip@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group, Host Interactions with Bacterial Pathogens Study Section.

*Date:* October 25-26, 2006.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Hotel & Suites, 160 E. Huron Street, Chicago, IL 60611.

*Contact Person:* Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301-435-1148, [wachtelm@csr.nih.gov](mailto:wachtelm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Conflicts in Biological Chemistry and Macromolecular Biophysics.

*Date:* October 25-26, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, 301-435-1727, [schneidd@csr.nih.gov](mailto:schneidd@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Cancer Suppressor Gene.

*Date:* October 25, 2006.

*Time:* 1:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301-435-1720, [shauhung@csr.nih.gov](mailto:shauhung@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR-06-288 Molecular Probes for Microscopy of Cells.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 9 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892, 301-435-2786, [shonatr@csr.nih.gov](mailto:shonatr@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005.

*Contact Person:* Jonathan K. Ivins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594-1245, [ivinsj@csr.nih.gov](mailto:ivinsj@csr.nih.gov).

*Name of Committee:* Biology of Development and Aging Integrated Review Group, Development-1 Study Section.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1111 29th Street, NW., Washington, DC 20007.

*Contact Person:* Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3216, MSC 7843, Bethesda, MD 20892, (301) 435-1021, [duperes@csr.nih.gov](mailto:duperes@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Nuclear Dynamics and Transport.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street, NW., Washington, DC 20037.

*Contact Person:* Alessandra M. Bini, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301-435-1024, [binia@csr.nih.gov](mailto:binia@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Vilen A. Movsesyan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301-402-7278, [movsesyanv@csr.nih.gov](mailto:movsesyanv@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR: Risk Prevention and Health Behavior.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

*Contact Person:* Claire E. Gutkin, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, 301-594-3139, [gutkincl@csr.nih.gov](mailto:gutkincl@csr.nih.gov).

*Name of Committee:* Health of the Population Integrated Review Group, Nursing Science: Adults and Older Adults Study Section.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.  
*Contact Person:* Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435-1784, [mcfarlag@csr.nih.gov](mailto:mcfarlag@csr.nih.gov).

*Name of Committee:* Oncological Sciences Integrated Review Group, Developmental Therapeutics Study Section.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435-1767, [gubanics@csr.nih.gov](mailto:gubanics@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review Group, Cell Death in Neurodegeneration Study Section.

*Date:* October 26-27, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435-1278, [simpsond@csr.nih.gov](mailto:simpsond@csr.nih.gov).

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group, Instrumentation and Systems Development Study Section.

*Date:* October 26-27, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* Ping Fan, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301-435-1740, [fanp@csr.nih.gov](mailto:fanp@csr.nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group, Cognition and Perception Study Section.

*Date:* October 26-27, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* Cheri Wiggsc, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435-1261, [wiggsc@csr.nih.gov](mailto:wiggsc@csr.nih.gov).

*Name of Committee:* Health of the Population Integrated Review Group, Social Sciences and Population Studies Study Section.

*Date:* October 26-27, 2006.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

*Contact Person:* Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435-0694, [weller@csr.nih.gov](mailto:weller@csr.nih.gov).

*Name of Committee:* Biology of Development and Aging Integrated Review Group, Aging Systems and Geriatrics Study Section.

*Date:* October 26-27, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Francois Boller, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040Q, MSC 7843, Bethesda, MD 20892, 301-594-6421, [bollefr@csr.nih.gov](mailto:bollefr@csr.nih.gov).

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Tissue Engineering Study Section.

*Date:* October 26-27, 2006.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jean Dow Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435-1743, [sipej@csr.nih.gov](mailto:sipej@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, LIR Member Conflict.

*Date:* October 26, 2006.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301-435-0696, [barnasg@csr.nih.gov](mailto:barnasg@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Community-Based Participation in Research R01s.

*Date:* October 26-27, 2006.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard Marriott at Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

*Contact Person:* Alfonso R. Latoni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301-435-1735, [Latonia@csr.nih.gov](mailto:Latonia@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 20, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8340 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 5, 2006, 1 p.m. to October 5, 2006, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on September 11, 2006, 71 FR 53458-53460.

The meeting will be held on October 23, 2006, from 2 p.m. to 4 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: September 22, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06-8341 Filed 9-28-06; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5037-N-68]

#### Notice of Submission of Proposed Information Collection to OMB; Contract and Subcontract Activity Reporting on Minority Business Enterprise (MBE)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is collected from developers, borrowers, sponsors, or

project managers. Summaries from this report enables HUD to monitor and evaluate progress toward designated Minority Business Enterprise (MBE) goals of Executive Order 12432. The information is used for the Department's annual report.

**DATES:** *Comments Due Date:* October 30, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535-0117) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail [Lillian.L.Deitzer@HUD.gov](mailto:Lillian.L.Deitzer@HUD.gov) or telephone (202) 708-2374. This is not a

toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at <http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm>.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the

burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Contract and Subcontract Activity Reporting on Minority Business Enterprise (MBE).

*OMB Approval Number:* 2535-0117.

*Form Numbers:* HUD-2516.

*Description of the Need for the Information and Its Proposed Use:* The information is collected from developers, borrows, sponsors, or project managers. Summaries from this report enables HUD to monitor and evaluate progress toward designated Minority Business Enterprise (MBE) goals of Executive Order 12432. The information is used for the Department's annual report.

*Frequency of Submission:* Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden .....	5,365	1		1		5,365

*Total Estimated Burden Hours:* 5,365.  
*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 25, 2006.

**Lillian L. Deitzer,**  
*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E6-15961 Filed 9-28-06; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5045-N-39]

**Federal Property Suitable as Facilities To Assist the Homeless**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**DATES:** *Effective Date:* September 29, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, Department of Housing and Urban Management, Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 21, 2006.

**Mark R. Johnston,**  
*Acting Deputy Assistant Secretary for Special Needs.*

[FR Doc. 06-8259 Filed 9-28-06; 8:45 am]

**BILLING CODE 4210-67-M**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Recovery Plan for Holmgren milk-vetch (*Astragalus holmgreniorum*) and Shivwits milk-vetch (*Astragalus ampullarioides*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final Holmgren milk-vetch (*Astragalus holmgreniorum*) and Shivwits milk-vetch (*Astragalus ampullarioides*) recovery plan. These species are federally listed as endangered under the Endangered Species Act of 1973, as amended (Act).

**ADDRESSES:** You may obtain a copy of the recovery plan by any of the following means:

1. *World Wide Web:* <http://endangered.fws.gov/recovery/index.html#plans>; or
2. *U.S. mail or in-person pickup:* U.S. Fish and Wildlife Service, Utah Field Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, at the above address (telephone 801-975-3330).

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for the federally listed species native to the United States where a plan will promote the conservation of the species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting and delisting listed species, and estimating time and cost for implementing the measures needed for recovery measures.

Section 4(f) of the Act (16 U.S.C. 1531 et seq.) requires that public notice and an opportunity for public review and comment be provided during recovery plan development. In fulfillment of this requirement, we made the draft recovery plan for Holmgren milk-vetch (*Astragalus holmgreniorum*) and Shivwits milk-vetch (*Astragalus ampullarioides*) available for public comment from August 1 through August 31, 2006 (71 FR 43514, August 1, 2006). In our preparation of the final recovery plan, we considered information provided to us during the comment period, and we have summarized this information in an appendix to the recovery plan. We will provide substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take comments into account during the course of implementing recovery actions.

Holmgren milk-vetch and Shivwits milk-vetch are endemic to the Mojave Desert around St. George, Utah. These perennials were listed as endangered in October 2001 (66 FR 49560, September 28, 2001) because of their rarity and declining population trends, as well as the threats of urban development, off-road vehicle use, grazing, displacement by invasive plants, and mineral development. We proposed critical habitat for these species on March 29, 2006 (71 FR 15965). For the purpose of recovery, each species comprises six extant populations located in Washington County, Utah, with one Holmgren milk-vetch population extending into Mohave County, Arizona. This also represents the known historic distribution, although it is probable that both species occupied more habitat in the past.

Holmgren milk-vetch occurs at elevations between 756 and 914 meters

(m) (2,480 and 2,999 feet (ft)) in areas that drain to the Santa Clara and Virgin Rivers. It is typically found on the skirt edges of hill and plateau formations slightly above or at the edge of drainage areas; it occurs on soils characterized by small stone and gravel deposits and where living cover is less than 20 percent of the landscape. Shivwits milk-vetch is found in isolated pockets of Chinle and Moenave soils around St. George. Occupied sites are small, and populations are found between 920 and 1,330 m (3,018 and 4,363 ft) in elevation in sparsely vegetated habitat with an average 12 percent cover. Shivwits milk-vetch is thinly and discontinuously distributed within its habitat, and is found in dense patches. Depending on precipitation, Holmgren milk-vetch has variable seedling output, followed by a low rate of survivorship, limiting the number of reproductive adults within a population; Shivwits milk-vetch is constrained by the isolation of appropriate soil substrate and limited mechanisms for seed dispersal.

Recovery of Holmgren milk-vetch and Shivwits milk-vetch will hinge on conservation of extant populations and establishment of enough additional populations to ensure long-term demographic and genetic viability. This will require the active involvement of experts and the public, as well as a continuing recognition of the role each milk-vetch plays in the ecology of southwestern Utah and, in the case of Holmgren milk-vetch, northwestern Arizona. Because of the biological and historical uncertainties regarding the status and recovery potential of these species, the recovery strategy is necessarily contingent on a growing understanding of both species and their ecological requirements. Consequently, a dynamic and adaptive approach will be key to making effective progress toward full recovery.

The objective of the recovery plan is to provide a framework for the recovery of the Holmgren milk-vetch and Shivwits milk-vetch so that protection by the Act is no longer necessary. We think the following actions are among those necessary to accomplish this objective—(1) Conserve known extant Holmgren milk-vetch and Shivwits milk-vetch populations and their habitat; (2) Locate and conserve additional extant populations, if any; (3) Monitor Holmgren milk-vetch and Shivwits milk-vetch sites for population information and trends; (4) Establish a set of need-based research priorities aimed at abating or reducing threats and increasing population health and numbers; (5) Develop and implement a rangewide strategy for augmentation

and/or establishment of milk-vetch populations; (6) Augment extant populations and/or establish new populations of each species in accordance with the rangewide strategy; (7) Promote effective communications with partners and stakeholders regarding the milk-vetches' recovery needs and progress; (8) Develop and implement educational and outreach programs; (9) Provide oversight and support for implementation of recovery actions; (10) Establish a technical working group to regularly review the status of the species and track the effectiveness of recovery actions; (11) Revise the recovery program when indicated by new information and recovery progress.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 7, 2006.

**Sharon R. Rose,**

*Acting Deputy Regional Director, Denver, Colorado.*

[FR Doc. E6-16043 Filed 9-28-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Programmatic Safe Harbor Agreement for Nevada Department of Wildlife, Clark County, NV

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability, receipt of application.

**SUMMARY:** Nevada Department of Wildlife (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed programmatic Safe Harbor Agreement (SHA) between the Applicant and the Service. The SHA provides for voluntary habitat restoration, maintenance, enhancement, or creation activities to enhance the reintroduction and long-recovery of razorback sucker (*Xyrauchen texanus*) and bonytail chub (*Gila elegans*) within Clark County, Nevada. The proposed duration of both the SHA and permit is 50 years.

The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental

Action Statement, which also is available for public review.

**DATES:** Written comments must be received by 5 p.m. on October 30, 2006.

**ADDRESSES:** Comments should be addressed to Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada, facsimile number (775) 861-6301 (see **SUPPLEMENTARY INFORMATION**, Public Review and Comment).

**FOR FURTHER INFORMATION CONTACT:** Jody Brown, Fish and Wildlife Biologist, at the above address or (775) 861-6300.

**SUPPLEMENTARY INFORMATION:**

**Background**

The primary objective of this SHA is to encourage voluntary habitat restoration, maintenance, or enhancement activities to benefit the razorback sucker and bonytail chub by relieving participating landowners, who enter into the provisions of a Cooperative Agreement with the Applicant, from any additional Section 9 liability under the Endangered Species Act beyond that which exists at the time the Cooperative Agreement is signed ("regulatory baseline"). A SHA encourages landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased listed species restrictions should their beneficial stewardship efforts result in increased listed species populations. Application requirements and issuance criteria for enhancement of survival permits through SHAs are found in 50 CFR 17.22 and 17.32(c). As long as enrolled landowners allow the agreed upon conservation measures to be completed on their property and maintain their baseline responsibilities, they may make any other lawful use of the property during the permit term, even if such use results in the take of individual razorback sucker or bonytail chub or harm to their habitat.

Landowners within Clark County, Nevada, that have suitable aquatic habitat for the rearing and long-term adult maintenance of razorback sucker and bonytail chub may be enrolled with the Applicant under the SHA. The landowner will receive a Certificate of Inclusion when they sign a Cooperative Agreement. The Cooperative Agreement will include: (1) A map of the property and its legal location; (2) a description of the existing biological community including nonnative aquatic species and sensitive or protected species if any; (3) the portion of the property to be enrolled and its acreage; (4) a description of the habitat types that

occur on the portion of the property to be enrolled including an accurate description of ponds or other aquatic habitats and their characteristics; and (5) current land-use practices and existing development, and the characteristics of water supplies to aquatic habitats.

The Applicant, as the Permittee, will be responsible for annual monitoring and reporting related to implementation of the SHA and Cooperative Agreements and fulfillment of their provisions. As specified in the SHA, the Applicant will issue yearly reports to the Service related to implementation of the program.

Each Cooperative Agreement will cover conservation activities to create, maintain, restore, or enhance habitat for razorback sucker and bonytail chub and achieve species' recovery goals. Management activities that are undertaken through Cooperative Agreements will result in additional areas being available for the rearing of razorback sucker and bonytail chub in protected habitats, which will provide additional razorback sucker and bonytail chub of a suitable size for release into the wild, and for the maintenance of adult refuge populations. The overall goal of the Cooperative Agreements entered into under this SHA is to produce conservation measures that are mutually beneficial to the Cooperator and the long-term existence of razorback sucker and bonytail chub.

The Service estimates it will take 2 years of implementing the SHA to fully reach a net conservation benefit, given the probable species response time for razorback sucker and bonytail chub to the planned conservation measures. However, some level of benefits will likely occur within a shorter time period. Each Cooperative Agreement will stipulate that the conservation measures be implemented to provide good habitat and positive stewardship for sites to be used for adult refuges and for the rearing of subadult razorback sucker and bonytail chub prior to their release to the wild.

After maintenance of the restored/created/enhanced razorback sucker and bonytail chub habitat on the property for the agreed-upon term, Cooperators may then conduct otherwise lawful activities on their property that result in the partial or total elimination of the habitat improvements and the incidental taking of Razorback sucker and bonytail chub. However, the restrictions on returning a property to its original baseline condition include: (1) The Cooperator must demonstrate that baseline conditions were

maintained and the conservation measures necessary for achieving a net conservation benefit were carried out; (2) the Applicant and the Service will be notified a minimum of 30 days prior to the activity and given the opportunity to capture, rescue, and/or relocate any Razorback sucker and bonytail chub; and (3) return to baseline conditions must be completed within the 50-year term of the permit issued to the Applicant. Cooperative Agreements may be extended if the Applicant's permit is renewed and that renewal allows for such an extension.

The Service has made a preliminary determination that approval of this SHA qualifies as a categorical exclusion under the NEPA, as provided by the Department of Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1) based on the following criteria: (1) Implementation of the SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

**Public Review and Comments**

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the SHA, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section or obtain copies from the Web site at (<http://www.fws.gov/nevada>). Documents also will be available for public inspection, by appointment, during normal business hours at this office (see **ADDRESSES**).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents,



available for public review. Individual respondents may request that we withhold their names and /or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organization or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

#### Decision

We will evaluate the permit application, the SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the razorback sucker and bonytail chub incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

**Robert D. Williams,**

*Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada.*

[FR Doc. E6-16052 Filed 9-28-06; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Final Revised Comprehensive Conservation Plan and Environmental Impact Statement for Kodiak National Wildlife Refuge, Alaska

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that a Final Revised Comprehensive Conservation Plan (Conservation Plan) and Environmental Impact Statement for Kodiak National Wildlife Refuge is available for final review and comment

before a Record of Decision (ROD) is signed. This Conservation Plan was prepared pursuant to the Alaska National Interest Lands Conservation Act of 1980, the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 as amended. It describes how the Service intends to manage Kodiak NWR over the next 15 years.

**DATES:** Please submit comments on the Final Conservation Plan and Environmental Impact Statement on or before 30 days from the date of publication of this Notice. A ROD will then be signed, and a stand-alone Conservation Plan will be published.

**ADDRESSES:** The Conservation Plan is available on compact diskette or over the Internet. You may obtain a copy of the CD by writing: Mikel Haase, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS 231, Anchorage, Alaska, 99503-6199. You may access or download the Conservation Plan at: [www.r7.fws.gov/nwr/planning/plans.htm](http://www.r7.fws.gov/nwr/planning/plans.htm). Comments may be sent to the above address or e-mailed to [fws\\_kodiak\\_planning@fws.gov](mailto:fws_kodiak_planning@fws.gov).

Copies of the Conservation Plan may be viewed at the Kodiak NWR office, 1390 Buskin River Road, Kodiak, Alaska; local libraries, and the U.S. Fish and Wildlife Service Regional Office in Anchorage, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Mikel Haase, (907) 786-3402.

**SUPPLEMENTARY INFORMATION:** The Alaska National Interest Lands Conservation Act as amended (ANILCA; 16 U.S.C. 140hh-3233, 434 U.S.C. 1602-1784) requires a conservation plan for all national wildlife refuges in Alaska. The Conservation Plan for Kodiak NWR was developed consistent with § 304(g) of ANILCA and the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee). Conservation plans provide refuge managers with a 15-year management strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving fish and wildlife and their habitats, conservation plans identify fish and wildlife-dependent recreational opportunities available to the public, including

opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Conservation plans are updated in accordance with planning direction in § 304(g) of ANILCA, the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370), and Service planning policy.

**Background:** On August 19, 1941, President Franklin D. Roosevelt established Kodiak NWR by Executive Order 8857 “\* \* \* for the purpose of protecting the natural feeding and breeding ranges of the brown bears and other wildlife on Uganik and Kodiak Islands.” The Alaska Native Claims Settlement Act of 1971 allowed the conveyance of about 310,000 acres of Refuge land to Native village corporations.

On December 2, 1980, ANILCA added about 50,000 acres on Afognak and Ban Islands to Kodiak NWR and stated that the Kodiak NWR purposes include: to conserve fish and wildlife populations and habitats in their natural diversity; to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; to provide the opportunity for continued subsistence use by local residents; and to ensure water quality and necessary water quantity within the Refuge.

Since 1994, the Service has purchased fee title to nearly 174,000 acres, and conservation or nondevelopment easements have been acquired on more than 100,000 acres within the Refuge boundaries. Today, Refuge boundaries encompass nearly 1.8 million acres, of which nearly 1.64 million acres (92 percent) are under Service jurisdiction.

The original Kodiak Conservation Plan was completed in 1987 following direction in Section 304(g) of ANILCA. The 1997 Refuge Improvement Act includes additional direction for conservation planning throughout the Refuge System. This direction has been incorporated into national planning policy for the Refuge System, including refuges in Alaska. The Revised Conservation Plan and Environmental Impact Statement (EIS) meets the requirements of both ANILCA and the Refuge Improvement Act. It provides broad general direction for managing Kodiak NWR for the next 15 years and contains the vision, goals, and objectives of the Refuge. Except for alternative ways of addressing the issues, this plan substantially follows the direction of the original plan. Traditional means of access and uses of the Refuge would be maintained under all alternatives.

Issues raised during scoping and addressed in the Conservation Plan are

(1) how to manage public use, given limited access and projected growth in demand, to continue providing opportunities for appropriate and quality use while preventing significant impacts to Refuge resources; and (2) what types of bear viewing opportunities should be available on the Refuge and how should these opportunities be managed while protecting bears and their habitats.

The EIS evaluates four alternatives for management of Kodiak NWR, primarily focusing on four areas: (1) Protection of bear concentration areas; (2) management of public use cabins; (3) management of camping areas; and (4) management of O'Malley River. These alternatives follow the same general management direction but provide different ways of addressing the issues.

*Alternative A (Current Management):*

Management of the Refuge would continue to follow the 1987 conservation plan and record of decision as modified by subsequent step-down plans, including fisheries and public use management plans. Private and commercial uses of the Refuge would continue at current levels. Refuge management would continue to reflect existing laws, executive orders, regulations, and policies governing Service administration and operation of the National Wildlife Refuge System. Regulations would be adopted to seasonally limit public use (only commercial users are currently restricted) of nine bear concentration areas; to close two bear denning areas to snowmachine use; and to restrict camping near public use cabins and administrative facilities. Seven existing public use cabins would be maintained, two additional cabins could be constructed, and cabins on newly acquired lands could be managed for public use if located on appropriate sites. Impacts at heavily used camping areas would be managed by restricting use through regulations. The seasonal closure to all users at O'Malley River would continue; the site would not be open to bear viewing. Refuge lands would continue to be managed under Moderate (44,627 acres) and Minimal (1,578,700 acres) management categories, with Special River Management as an option for rivers receiving higher levels of public use.

*Alternative B:* Much of the general management direction in Alternative A would continue. Goals and objectives for increasing our knowledge of wildlife and habitat needs and relationships would be established. Public use monitoring would facilitate wildlife-dependent recreation, subsistence, and other traditional uses. Regulations

proposed in Alternative A would not be promulgated; voluntary guidelines for public use of bear concentration areas would be developed. These guidelines would replace current use restrictions on commercial users. The number of public use cabins would be allowed to expand as demand increases, either by constructing new cabins or by managing cabins on newly acquired lands for public use. Food storage containers, latrines, temporary electric fences, and other minor improvements could be provided if needed at popular camping areas to reduce impacts. The O'Malley River closure would be modified to allow a guide to operate a formal bear viewing program under a refuge special use permit. The permit would be awarded competitively. Refuge lands would continue to be managed in Moderate and Minimal management categories as in Alternative A. The Special River Management category would be eliminated.

*Alternative C:* Much of the general management direction in Alternative A would continue, although some specific directions and actions occurring under current management would be altered or not pursued in this alternative. As with Alternative B, goals and objectives for increasing our knowledge of wildlife and habitat needs and relationships would be established. Public use monitoring would facilitate wildlife-dependent recreation, subsistence, and other traditional uses. Voluntary guidelines for public use of bear concentration areas would be developed. These guidelines would replace use restrictions on commercial users. Seasonal closure or day-use-only restrictions could be proposed for some bear concentration areas, based on on-going evaluation of the effectiveness of voluntary use guidelines in these areas. Two bear denning areas would be closed to snowmachine use by regulation. The public use cabin program would be phased out over time. Impacts at heavily used camping areas would be managed by restricting use through regulations. Regulations would be adopted to restrict camping near public use cabins and administrative facilities. The O'Malley River closure would be modified to allow the Service, in cooperation with the Alaska Department of Fish and Game, to operate a formal bear viewing program. Bear viewing permits would be awarded to individuals by lottery. The Moderate Management category would be reduced by 11,192 acres; the acreage in Minimal Management would increase by an equivalent amount. The Special River

Management category would be eliminated.

*Alternative D (Preferred Alternative):*

Much of the general management direction in Alternative A would continue, although some specific directions and actions occurring under current management would be altered or not pursued in this alternative. As in Alternatives B and C, goals and objectives for increasing our knowledge of wildlife and habitat needs and relationships would be established. Public use monitoring would facilitate wildlife-dependent recreation, subsistence, and other traditional uses. Voluntary guidelines for public use of bear concentration areas would be developed. These guidelines would replace use restrictions on commercial users. Day-use-only restrictions could be proposed for some bear-concentration areas based on on-going evaluation of the effectiveness of voluntary use guidelines in these areas. One bear denning area would be closed to snowmachine use by regulation. Seven public use cabins would be maintained, two additional cabins could be constructed, and cabins on newly acquired land could be managed for public use if located on appropriate sites. Regulations would be adopted to restrict camping near public use cabins and administrative facilities. Food-storage containers, latrines, temporary electric fences, and other minor improvements could be provided if needed at popular camping areas to reduce impacts. The O'Malley River closure would be modified to allow a formal bear viewing program combining agency-supervised use (allocated to the public by lottery) with guided use (offered to the public by qualified guides selected through a competitive process and operating under a refuge special use permit). The Moderate Management category would be reduced by 12,579 acres; the acreage in Minimal Management would increase by an equivalent amount. The Special River Management category would be eliminated.

Dated: September 8, 2006.

**Thomas O. Melius,**

*Regional Director, U.S. Fish & Wildlife Service, Anchorage, Alaska.*

[FR Doc. E6-16044 Filed 9-28-06; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[AK-040-06-1610-DP-087L]

**Notice of Availability of Bay Draft Resource Management Plan and Draft Environmental Impact Statement, Alaska**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) for the Bay planning area for lands adjacent to Bristol Bay and Goodnews Bay, Alaska and by this notice is announcing the opening of the comment period.

**DATES:** Public comments on the draft RMP/EIS will be accepted until 90 calendar days after the date the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

**ADDRESSES:** You may submit comments by the following methods:

- *E-mail:* [akbayrmp@blm.gov](mailto:akbayrmp@blm.gov).
- *Mail:* Bureau of Land Management, Anchorage Field Office, ATTN: Bay RMP, 6881 Abbott Loop Road, Anchorage, AK 99507.

**FOR FURTHER INFORMATION CONTACT:** Patricia McClenahan, Project Lead (907) 267-1484, [akbayrmp@blm.gov](mailto:akbayrmp@blm.gov) or Gary

Reimer, Field Manager, (907) 267-1246, or in writing to the address listed above.

**SUPPLEMENTARY INFORMATION:** The Bay Draft Resource Management Plan/ Environmental Impact Statement covers approximately 1,176,269 acres of unencumbered land and 1,327,553 acres of State- and Native-selected land in the Bristol Bay and Goodnews Bay regions in southwestern Alaska. The Southwest Management Framework Plan (MFP), completed in 1981, addresses only the use of the specific portion of these lands that lie within the Goodnews Block. A new RMP is necessary to plan for those lands not covered by the MFP, to address issues that have arisen since the MFP was written, and to meet current planning regulations.

BLM published a Notice of Intent to prepare an RMP/EIS in the **Federal Register** on December 6, 2004. A 90-day formal scoping period began with publication of the Notice by the EPA. Public meetings were held in eight communities, and the following primary management concerns were identified: (1) What land tenure adjustments would allow BLM to consolidate discontinuous blocks of land to benefit users and land managers; (2) Which lands would be made available for oil, gas and hardrock mineral development, and how should these lands be managed to sustain natural and cultural resources; (3) How will access be provided to BLM-administered lands for various purposes, including recreation, subsistence activities, and general enjoyment of public lands while protecting natural and cultural resources; and (4) Should eligible rivers be recommended for inclusion in the National Wild and Scenic Rivers System.

This draft RMP/EIS presents four alternatives to address the issues identified in scoping. These include a No Action Alternative and three action alternatives, including the Preferred

Alternative. The No Action Alternative (A) would continue existing management of lands within the planning area. Alternative B emphasizes resource development. Under this alternative, constraints to protect renewable resource values or habitat, cultural and paleontological resources would be implemented on a project-by-project basis rather than across the planning area or by special designation. Alternative C proposes two Areas of Critical Environmental Concern and three Wild River segments. No Special Recreation Management Areas are identified and off-highway vehicle (OHV) use would be limited to existing roads and trails. The Preferred Alternative (D) represents a variety of actions that the BLM believes best resolves the issues and management concerns in consideration of all values and programs. The Preferred Alternative proposes one Area of Critical Environmental Concern. No Special Recreation Management Areas are identified and off-highway vehicle use would be limited to existing roads and trails.

As required by 43 CFR 1610.7-2, areas with potential for designation as Areas of Critical Environmental Concern (ACECs) and protective management have been considered during the planning process. Two potential areas are considered for designation in Alternative C: Carter Spit ACEC (62,863 acres) and Bristol Bay ACEC (989,202 acres). Three river segments—portions of the Alagnak, Goodnews mainstem, and Goodnews middle fork rivers—are also proposed as Wild Rivers under Alternative C. One potential area (Carter Spit ACEC) is considered for designation under Alternative D. The following tables provide the names, acreages of each area, and summary descriptions of resource use limitations for Alternatives C and D.

TABLE 1.—PROPOSED AREAS OF CRITICAL ENVIRONMENTAL CONCERN AND WILD RIVERS UNDER ALTERNATIVE C

Name of area	Acreage	Resource use limitations
Carter Spit ACEC .....	62,863	Open to fluid mineral leasing with Stipulations and Required Operating Procedures, subject to conditions. Open to locatable mineral exploration and development with Required Operating Procedures, subject to conditions. Closed to sale of mineral materials (i.e. sand, gravel). Designated "Limited" OHV Use. Recreation managed as "Semi-primitive Motorized." Visual resources managed at Level III. Avoidance Area for rights-of-way. Develop Habitat Management Plan.
Bristol Bay ACEC .....	989,202	Open to fluid mineral leasing with Stipulations and Required Operating Procedures, subject to conditions. Open to locatable mineral exploration and development with Required Operating Procedures, subject to conditions.

TABLE 1.—PROPOSED AREAS OF CRITICAL ENVIRONMENTAL CONCERN AND WILD RIVERS UNDER ALTERNATIVE C—  
Continued  
Name of area

Name of area	Acreage	Resource use limitations
Wild River segments: Alagnak, Goodnews River (Mainstem), Goodnews River (Middle Fork).	15,125	Closed to sale of mineral materials (i.e. sand, gravel). Designated "Limited" OHV Use. Recreation managed as "Semi-primitive Motorized." Visual resources managed at Level III. Avoidance Area for rights-of-way. Develop Habitat Management Plan. Visual resources managed at Level III. Retain existing 17(d)(1) withdrawals until Congress acts. Closed to sale of mineral materials (i.e. sand, gravel). Avoidance Area for rights-of-way.

TABLE 2.—PROPOSED AREA OF CRITICAL ENVIRONMENTAL CONCERN UNDER ALTERNATIVE D

Name of area	Acreage	Resource use limitations
Carter Spit ACEC .....	62,863	Open to fluid mineral leasing with Stipulations and Required Operating Procedures, subject to conditions. Open to locatable mineral exploration and development with Required Operating Procedures, subject to conditions. Closed to sale of mineral materials (i.e. sand, gravel). Designated "Limited" OHV Use. Recreation managed as "Semi-primitive Motorized." Visual resources managed at Level III. Avoidance Area for rights-of-way. Develop Habitat Management Plan.

Final acreage for areas designated as ACECs would also depend on the result of land conveyance to the State of Alaska and Native corporations.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Copies of the Bay Draft RMP/EIS (paper or compact disc) are available at the BLM Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, AK 99507 and the BLM Alaska State Office, 222 W. 7th Avenue, Anchorage, AK 99513. The document is also available online and may be viewed at <http://www.blm.gov/ak/ado>.

Dated: July 6, 2006.

**Julia Dougan,**

*Acting State Director.*

[FR Doc. E6-15923 Filed 9-28-06; 8:45 am]

BILLING CODE 4310-JA-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[OR-957-00-1420-BJ: GP06-0190]

**Filing of Plats of Survey: Oregon/ Washington**

**AGENCY:** U.S. Department of the Interior, Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The plat of survey of the following described lands was officially filed in the Oregon State office, Portland, Oregon, on May 15, 2006.

**Willamette Meridian**

Oregon

T. 24 S., R. 7 W., accepted March 7, 2006.

T. 29 S., R. 3 W., accepted March 7, 2006.

Washington

T. 24 N., R. 13 W., accepted April 18, 2006.

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on June 22, 2006.

**Willamette Meridian**

Oregon

T. 1 S., R. 5 W., accepted April 18, 2006.

T. 7 S., R. 4 E., accepted April 25, 2006.

T. 3 S., R. 7 W., accepted April 25, 2006.

T. 17 S., R. 19 E., accepted June 2, 2006.

T. 3 N., R. 36 E., accepted June 2, 2006.

T. 13 S., R. 7 W., accepted June 2, 2006.

The plats of survey of the following described lands were officially filed in the

Oregon State Office, Portland, Oregon, on August 1, 2006.

**Willamette Meridian**

Oregon

T. 4 S., R. 35 E., accepted June 20, 2006.

T. 7 S., R. 7 W., accepted June 22, 2006.

T. 1 S., R. 33 E., accepted July 6, 2006.

T. 34 S., R. 5 W., accepted July 11, 2006.

T. 35 S., R. 5 W., accepted July 11, 2006.

T. 1 N., R. 36 E., accepted July 11, 2006.

T. 1 S., R. 36 E., accepted July 11, 2006.

T. 30 N., R. 31 E., accepted July 11, 2006.

A copy of the plats may be obtained from the Public Room at the Oregon State Office, Bureau of Land Management, 333 S.W. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the State Director, Bureau of Land Management, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:**

Chief, Branch of Geographic Sciences, Bureau of Land Management, (333 S.W. 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: September 18, 2006.

**Patrick H. Geehan,**

*Acting, Branch of Lands and Minerals Resources.*

[FR Doc. E6-15995 Filed 9-28-06; 8:45 am]

BILLING CODE 4310-33-P

**DEPARTMENT OF THE INTERIOR****Minerals Management Service****Coastal Impact Assistance Program Guidelines**

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of Availability of Guidelines.

**SUMMARY:** The Minerals Management Service (MMS) is issuing this notice to advise the public of the availability of guidelines for the Coastal Impact Assistance Program (CIAP). The guidelines are an important step in the formulation of CIAP.

**FOR FURTHER INFORMATION CONTACT:** Ms. Colleen Benner, Minerals Management Service, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170. You may also contact Ms. Benner by telephone at (703) 787-1710.

**SUPPLEMENTARY INFORMATION:** The Energy Policy Act of 2005 (EPA) has created CIAP by amending Section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a). Under the provisions of the EPA, the authority and responsibility for the management of CIAP is vested in the Secretary of the Department of the Interior (Secretary). The Secretary has delegated this authority and responsibility to MMS. Under Section 384 of the EPA, MMS shall disburse \$250 million for each Fiscal Year 2007 through 2010 to eligible producing States (State) and coastal political subdivisions (CPS's). The funds allocated to each State are based on the proportion of qualified outer continental shelf (OCS) revenues offshore the individual State to total qualified OCS revenues from all States. In order to receive CIAP's funds, States are required to submit a coastal impact assistance plan (Plan) that MMS must approve prior to disbursing any funds. All funds shall be disbursed through a grant process. This guidance has been developed by MMS to provide the information necessary for States to develop a Plan and submit it to MMS. Digital copies of these guidelines may be found on the MMS Web site at <http://www.mms.gov/offshore/CIAPmain.htm>.

Dated: September 6, 2006.

**R.M. "Johnnie" Burton,**

*Director, Minerals Management Service.*

[FR Doc. E6-16090 Filed 9-28-06; 8:45 am]

**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****National Register of Historic Places; Notification of Pending Nominations and Related Actions**

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 16, 2006. Pursuant to section 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 October 16, 2006.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**CALIFORNIA****Lake County**

Tallman Hotel, 9550 Main St., Upper Lake, 06000947

**Orange County**

Fox Fullerton Theatre Complex, 500-512 N. Harbor Blvd., Fullerton, 06000948

**COLORADO****Las Animas County**

Zion's German Lutheran Church, 510 Pine St., Trinidad, 06000950

**Weld County**

Alger, Amanda K., Memorial Methodist Episcopal Church, 303 Maple Ave., Eaton, 06000949

**CONNECTICUT****Fairfield County**

Perry Avenue Bridge, Perry Avenue over Silvermine River, Norwalk, 06000951

**New Haven County**

Westville Village Historic District (Boundary Increase), 827 Whalley Ave., New Haven, 06000954

**FLORIDA****Miami-Dade County**

Lummus Park Historic District, Generally bounded by NW 4th ST., NW 3rd Court, NW 2nd St. and NW North River Dr., Miami, 06000952

**IOWA****Linn County**

Terrace Park Historic District, Roughly bounded by 10th Ave., 9th Ave., 11th St. and E side of 12th St., Marion, 06000953

**TEXAS****Cameron County**

Morris-Browne House, 204 E. Levee St., Brownsville, 06000955

[FR Doc. E6-16071 Filed 9-28-06; 8:45 am]

**BILLING CODE 4310-70-P**

**INTERNATIONAL TRADE COMMISSION**

[Inv. No. 337-TA-545]

**In the Matter of Certain Laminated Floor Panels; Notice of Commission Determination to Review Portions of a Final Initial Determination; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Extension of Target Date**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review portions of the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") on July 3, 2006, in the above-captioned investigation. The Commission has also determined to extend the target date for completion of the investigation until November 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Michael Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3041. Copies of the ALJ's ID and all other nonconfidential 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: The Commission instituted this investigation on July 29, 2005, based on a complaint filed by Unilin Beheer B.V., Flooring Industries Ltd., and Unilin Flooring N.C. LLC (collectively "Unilin"). 70 FR 44694 (August 3, 2005). The complaint (as amended) alleged violations of section 337 of the Tariff Act of 1930 ("section 337") in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain laminated floor panels by reason of infringement of one or more of claims 1, 14, 17, 19, 20, 21, 37, 52, 65, and 66 of U.S. Patent No. 6,006,486 ("the '486 patent"), claims 1, 2, 10, 13, 18, 19, 22, 23, 24, and 27 of U.S. Patent No. 6,490,836 ("the '836 patent"), claims 1-6 of U.S. Patent No. 6,874,292 ("the '292 patent"), and claims 1, 5, 13, 17, 27, and 28 of U.S. Patent No. 6,928,779 ("the '779 patent"). The investigation was subsequently terminated with respect to the '486 patent. The Commission named as respondents 32 companies located in Canada, China, South Korea, Malaysia, and the United States. *Id.* Two respondents have been terminated from the investigation as a result of settlement agreements. The administrative law judge set October 3, 2006, as the target date for completion of the investigation.

On July 3, 2006, the ALJ issued his final ID, including his recommended determination on remedy and bonding. The complainants, the Commission investigative attorney ("IA"), and several respondents have petitioned for review of various portions of the ID.

Having considered the ID, the petitions for review, the responses thereto, and other relevant portions of the record, the Commission has determined to review those portions of the ALJ's final ID concerning: (1) Construction of claim 1 of the '836 patent and claim 4 of the '292 patent, (2) infringement of claims 1 and 2 of the '836 patent and claims 3 and 4 of the '292 patent; (3) infringement by the defaulting respondents; (4) invalidity of the asserted claims of the '779 patent; and (5) the validity of the asserted claims of the '836 and '292 patents to the extent implicated by the Commission's review described in item (1).

On review, the Commission requests briefing based on the evidentiary record. In particular, the Commission is interested in briefing on the following issues: In connection with issue (1), whether the location of the "elastically bendable portion" of the lower lip is

limited to a particular portion of the lip (as discussed by the IA in his Petition for Review at p. 14, n.11); in connection with issue (2), the reliability of Dr. Loferski's bent lower lip test and the results of other experts' tests for a bent lower lip in the accused products; in connection with issue (2), whether the bent lower lip should be analyzed as a cantilevered beam; in connection with issue (2), whether the evidence was sufficient to prove that the lower lip remains in the bent position during lateral shifting of the coupled panels; in connection with issue (3), the legal and policy issues the Commission should consider with respect to infringement by defaulting respondents.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. 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 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. The Commission also requests that complainants provide the expiration dates of the asserted patents and the HTSUS numbers of the allegedly infringing goods.

*Written Submissions:* The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. 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 July 3, 2006, 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 October 10, 2006. Reply submissions must be filed no later than the close of business on October 17, 2006. 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 nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42-.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-.46).

By order of the Commission.

Issued: September 25, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-16078 Filed 9-28-06; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-364 and 731-TA-711 and 713-716 (Second Review)]

### Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the countervailing duty order on oil country tubular goods from Italy and the antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, Korea, and Mexico.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on oil country tubular goods from Italy and the antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, Korea, and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** September 22, 2006.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202-205-3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for

these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On September 5, 2006, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (71 FR 54520, September 15, 2006). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

**Participation in the reviews and public service list.**—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the reviews will be placed in the nonpublic record on March 22, 2007, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April

12, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 3, 2007. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 5, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.**—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 2, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 23, 2007; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before April 23, 2007. On May 22, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 24, 2007, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8,

2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 25, 2006.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-16077 Filed 9-28-06; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-707-709 (Second Review)]

### Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Argentina, Brazil, and Germany

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the antidumping duty orders on certain seamless carbon and alloy steel standard, line, and pressure pipe from Argentina, Brazil, and Germany.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on certain seamless carbon and alloy steel standard, line, and pressure pipe from Argentina, Brazil, and Germany would be likely to lead to

continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

*Effective Date:* September 22, 2006

**FOR FURTHER INFORMATION CONTACT:**

Joanna Lo (202-205-1888), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background:* On September 5, 2006, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (71 FR 54520, September 15, 2006). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the reviews and public service list:* Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

*Limited disclosure of business proprietary information (BPI) under an*

*administrative protective order (APO) and BPI service list:* Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report:* The prehearing staff report in the reviews will be placed in the nonpublic record on January 9, 2007, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing:* The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on February 8, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 30, 2007. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 5, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions:* Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 19, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 20, 2007; witness testimony must be filed no later



than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before February 20, 2007. On March 19, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 21, 2007, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 26, 2006.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6-16025 Filed 9-28-06; 8:45 am]

**BILLING CODE 7020-02-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration**

By Notice dated June 12, 2006, and published in the **Federal Register** on June 19, 2006, (71 FR 35310), Aptuit, 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of a Cocaine derivative under the drug code for Cocaine (9041), a basic class of controlled substance listed in Schedule II.

The company plans to import bulk capsules in dosage form specifically for packaging for a clinical trial study.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Aptuit to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Aptuit to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-16026 Filed 9-28-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Registration**

By Notice dated June 1, 2006, and published in the **Federal Register** on June 8, 2006, (71 FR 33315), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of

Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to procure Phenylacetone through importation to be used as a precursor in the manufacture of amphetamines only.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Cambrex Charles City, Inc. to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-16024 Filed 9-28-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated June 7, 2006, and published in the **Federal Register** on June 13, 2006, (71 FR 34162), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Amphetamine (1100) .....	II
Methylphenidate (1724) .....	II
Phenylacetone (8501) .....	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Fentanyl (9801) .....	II

The company plans to manufacture the listed controlled substances in bulk for sales to customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex Charles City, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-16030 Filed 9-28-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 18, 2006, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Morphine (9300), a basic class of controlled substance listed in Schedule II.

The company plans to utilize small quantities of the listed controlled substance in the preparation of analytical standards.

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 written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration,

Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 28, 2006.

September 20, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-16029 Filed 9-28-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Importer of Controlled Substances; Notice of Application**

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on February 10, 2006, Dakota Pharmaceutical Packaging, 4733 Amber Valley Parkway, Fargo, North Dakota, 58104, made application to the Drug Enforcement Administration (DEA) to be registered as an Importer of Hydrocodone (9193), a basic class of controlled substances in Schedule II.

The company plans to import the listed controlled substance for clinical trials.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/

ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 30, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745-46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 USC 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-16053 Filed 9-28-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated May 9, 2006, and published in the **Federal Register** on May 15, 2006, (71 FR 28052), Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Dihydrocodeine (9120) .....	II
Oxymorphone (9652) .....	II

The company plans to manufacture in bulk for distribution to its customers, who are final dosage manufacturers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Johnson Matthey Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical

security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-16023 Filed 9-28-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Application**

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 30, 2006, Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Dihydromorphine (9145) .....	I
Hydromorphone (9150) .....	II

The company plans to manufacture bulk product and dosage units 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 written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than November 28, 2006.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-16032 Filed 9-28-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated May 17, 2006, and published in the **Federal Register** on May 25, 2006, (71 FR 30166), Lilly Del Caribe, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lilly Del Caribe, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lilly Del Caribe, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E6-16022 Filed 9-28-06; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated June 1, 2006, and published in the **Federal Register** on June 8, 2006, (71 FR 33315), Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Codeine-N-oxide (9053) .....	I
Difenoxin (9168) .....	I
Dihydromorphine (9145) .....	I
Morphine-N-oxide (9307) .....	I
Norlevorphanol (9634) .....	I
Normorphine (9313) .....	I
Tetrahydrocannabinols (7370) .....	I
Alfentanil (9737) .....	II
Amphetamine (1100) .....	II
Ecgonine (9180) .....	II
Codeine (9050) .....	II
Dextropropoxyphene, bulk (9273) .....	II
Dihydrocodeine (9120) .....	II
Diphenoxylate (9170) .....	II
Diprenorphine (9058) .....	II
Etorphine HCL (9059) .....	II
Fentanyl (9801) .....	II
Hydrocodone (9193) .....	II
Hydromorphone (9150) .....	II
Levo-alphaacetylmethadol (9648) ..	II
Levorphanol (9220) .....	II
Meperidine (9230) .....	II
Methadone (9250) .....	II
Methadone intermediate (9254) ...	II
Methamphetamine (1105) .....	II
Methylphenidate (1724) .....	II
Metopon (9260) .....	II
Morphine (9300) .....	II
Nabilone (7379) .....	II
Noroxymorphone (9668) .....	II
Opium extracts (9610) .....	II
Opium fluid extract (9620) .....	II
Opium tincture (9630) .....	II
Opium, granulated (9640) .....	II
Opium, powdered (9639) .....	II
Oxycodone (9143) .....	II
Oxymorphone (9652) .....	II
Phenazocine (9715) .....	II
Remifentanil (9739) .....	II
Sufentanil (9740) .....	II
Thebaine (9333) .....	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

Since the publication of the Notice of Application, it has been determined that drug code 7360 (Marihuana) is not needed as a bulk manufacturing drug code for the company. The company has subsequently withdrawn their request to add this code to their current application for registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Mallinckrodt Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Mallinckrodt Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.  
[FR Doc. E6-16021 Filed 9-28-06; 8:45 am]  
BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated June 1, 2006, and published in the **Federal Register** on June 8, 2006, (71 FR 33316), Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture a chemical that is a derivative of cocaine that will be sold to another company for research purposes.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Organix Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Organix Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.  
[FR Doc. E6-16020 Filed 9-28-06; 8:45 am]  
BILLING CODE 4410-09-P

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated May 17, 2006, and published in the **Federal Register** on May 25, 2006, (71 FR 30167), Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Cocaine (9041) .....	II
Benzoylcegonine (9180) .....	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Stepan Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: September 20, 2006.

**Joseph T. Rannazzisi,**  
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.  
[FR Doc. E6-16054 Filed 9-28-06; 8:45 am]  
BILLING CODE 4410-09-P

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**Submission for OMB Review: Comment Request**

September, 21 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Ira Mills at the Department of Labor on 202-693-4122 (this is not a toll-free number) or e-mail: [Mills.Ira@dol.gov](mailto:Mills.Ira@dol.gov). This ICR can also be accessed online at <http://www.doleta.gov/OMBCN/OMBControlNumber.cfm>.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

*Type of Review:* Extension without change to a currently approved collection.

*Title:* Title 29 CFR Part 30—Equal Employment Opportunity in Apprenticeship Training.

*OMB Number:* 1205-0224.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit, individuals or households, not-for-profit institutions, Federal government, and State, local or tribal government.

*Type of Response:* Reporting and recordkeeping.

*Number of Respondents:* 28,800.

*Annual Responses:* 50,770.

*Average Response Time:* 30 minutes.

*Total Annual Burden Hours:* 5,842.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* 0.

*Description:* Title 29 CFR part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State Apprenticeship Agencies.

**Ira L. Mills,**

*Departmental Clearance Officer/Team Leader.*

[FR Doc. E6-15990 Filed 9-28-06; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-59,323; TA-W-59,094A]

#### Moore Wallace Business Form Design Division, A RR Donnelly Company, Monroe, WI, Including an Employee Located in Sumerduck, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 17, 2006, applicable to workers of The Moore Wallace, Business Form Design Division, A RR Donnelly Company, Monroe, Wisconsin. The notice was published in the **Federal Register** on June 29, 2006 (71 FR 33488).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separation has occurred involving an employee of the Monroe, Wisconsin facility of Moore Wallace, Business Form Design Division, A RR Donnelly Company located in Sumerduck, Virginia. Ms. Deb Orf provided designing function services for the production of business form designs which are used within the subject firm to produce business forms for sale.

Based on these findings, the Department is amending this certification to include an employee of the Monroe, Wisconsin facility of Moore Wallace, Business Form Design Division, A RR Donnelly Company located in Sumerduck Virginia.

The intent of the Department's certification is to include all workers of Moore Wallace, Business Form Design Division, A RR Donnelly Company, Monroe, Wisconsin who were adversely affected by a shift in production to India.

The amended notice applicable to TA-W-59,323 is hereby issued as follows:

"All workers of Moore Wallace, Business Form Design Division, A RR Donnelly Company, Monroe Wisconsin (TA-W-59,323), and including an employee located in Sumerduck, Virginia (TA-W-59,323A), who became totally or partially separated from employment on or after April 28, 2005, through May 17, 2008, 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 at Washington, DC this 22nd day of September 2006.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6-16100 Filed 9-28-06; 8:45 am]

**BILLING CODE 4510-30-P**

## NUCLEAR REGULATORY COMMISSION

[IA-06-036]

### In the Matter of Mr. Gary Abel; Confirmatory Order (Effective Immediately)

**I**

Mr. Gary Abel is a former General Manager of the Sterigenics International Inc. (Sterigenics), facility in Tustin, California.

**II**

An NRC inspection was conducted at Sterigenics' facility in Tustin, California

on October 18-19, 2004, to review compliance with the NRC's June 6, 2003, Order Imposing Compensatory Measures (Order) for Panoramic and Underwater Irradiator Licensees. Following that inspection, an investigation was initiated by the NRC Office of Investigations (OI) in order to determine whether Mr. Abel, who was the General Manager of the facility at the time, engaged in deliberate misconduct. Based on the results of the NRC inspection and investigation, the NRC identified that Mr. Abel acted in apparent violation of 10 CFR 30.10, "Deliberate misconduct." 10 CFR 30.10 states, in part, that any employee of a licensee may not: (1) Engage in deliberate misconduct that causes a licensee to be in violation of any order issued by the Commission; or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. Attachment 3 of the NRC's June 6, 2003 Order requires certain specific handling requirements for documents containing Safeguards Information-Modified Handling (SGI-M).

Based on the inspection and investigation, the NRC was concerned that between December 2003 and April 2004, Mr. Abel engaged in deliberate misconduct when he faxed, over unprotected telecommunications circuits, a document containing SGI-M, when he knew this was prohibited by the Order. This act caused the licensee to be in violation of the June 6, 2003, Order. In addition, the NRC was concerned that Mr. Abel submitted to the NRC information that he knew was incomplete or inaccurate regarding some of the circumstances relating to the faxed document.

**III**

In a letter dated March 21, 2006, the NRC identified to Mr. Abel an apparent violation of 10 CFR 30.10, and offered Mr. Abel the opportunity to either request a predecisional enforcement conference or request Alternative Dispute Resolution (ADR) with the NRC in an attempt to resolve any disagreement on whether a violation occurred and if a violation did in fact occur, the appropriate enforcement sanction. In response to the March 21, 2006 letter, Mr. Abel requested ADR to resolve the matter with the NRC. ADR is a process in which a neutral mediator with no decision-making authority assists the NRC and Mr. Abel to resolve any differences regarding the matter.

An ADR session was held between Mr. Abel and the NRC in Lisle, Illinois,

on August 4, 2006. During that ADR session, an agreement was reached. The elements of the agreement consisted of the following:

1. The NRC and Mr. Abel agree that a violation of 10 CFR 30.10 occurred. Specifically, 10 CFR 30.10 prohibits, in part, any licensee or licensee employee from engaging in deliberate misconduct that causes a licensee to be in violation of any rule or Order issued by the Commission. Mr. Abel agrees that he deliberately faxed a document containing SGI-M information over unprotected telecommunications circuits to a security contractor in violation of the NRC's June 6, 2003, Order Imposing Compensatory Measures (Order) for Panoramic and Underwater Irradiator Licensees. This caused Mr. Abel's former employer to be in violation of the Order.

2. Mr. Abel does not agree that he violated 10 CFR 30.10 by deliberately providing information that was inaccurate and incomplete to the NRC. The NRC and Mr. Abel agree to disagree regarding this point.

3. The NRC and Mr. Abel agree that the actions in this paragraph are sufficient to address the NRC's concerns. Mr. Abel agrees to issuance of a letter and Confirmatory Order confirming this agreement, and also agrees to waive any request for a hearing regarding this Confirmatory Order. The Confirmatory Order would include the following elements:

A. Mr. Abel will not engage in future NRC or Agreement State licensed activities for a period of 1 year to begin on the date of this Confirmatory Order or on October 1, 2006, whichever date is sooner.

B. Not later than 90 days from the date of the Confirmatory Order, Mr. Abel will write an article for publication in the NRC's NMSS Newsletter that is mutually agreeable. The article will address the following elements: (1) That he was employed at a senior position at an irradiation facility, (2) how an individual should conduct themselves during an NRC inspection (e.g., the need for candor and forthrightness, the need to acknowledge violations forthrightly, if found, the potential consequences to an individual who does not provide complete and accurate information to the NRC, etc. \* \* \*), and (3) the importance of controlling SGI-M material. The NRC agrees that Mr. Abel's article will be published anonymously, and Mr. Abel will submit the article to an addressee which the NRC will provide.

C. In light of Mr. Abel's agreement as described in Item 3, the NRC agrees not

to take any further action against Mr. Abel regarding this matter.

D. Mr. Abel understands that the NRC, as part of its normal process, will issue a press release with the Confirmatory Order. The NRC will provide Mr. Abel a copy of the press release prior to its release.

On September 16, 2006, Mr. Abel consented to issuing this Confirmatory Order with the commitments, as described in Section IV below. Mr. Abel further agreed in his September 16, 2006, consent and waiver that this Confirmatory Order is to be effective upon issuance and that he has waived his right to a hearing. Implementation of these commitments will provide enhanced assurance that documents containing SGI-M will be appropriately protected and will resolve the NRC's concerns. I find that Mr. Abel's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Abel's commitments be confirmed by this Order. Based on the above and Mr. Abel's consent, this Confirmatory Order is immediately effective upon issuance.

#### IV

Accordingly, pursuant to Sections 147, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, and the Commission's June 6, 2003 Order, *it is hereby ordered, effective immediately, that:*

(1) Mr. Abel will not engage in future NRC or Agreement State licensed activities for a period of 1 year to begin on the date of this Confirmatory Order or on October 1, 2006 whichever date is sooner.

4. Not later than 90 days from the date of the Confirmatory Order, Mr. Abel will write an article for publication in the NRC's NMSS Newsletter that is mutually agreeable. The article will address the following elements: (1) That he was employed at a senior position at an irradiation facility, (2) how an individual should conduct themselves during an NRC inspection (e.g., the need for candor and forthrightness, the need to acknowledge violations forthrightly, if found, the potential consequences to an individual who does not provide complete and accurate information to the NRC), and (3) the importance of controlling SGI-M material. The NRC agrees that Mr. Abel's article will be published anonymously, and Mr. Abel

will submit the article to an addressee which the NRC will provide.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Abel of good cause.

#### V

Any person adversely affected by this Confirmatory Order, other than Mr. Abel, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Abel. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309 (d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

*An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 22nd day of September, 2006.

For the nuclear regulatory commission.

**Cynthia A. Carpenter,**

*Director, Office of Enforcement.*

[FR Doc. E6-16075 Filed 9-28-06; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70–27]

### Notice of License Amendment Request of BWX Technologies, Inc., Lynchburg, VA, and Opportunity to Request a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license amendment request and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by November 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** Billy Gleaves, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8F42, Washington, DC 20555, telephone: (301) 415–5848; fax number (301) 415–5955; e-mail: [bcg@nrc.gov](mailto:bcg@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated June 23, 2006, a request from BWX Technologies, Inc., to amend its materials license to include an exemption from 10 CFR part 73 requirements that limits conduct of medical evaluations to licensed physicians. Materials License SNM–42 authorizes the licensee to possess nuclear materials, manufacture nuclear fuel components, fabricate research and university reactor components, fabricate compact reactor fuel elements, perform research on spent fuel performance, and to handle the resultant waste streams, including recovery of scrap uranium. Specifically, if the exemption is approved, the license amendment would allow licensed nurse practitioners to conduct security physical examinations as stipulated in the Commonwealth of Virginia regulation 18 VAC 90–30–10 *et seq.*

An NRC administrative review, documented by letter to BWX Technologies, Inc., dated July 18, 2006, found the application acceptable to begin technical review. If the NRC approves the exemption, the approval will be documented in an amendment to NRC License No. SNM–42. However, before approving the proposed exemption, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in an NRC Safeguards

Evaluation Report and an Environmental Assessment.

##### II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment involving an exemption to 10 CFR part 73 regarding personnel authorized to conduct medical evaluations required by this regulation. In accordance with the general requirements in subpart C of 10 CFR part 2, as amended on January 14, 2004, (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;
2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;
3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov); or
4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, BWX Technologies, Inc., Nuclear Products Division, P.O. Box 785, Lynchburg, VA 24505–0785, Attention: Leah Morrell; and
2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to [ogcmailcenter@nrc.gov](mailto:ogcmailcenter@nrc.gov).

The formal requirements for documents contained in 10 CFR 2.304(b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by November 27, 2006.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and
5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue, and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include

references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. *Technical*—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.
2. *Environmental*—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.
3. *Emergency Planning*—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.
4. *Physical Security*—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.
5. *Miscellaneous*—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs

with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

### III. Further Information

The application, including the safety analysis report and other information referenced in the application, may be made available pursuant to a protective order and subject to applicable security requirements upon a showing that the petitioner has an interest that may be affected by the proceeding.

Dated at Rockville, Maryland, this 21st day of September 2006.

For the U.S. Nuclear Regulatory Commission.

**Gary S. Janosko,**

*Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6-16019 Filed 9-28-06; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499]

### STP Nuclear Operating Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (NRC/the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its July 4, 2005, application for the proposed amendments to Facility Operating License No. NPF-76, to be issued to the licensee for operation of the South Texas Project, Unit 1; and Facility Operating License No. NPF-80, to be issued to the licensee for South Texas Project, Unit 2; located in Matagorda County, Texas.

The proposed amendments would have modified the facility technical specifications (TSs) to extend allowed outage time for TS 3.7.4, "Essential Cooling Water System," and associated TSs for those systems that are supported by Essential Cooling Water, from 7 days to 14 days.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on August 2, 2005 (70 FR 44403). However, by letter dated September 13, 2006, the NRC informed the licensee that the NRC would consider the proposed application for the amendments to be withdrawn unless the licensee notified the NRC by September 21, 2006, that our understanding was incorrect. Thus, the July 4, 2005, application for the amendments is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for the amendments dated July 4, 2005, and (2) the NRC staff's letter dated September 21, 2006, which withdrew the application for the license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 25th day of September 2006.

For the Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6-16016 Filed 9-28-06; 8:45 am]

**BILLING CODE 7590-01-P**



## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 070-00784 and 040-07044]

### Notice of Determination That No Further Action Is Required Under the U.S. Nuclear Regulatory Commission's Authority at the Union Carbide Corporation Facility in Lawrenceburg, TN

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of Determination that no further remedial action is required.

#### FOR FURTHER INFORMATION CONTACT:

Kenneth Kalman, Materials Decommissioning Section, Division of Waste Management and Environmental Protection, NRC, Washington, DC 20555; telephone: (301) 415-6664; fax: (301) 415-5398; or e-mail at: [klk@nrc.gov](mailto:klk@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The NRC is providing notice that it has determined that no further remedial action under the NRC's authority is required at the Union Carbide Corporation (UCAR) site located at Highway 43 South, in Lawrenceburg, Tennessee (the Site).

UCAR was issued Special Nuclear Materials License No. SNM-724 (SNM-724), on August 26, 1963, for testing equipment and nuclear fuels development. UCAR also held License No. SMB-720 (SMB-720), which authorized the possession of source material at the Site. SNM-724 was terminated on June 4, 1974, and the U.S. Atomic Energy Commission (AEC) released the site for unrestricted use. SMB-720 was superseded by the State of Tennessee License No. S-5002-H8 and was terminated on August 28, 1975.

SNM-724 authorized possession of up to 500 grams (g) of fully-enriched (<94 percent) uranium for testing of equipment and processes in the Lawrenceburg Fuel Development Facility located at the Site. On May 22, 1964, the license was amended to authorize possession of 150 kilograms (kg) of U-235 to make graphite-coated uranium-thorium carbide particles and graphite-matrix fuel elements. The possession limit was increased to 475 kg on June 12, 1964.

By letter dated February 4, 1974, UCAR submitted "closeout" survey information and requested that SNM-724 be terminated and the facility be released for unrestricted use. On April 5, 1974, AEC staff performed a closeout inspection which was documented in

Inspection Report 70-784/74-1. The staff recommended that the license be terminated, and the facility be released for unrestricted use. By AEC letter dated June 4, 1974, SNM-724 was terminated and the UCAR facility released for unrestricted use.

In 1991, the Oak Ridge National Laboratory was contracted by NRC to review and evaluate all nuclear materials licenses terminated by NRC or its predecessor agencies, since inception of materials regulation in the late 1940s. One of the objectives of this review was to identify sites with the potential for residual contamination, based on information in the license documentation. NRC evaluated the available survey data to determine if the information was sufficient to conclude that the site meets the existing guidelines for unrestricted use.

Radiological assessments performed at the UCAR facility and its immediate vicinity identified the presence of enriched and depleted uranium on building surfaces and in soil in excess of applicable radiological release criteria. Sampling identified contamination in three buildings on the UCAR site: Building 10, Building 5 Annex, and the Metallurgy Laboratory. Surface contamination in Building 10, Building 5 Annex, and in the Metallurgy Laboratory was primarily present as fixed contamination. Contamination in soils/sediments in small areas was also present.

Surface contamination above the release guidelines was identified in 11 rooms in Building 10 (Rooms 106-2, 120, 121, 122, 124, 126, 128-1, 129, 132, 133, and 134) ranging from background to 106,469 disintegrations per minute/100 square centimeter (dpm/100 cm<sup>2</sup>) direct beta/gamma. Volumetric contamination in other areas of the site was found to be above the release criteria: (1) Soil surrounding the incinerator pad; (2) sediment in the manholes and cooling water tanks; (3) laundry sump tank; and (4) the surface layer of concrete flooring. A core sample was taken near the incinerator pad. The range for total uranium concentration was 1.33 to 3,655 picocuries per gram (pCi/g). The estimated average depth of the soil contamination was one foot resulting in a contaminated soil volume estimate of 500 cubic feet.

Uranium was also the primary contaminant in Building 5 Annex. Surface contamination was found in four rooms in Building 5 (Rooms 106, 107, 108, 110), ranging from background to 428,698 dpm/100 cm<sup>2</sup> direct beta/gamma. Volumetric contamination above the release criteria was found in three areas in and around Building 5: (1)

Sink trap; (2) concrete flooring; and (3) asphalt outside exit.

Contamination in the Metallurgy Laboratory consisted of localized surface contamination on the tops of cabinets. There was no indication of radioactive material above the release criteria beyond the former restricted area boundary in the ground water, settling basins, or former sanitary sewer system.

UCAR voluntarily conducted remediation activities without a license, as its license was terminated in 1974. Although UCAR was not a licensee, NRC staff conducted periodic inspections to ensure that remediation was performed in accordance with current regulations and release limits.

As part of its remediation activities, UCAR amassed fifteen (15) 24-yard<sup>3</sup> intermodal containers of solid low-level radiological waste. UCAR reported concentrations in the intermodal containers averaging approximately 25 pCi/g of U-235 and 1,082 pCi/g of total uranium.

On February 15 and 16, 2006, NRC staff conducted an inspection of the UCAR site that included Building 10, Building 5 Annex, the Metallurgy Lab, the incinerator pad and other areas, as well as the intermodal containers (Inspection Report 07000784/2005001). This inspection found that residual uranium contamination on surfaces and soil met the criteria in the remediation plan for unrestricted use. The remediation activities in Building 10 and the incinerator pad resulted in complete removal of the structures and the concrete floor pads so that no surfaces were available for surface contamination measurements. Gamma scans of areas where an incinerator pad, drain lines, and a buried water cooling tank had been located, as well as scans of various non-remediated areas found no areas of elevated gamma exposure rates. Direct alpha measurement of the Building 5 Annex and the Metallurgy Lab were all less than 2000 dpm/100cm<sup>2</sup>. The inspector found no areas of elevated gamma exposure rates in the scanned areas.

Soil samples were taken from Site areas based on operational history and remediation activities and were analyzed by the Oak Ridge Institute for Science and Education for isotopic concentrations of U-234, U-235, and U-238. All samples were surface soil, collected within the top four inches of the soil surface. One sample from the Building 5 Annex showed elevated concentrations of U-234, but when averaged over the survey unit was found to be within the derived concentration guidelines for soils at the site.

The NRC inspector examined the intermodal containers while they were stored at the site. The amount of U-235 in the intermodals ranged from 75 to 206 grams per intermodal. One of the intermodals contained a sump from Building 10 and had a contact exposure rate of 65 microroentgens/hour. Measurements of the other containers were not significantly above background. On August 14, 2006, UCAR provided copies of the shipping manifests demonstrating that the 15 intermodal containers had been accepted for disposal by EnergySolutions in Utah.

UCAR provided a final radiological status survey and the NRC staff performed an independent dose assessment to demonstrate the site meets the license termination criteria in Subpart E of 10 CFR Part 20. Based on its reviews of UCAR submittals and its own analyses and assessments, the NRC staff has determined that the site meets the unrestricted release dose criteria in 10 CFR Part 20.1402 and that no further remedial action under the NRC's authority is required at the UCAR site. The staff prepared a Safety Evaluation Report (SER) (ML062580415) to support its determination.

## II. Further Information

In accordance with 10 CFR Part 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the SER, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the termination letter and SER, "Safety Evaluation Report to Support the Determination that No Further Action is Required under the Authority of the U.S. Nuclear Regulatory Commission at the Union Carbide Corporation Facility in Lawrenceburg, TN" (Docket Nos. 070-00784 and 040-07044) is ADAMS No. ML062620512. If you do not have access to ADAMS or if there are problems in accessing a document located in ADAMS, contact the NRC Public Document Room Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to: [pdr@nrc.gov](mailto:pdr@nrc.gov).

This document may also be viewed electronically on the public computers located at the NRC's PDR, O-1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at NRC, Rockville, MD, this 22nd day of September, 2006.

For the Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6-16014 Filed 9-28-06; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50-454, STN 50-455, STN 50-456 and STN 50-457]**

### **Exelon Generation Company, LLC, Byron Station, Unit Nos. 1 and 2; Braidwood Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.60(a), for Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77, issued to Exelon Generation Company, LLC (the licensee), for operation of the Byron Station, Unit Nos. 1 and 2 (Byron), and Braidwood Station, Unit Nos. 1 and 2 (Braidwood), located in Ogle County, Illinois and Will County, Illinois, respectively. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

### **Environmental Assessment**

#### *Identification of the Proposed Action*

The proposed action would allow the use of the methods described in Westinghouse Commercial Atomic Power Report (WCAP)-16143, "Reactor Vessel Closure Head/Vessel Flange Requirements Evaluation for Byron/Braidwood Units 1 and 2," dated November 2003, in calculating the reactor pressure vessel (RPV) pressure-temperature (P-T) limits for Byron and Braidwood, in lieu of 10 CFR Part 50, Appendix G, "Fracture Toughness Requirements," paragraph IV.A.2.c as required by 10 CFR 50.60(a).

The proposed action is in accordance with the licensee's application for exemption dated October 3, 2005.

#### *The Need for the Proposed Action*

The proposed action is needed because utilization of WCAP-16143 will enhance overall plant safety by widening the P-T operating window, especially in the region of low temperature operations. The primary

two safety benefits that would be realized are the following: (1) A reduction in the potential challenges to the low-temperature overpressure protection system and resultant inadvertent opening of a power operated relief valve, and (2) a reduction in the risk of damaging the reactor coolant pump seals due to pump operation under conditions in which it is difficult to maintain adequate seal differential pressure to ensure proper pump operation.

Appendix G to 10 CFR Part 50 contains requirements for P-T limits for the primary system and requirements for metal temperature of the closure head flange and vessel flange regions. The P-T limits are to be determined using the methodology of American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME Code), Section XI, Appendix G, but the flange temperature requirements are specified in 10 CFR Part 50, Appendix G. This regulation (Table 1 of 10 CFR Part 50, Appendix G) states that the metal temperature at the closure flange regions must exceed the material unirradiated nil-ductility transition reference temperature (RT<sub>NDT</sub>) by at least 120 °F for normal operation when the pressure exceeds 20 percent of the pre-service hydrostatic test pressure.

This requirement was originally based on concerns about the fracture margin in the closure flange region. During the boltup process, outside surface stresses in this region typically reach over 70 percent of the steady state stress, without being at steady state temperature. The margin of 120 °F and the pressure limitation of 20 percent of hydrostatic pressure were developed in the mid-1970s using the ASME Code lower bound crack arrest/dynamic test fracture toughness (K<sub>IC</sub>) to ensure that appropriate margins would be maintained.

Improved knowledge of fracture toughness and other issues that affect the integrity of the reactor vessel have led to the recent change to allow the use of the ASME Code lower bound static crack initiation fracture toughness (K<sub>IC</sub>) in the development of P-T curves, as contained in ASME Code Case N-640, "Alternative Reference Fracture Toughness for Development of P-T Limit Curves for Section XI, Division 1." ASME Code Case N-640 has been approved for use without conditions by the NRC staff in Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," published in August 2005.

However, P-T limit curves can still produce operational constraints by limiting the operational range available

to the operator during heatup and cooldown of the plant, especially when considering requirements in the closure head flange and the vessel flange regions. Implementing the P-T curves that use  $K_{Ic}$  material fracture toughness without exempting the flange requirement of 10 CFR Part 50, Appendix G, would place a restricted operating window in the temperature range associated with the closure head flange and reactor vessel flange, without a commensurate increase in plant safety.

#### *Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the more conservative minimum temperature requirements related to footnote (2) to Table 1 of 10 CFR Part 50, Appendix G are not necessary to meet the underlying intent of 10 CFR Part 50 Appendix G, to protect the Byron and Braidwood RPVs from brittle fracture during normal operation under both core critical and core non-critical conditions and RPV hydrostatic and leak test conditions.

The details of the NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed

action and the alternative action are similar.

#### *Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Byron and Braidwood stations, NUREG-0848 dated April 1982, and NUREG-1026 dated June 1984, respectively.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on June 19, 2006, the NRC staff consulted with the Illinois State official, Mr. Frank Niziolek of the Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

#### **Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 3, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 22nd day of September 2006.

For the Nuclear Regulatory Commission.

**Robert F. Kuntz,**

*Project Manager Plant Licensing Branch III-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6-16015 Filed 9-28-06; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Draft Report for Comment: Office of Nuclear Reactor Regulation Standard Review Plan, Section 13.3, "Emergency Planning"**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** The U.S. Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation (NRR) and Office of Nuclear Security and Incident Response (NSIR) has issued Section 13.3, Second Draft Revision 3, "Emergency Planning," of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, LWR Edition," for public comment.

**DATES:** Comments on this document should be submitted by November 13, 2006. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies.

**ADDRESSES:** NUREG-0800, including Section 13.3, Second Draft Revision 3, is available for inspection and copying for a fee at the Commission's Public Document Room, NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. NUREG-0800, including Section 13.3, Second Draft Revision 3, is also available electronically on the NRC Web site at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>, and from the ADAMS Electronic Reading Room on the NRC Web site at: <http://www.nrc.gov/reading-rm/adams.html> (ADAMS Accession No. ML062550293).

Members of the public are invited and encouraged to submit written comments. Comments may be accompanied by additional relevant information or supporting data. A number of methods may be used to submit comments. Written comments should be mailed to Chief, Rulemaking, Directives, and Editing Branch, U.S. Nuclear Regulatory Commission, Mail Stop T6-D59, Washington, DC 20555-0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may be submitted electronically to: [nrcprep@nrc.gov](mailto:nrcprep@nrc.gov). Comments also may be submitted electronically through the comment form available on the NRC Web site at:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>.

Please specify the report number NUREG-0800, Section 13.3, Second Draft Revision 3, in your comments, and send your comments by November 13, 2006.

**FOR FURTHER INFORMATION, CONTACT:**

Bruce Musico, Mail Stop O-6H2, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-2310; internet: [bjm2@nrc.gov](mailto:bjm2@nrc.gov).

**SUPPLEMENTARY INFORMATION:** This Standard Review Plan, NUREG-0800, has been prepared to establish criteria that the NRR and NSIR staff responsible for the review of applications to construct and operate nuclear power plants intends to use in evaluating whether an applicant/licensee meets the NRC's regulations. The Standard Review Plan is not a substitute for the NRC's regulations, and compliance with it is not required. However, applicants are required to identify differences in design features, analytical techniques, and procedural measures proposed for a facility and corresponding SRP acceptance criteria, and evaluate how the proposed alternatives to the SRP acceptance criteria provide an acceptable method of complying with the NRC's regulations.

The standard review plan sections are keyed to Regulatory Guide 1.70, "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants (LWR Edition)." Not all sections of the standard format have a corresponding review plan section. For combined license applications submitted under 10 CFR part 52, the applicability of standard review plan sections will be based on the Regulatory Guide DG-1145, "Combined License Applications for Nuclear Power Plants (LWR Edition)," as superseded by the final guide.

The proposed revision is a rewrite of the July 1981 SRP Section 13.3, Revision 2, and provides staff guidance for the review of emergency planning information submitted in license applications under 10 CFR parts 50 and 52. In addition to updating the July 1981 SRP section, the proposed revision includes some of the proposed changes in the April 1996 draft Revision 3 to SRP section 13.3. The proposed revision consists mostly of changes that identify specific regulations and guidance, and provides SRP acceptance criteria for the various applications submitted under both 10 CFR parts 50 and 52. The most significant changes reflect the new application processes allowed by 10 CFR part 52. This also includes the

incorporation of Commission policy on the use of emergency planning inspections, tests, analyses, and acceptance criteria (EP-ITAAC), which is addressed in the February 22, 2006, SRM SECY-05-0197, "Review of Operational Programs in a Combined License Application and Generic Emergency Planning Inspections, Tests, Analyses, and Acceptance Criteria" (ML052770225). In addition, the proposed revision incorporates experience gained from the first three early site permit (ESP) application reviews, and the standard design certification applications. The license application review processes in both 10 CFR part 50 and part 52 utilize the same existing emergency planning requirements contained primarily in 10 CFR 50.47 and Appendix E to part 50.

While the proposed SRP Section 13.3 revision is a complete rewrite of Section 13.3, it does not contain new or unreviewed staff positions. It does, however, identify a new NUREG/CR report on evacuation time estimates (ETEs). Guidance on the development of ETEs was provided in November 1980 in NUREG-0654/FEMA-REP-1, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," and that guidance is still used today. The staff will continue to use the established guidance and criteria in Appendix 4, "Evacuation Time Estimates Within the Plume Exposure Pathway Emergency Planning Zone," of NUREG-0654/FEMA-REP-1, as the basis for compliance with applicable regulations.

The new (January 2005) ETE report, NUREG/CR-6863, "Development of Evacuation Time Estimate Studies for Nuclear Power Plants," is identified in the proposed SRP Section 13.3 revision as providing information relating to performing an ETE analysis. In March 1992, NUREG/CR-4831, "State of the Art in Evacuation Time Estimate Studies for Nuclear Power Plants," was written to provide updated information, assumptions, and methods to be used in performing ETE studies. NUREG/CR-6863 updates NUREG/CR-4831 and integrates new technologies in traffic management, computer modeling, and communication systems to identify additional tools useful in the development of new, or updates to existing, ETEs.

Of note, the proposed revision does introduce the option to use EP-ITAAC in an ESP application, which is consistent with the ongoing 10 CFR part 52 rulemaking (see proposed 10 CFR 52.17(b)(3)). Prior to the current 10 CFR part 52 rulemaking, the rules only

addressed the use of EP-ITAAC with a combined license (COL) application but not at the ESP stage. The staff's position, which is supported by public comments, is that the extension of EP-ITAAC to ESP applications is not precluded in the existing rules, and is necessary in order to accommodate an applicant's submission of a "complete and integrated emergency plan" at the ESP stage, as well as provide an additional level of flexibility for an ESP applicant. Without allowing the use of EP-ITAAC (or other such placeholders) at the ESP stage, the staff would be unable to reach a reasonable assurance finding at the time of application. The use of EP-ITAAC would allow the staff to make its findings based on proposed, and not yet implemented, emergency plans. Table 13.3-1 provides a proposed set of allowable EP-ITAAC (for use at either the ESP or COL application stage). The asterisk/bolded text in the table represents the earlier set of COL EP-ITAAC that was approved by the Commission in SRM SECY-05-0197. Table 13.3-1 reflects a process of review allowed by 10 CFR part 52, and does not contain new or unreviewed staff positions relating to emergency planning requirements.

Dated at Rockville, Maryland, this 25th day of September, 2006.

For the Nuclear Regulatory Commission.

**Robert Tregoning,**

*Branch Chief, New Reactor Infrastructure Guidance, Development Branch, Division of New Reactor Licensing.*

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## **NUCLEAR REGULATORY COMMISSION**

[HLWRS-ISG-01]

### **Review Methodology for Seismically Initiated Event Sequences; Availability of Final Interim Staff Guidance Document**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of final interim staff guidance (ISG) document, "HLWRS-ISG-01, Review Methodology for Seismically Initiated Event Sequences," and NRC responses to the public comments received on that document. The ISG clarifies or refines the guidance provided in the Yucca Mountain Review Plan (YMRP) (NUREG-1804, Revision 2, July 2003). The YMRP provides

guidance to NRC staff for evaluating a potential license application to receive and possess high-level radioactive waste at a geologic repository constructed or operated at Yucca Mountain, Nevada.

**ADDRESSES:** The document HLWRS-ISG-01 is available electronically at NRC's Electronic Reading Room, at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the ISG is ML062650140. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or (301) 415-4737, or (by e-mail), at [pdrr@nrc.gov](mailto:pdrr@nrc.gov).

This document may also be viewed electronically on the public computers located at NRC's PDR, Mail Stop: O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

**NRC RESPONSES TO PUBLIC COMMENTS ON HLWRS-ISG-1:** In preparing final HLWRS-ISG-01, "Review Methodology for Seismically Initiated Event Sequences," ADAMS ML062650140, the NRC staff reviewed and considered 23 comments received from five different organizations during the public comment period. One commenter had 12 comments recommending specific clarifying changes to the ISG. One commenter questioned NRC using the ISG to clarify its regulatory intent, instead of addressing the issue of seismically initiated event sequences, more appropriately, in the YMRP. Two commenters questioned whether the ISG sets forth a more stringent standard for the seismic design of repository surface facilities than the existing criteria for reactors. One commenter was concerned that a specific methodology described in the ISG would bias the NRC staff's review against other methodologies that the U. S. Department of Energy (DOE) may propose that provide equal or better protection of public health and safety. One commenter was concerned that the specific methodology proposed in the ISG lacks both precedent and scientific support. Two commenters were concerned that the ISG methodology may not produce accurate results over the 100-year plus operating life of the Yucca Mountain repository preclosure operating period. Two commenters raised questions as to whether NRC has adequately considered the geometric

consequence of closely spaced, recurring seismic events, in determining the seismic hazard and related failure probability of a structure, system, or component (SSC) important to safety (ITS). One commenter states that "the ISG totally ignores the existence of Section 63.102(f) of the regulation." The following discussion indicates how the comments were addressed, and the changes, if any, made to the ISG as a result of the comments.

Line numbers in the following comments refer to the draft HLWRS-ISG-01, ADAMS ML061170532, which was made available for public comment on May 22, 2006 (71 FR 29369).

1. *Comment.* The commenter recommends that the sentence starting at Line 38 be re-phrased as: "The mean fragility curve for an SSC ITS may be estimated using: (1) Probability density functions for controlling parameters in a Monte Carlo analysis; (2) simplified methods outlined in Section 4 of Electric Power Research Institute, TR-103959 (Ref. 2); (3) a method that uses the Conservative Deterministic Failure Margin methodology to determine the 1percent probability of failure, and an estimate of the composite logarithmic standard deviation, as described by Kennedy (2001, pp. 44 to 45) and Ravindra (2006, p. 132); or (4) other methods that capture appropriate variability and uncertainty in parameters used to estimate the capacity of the SSCs ITS to seismic events.

*Response.* NRC regulations grant DOE broad flexibility in choosing a method or methods for preclosure safety analysis of hazards at the geologic repository operations area (GROA). Although NRC staff has stated some example methods, in the ISG, for estimating the fragility curve, this does not imply that alternative methods would be unacceptable for demonstrating compliance with regulatory requirements. DOE may use an alternative method, if sufficient technical basis for the use of the method is provided.

No changes were made to the ISG as a result of this comment.

2. *Comment.* The commenter recommends that the following sentence be added at the end of the sentence on line 43:

"Where appropriate, assessment of fragility for an SSC may be based on fragility values for an identical or similar component as found in the literature."

*Response.* NRC agrees with the commenter that the fragility data for an SSC, developed and documented in databases and used at other facilities, may be used to estimate fragility for the

SSCs at the repository, if the data are shown to be applicable to the repository SSCs.

The ISG has been revised to add the following at the end of the sentence on Line 43:

"An estimate of fragility for an SSC may be based on fragility values for an identical or similar component as found in the literature, provided technical bases for the relevance of the data to the SSC under consideration are established."

3. *Comment.* The commenter recommends that an explanation be provided to address why the selection of the slope (Lines: 235 to 237, 240 to 241: Page: 8) is appropriate. This explanation may include, for example, that this portion of the hazard curve was selected if it were the interval where the dominant contribution to risk arises. Text could be added at the end of the sentence on Line 241:

"The slope should be selected to focus on the portion of the curve where risk is expected to dominate the convolution."

*Response.* NRC agrees with the commenter that an explanation for the selection of the slope between probabilities of exceedance of  $10^{-6}$  and  $10^{-5}$  should be added in the ISG.

The ISG has been revised to add the following at the end of the sentence on Line 241:

"This slope was selected to represent the hazard accurately at probabilities of exceedance values close to the target annual threshold probability of  $10^{-6}$  because this portion of the hazard curve may have a significant contribution to the risk."

4. *Comment.* The commenter suggests replacing the sentence starting on Line 263, with the sentence: "For the purposes of illustration, a single response frequency of 10 hertz (Hz) is assumed for this evaluation." The commenter also suggests that an explanation of why a single frequency is appropriate should be added.

*Response.* NRC believes that the essence of the comment, with the suggested change to the ISG, is adequately responded to by the sentences in lines 262 to 264 of the ISG. These sentences state that the evaluation typically would be performed at appropriate structural frequencies, based on the dynamic characteristics of the SSC, and that example evaluation is performed at a single frequency of 10 hertz. A single frequency was chosen in the example for illustration purposes only. As stated in the sentence in line 261, the evaluation typically would have to be performed for a number of structural frequencies of an SSC, based on its dynamic characteristics, to

appropriately assess the probability of failure of an SSC during a seismic event.

No changes were made to the ISG as a result of this comment.

5. *Comment.* The commenter suggests that text be added to include discussion of other non-seismic factors that may influence/mitigate the probability of occurrence of the event sequence. At line 262, a sentence should be inserted to read:

“Other non-seismic factors such as residency times, targeting factors, operational states, and design constraints, which may also influence the probability of occurrence of the complete event sequence, are not considered in this example.”

*Response.* NRC agrees with the commenter that in the example, design constraints, such as the probability of failure of the canister during a potential drop event, are not considered. This is indicated in Lines 276 to 277 of the ISG, and in the clarifying statement added in the ISG in response to comment 10. NRC believes that the clarifying statement recognizes that if the canister breach probability (given a drop) is demonstrated to be less than 1.0, the appropriate conditional probability of breach may be factored into the quantification of the event sequence. Therefore, NRC believes that a change to the ISG to clarify this factor in determining the probability of occurrence of the event sequences is not necessary. Other non-seismic factors mentioned in the comment appear to be related to the duration of operations at the proposed Yucca Mountain repository. NRC would need specific information on the Yucca Mountain repository operations and the technical bases for determining the values of these factors, to judge whether these factors are appropriate and can be used to calculate event sequence probability of occurrence in the preclosure safety analysis. NRC will review the use of these factors and their technical bases and make a determination of their acceptability during the potential future review of the DOE License Application for the proposed Yucca Mountain repository.

No changes were made to the ISG as a result of this comment.

6. *Comment.* The commenter recommends that the assumption made in the computation be clarified, and that each branch in the sequence be addressed in the description (Lines: 308 to 323; Page: 12). For instance, at the end of the sentence ending on Line 310, the text should be expanded to mention the other branches:

“Tracing Sequence 3 across the event tree shown in Figure B-1, this sequence also

includes the STR-SHWL success branch and the assumed failure of the canister (CANIS-BRCH) \* \* \*” Additional text on Lines 310 to 323 should include: “\* \* \* the STR-SHWL success probability is the complement of the fragility of the failure branch \* \* \*” and “\* \* \* Therefore, the combined fragility of the three systems in the event sequence can be obtained by \* \* \*.”

*Response.* NRC agrees with the commenter that the Event Sequence 3, as shown in Figure B-1, implies that the concrete shear wall provides a confinement barrier to the release of radioactive materials before they pass through the Heating, Ventilation and Air-Conditioning (HVAC) system. However, for illustration purposes only, it was assumed in the example that, if the HVAC duct anchor system fails, all radioactive materials released because of the canister breach would be discharged through the HVAC system. To clarify this assumption, the ISG has been revised as follows:

Add the following at the end of the sentence in Line 309:

“For simplicity, it is assumed, in this example, that if the HVAC duct anchor system were to fail, all radioactive materials released because of the potential canister breach would be discharged through the HVAC system, and that the concrete shear wall would be unable to provide a barrier to the release of radioactive materials.”

7. *Comment.* The commenter suggests that Figure B-1 be revised for clarity, making the figure consistent with conventions for the construction of event trees in other NRC documents, such as NUREG-2300. The following changes are suggested to Figure B-1:

(a) The figure be revised to indicate that the initiating event of the sequence is an earthquake;

(b) The figure heading be revised to state the event in terms of success;

(c) The missing branch be shown for the event that the crane does not drop the waste form.

(d) The probability of canister breach, which has been assumed to be 1.0, be indicated.

*Response.* NRC agrees with the suggested change in item (b), above, regarding revision of the figure headings and stating the event in terms of success, and has revised Figure B-1. Staff, however, does not agree with the other suggested changes because the title of the figure identifies the event sequence as initiated by a seismic event. This is also consistent with Section 11.2.6.2 of NUREG-2300. In addition, adding a success path for the crane not dropping the waste form would be superfluous to this example, and would not add any value to the illustration of the procedure for event sequence

probability calculation. The probability of canister breach assumed as 1.0 is stated in section B of Appendix B.

Figure B-1 has been revised as a result of this comment.

8. *Comment.* Assuming that the text in lines 220 to 222 has broader applicability than just as part of the example, the commenter suggests that the sentence starting on Line 220 be deleted from Appendix A, moved to the Discussion section on page 1, and inserted into the text at Lines 54 to 63. The commenter also suggests changes to the text for insertion into the Discussion section on page 1, in comment 9.

*Response.* NRC agrees with the comment. The ISG has been revised as follows:

(a) The sentence starting on Line 220 and ending on Line 222, “The technical basis \* \* \* staff review.”, has been deleted.

(b) The following has been added at the end of the sentence on Line 57:

“Technical bases for the development of the SSC ITS fragility curves should be available for staff review.”

9. *Comment.* The commenter suggests that, the following sentence consistent with the Comment 8, should be inserted into the Discussion section on page 1 at Lines 54 to 63:

“It is necessary in developing seismic fragilities that the technical basis for the development of the applicable fragility parameters be available for staff review.”

*Response.* NRC agrees with the essence of the comment. The ISG has been revised as shown in NRC staff response to comment 8, item (b).

10. *Comment.* The commenter recommends adding the following phrase to the end of Line 277:

“\* \* \* and it is assumed that probability of breach is 1.0 in all cases”. In addition, the commenter recommends adding, in Figure B-1, “(Pf = 1.0),” on the branch indicating potential for breach. The commenter also recommends adding text to state that when the probability of a breach (given a drop) is demonstrated to be less than 1.0, the appropriate conditional probability of breach may be factored into the quantification of the event sequence.

*Response.* NRC agrees with the comment. The ISG has been revised to clarify that, for the example in Appendix B, it is assumed that the canister probability of failure (given a drop) is 1.0. The comment regarding the use of appropriate conditional probability of canister failure, in the event sequence probability calculation, has been addressed in response to comment 5.

The ISG has been revised to add the following at the end of the sentence in Line 277:

"It is assumed that the canister probability of failure, given a drop, is 1.0."

11. *Comment.* The commenter suggests adding the following text in the sentence starting on Line 36:

"As a conservative assessment of probability, the probability of occurrence of an event sequence leading to an SSC ITS failure, or seismic performance, can be determined by \* \* \*"

*Response.* NRC agrees with the essence of the comment, and has added a new sentence to reflect the comment. The ISG has been revised to add the following sentence in Line 36:

"As a conservative assessment of the probability of occurrence of an event sequence, a single SSC ITS may be considered, instead of all SSCs ITS in the event sequence."

12. *Comment.* The commenter suggests that a brief statement be added at the end of line 232 and in Appendix B, as follows:

"Computations shown in the appendix can be performed either by hand computations or through the use of computer codes. A number of computer codes are available that can be used for probability computations."

*Response.* NRC agrees with the commenter that computations for the event sequence probabilities can be performed either by hand computations or through the use of computer codes. However, these options are available to the applicant for any calculations. Although the details of associated quality assurance requirements may be different for the computational method selected, the overall staff review strategy for the DOE analysis is not affected significantly by the computational method selected by DOE. Therefore, staff does not see the need to revise the ISG.

No changes were made to the ISG as a result of this comment.

13. *Comment.* The commenter refers to NRC Chairman Dale E. Klein's statement, on July 1, 2006, that regulatory stability is a crucial element in ensuring that NRC can complete its work in a timely manner, and states that HLWRS ISG-01 has the potential to create regulatory instability. Accordingly, the commenter encourages NRC to take advantage of the opportunity afforded by this comment period to reconsider issuing this ISG and to instead address the issue of seismically initiated event sequences, more appropriately, in the YMRP. The commenter is recommending this course of action for the following five reasons:

(a) ISG is not the most effective means for NRC to clarify its regulatory intent and could lead to unforeseen consequences due to inadequate review

(including not being reviewed by the Commission itself).

(b) Use of an "Interim Guidance," a vehicle that was meant to address emerging issues affecting multiple licensed activities, is unnecessary in a situation where there is only a single potential licensee that is not currently conducting any licensed activities.

(c) Draft HLRWS ISG-01 lacks safety focus in that it sets forth a more stringent standard for the seismic design of repository surface facilities than currently exists for reactors, without recognizing the comparatively lower level of risk associated with the repository facilities. In doing this, HLRWS ISG-01 directly contradicts the very regulation (10 CFR Part 63) that it seeks to inform.

(d) Providing guidance to staff that assumes a specific methodology for demonstrating compliance with 10 CFR 63.111 is likely to bias the staff's review against other methodologies, that DOE may propose, which provide equal or better protection of public health and safety. Furthermore, giving DOE the opportunity to first propose an acceptable method for meeting the regulation would allow for a more independent NRC review—avoiding a situation where NRC is both telling DOE how to demonstrate compliance and then determining if compliance was demonstrated as instructed.

(e) The specific methodology proposed in this draft ISG lacks both precedent and scientific support.

*Response.* Responses to each of the commenter's reasons are provided below:

(a) In the commenter's view, the ISG is not an effective means for NRC to clarify its regulatory intent and could lead to unforeseen consequences because of inadequate review (including not being reviewed by the Commission itself).

The ISG reflects a focused revision of the YMRP, with the scope of the revision limited to a specific technical issue. The ISG process allows for the rapid identification and resolution of specific technical issues that emerge as a result of staff interaction, with DOE, in preparation for the future License Application review. To increase regulatory efficiency and enhance clarity of communication with DOE and the public, NRC anticipates providing incremental updates to the YMRP in the form of ISGs. NRC believes it is unnecessary and inefficient to republish the YMRP, given the narrow scope of the technical issue addressed in the ISG. If re-publication of the YMRP is warranted (e.g., due to a major rule change or accumulation of a number of

ISGs), staff will be able to insert the appropriate text directly from the ISG into the YMRP. The ISG remains available to provide background discussion and examples, to supplement text, in the YMRP, at a level of detail not normally found in a Standard Review Plan (SRP). Thus, staff sees the ISG process as an effective, efficient, and appropriate means for revising or supplementing the YMRP.

An ISG provides guidance to NRC staff on approaches to use during the review of a potential license application. ISG guidance is for illustration purposes only, and does not imply a preferred method or an approach that an applicant must use. An ISG's review approach provides a framework for staff to conduct an efficient review, consistent with regulatory requirements. ISGs, that are revisions or supplements to the SRPs, are issued at the NRC Office Division level, because SRPs do not represent regulatory commitments, or staff interpretations. During the ISG development process, the technical and regulatory basis for the ISG is thoroughly reviewed by appropriate NRC technical, management, and legal staff. Also, the public and shareholders are informed of a proposed draft ISG and afforded the opportunity to comment. Comments from the public and stakeholders are considered in developing the final ISG.

No changes were made to the ISG as a result of this comment.

(b) In the commenter's view, ISGs are not necessary for the Yucca Mountain project because DOE is the only potential licensee for the proposed repository, and no licensing activities are being conducted currently. Although it is true that DOE is the only potential licensee and no licensing activities are currently underway, important technical issues continue to be identified in the complex, one-of-a-kind Yucca Mountain project during the prelicensing interaction with DOE. As these issues are being resolved, the ISG process provides an effective, efficient, and appropriate means for staff to revise or supplement the YMRP, as discussed in response to comment 13(a). The ISG process also allows staff to communicate with potential licensees on the scope of the staff reviews on specific technical issues, as NRC staff prepares to review the potential License Application in an effective and timely manner.

No changes were made to the ISG as a result of this comment.

(c) In the commenter's view, ISG-01 lacks safety focus and sets forth a more stringent standard for the seismic design

of repository surface facilities than for reactors even though the repository facility has a lower level of risk, which appears contradictory to the intent of 10 CFR Part 63. The commenter also questions the purpose of 10 CFR 63.102(f) and how it is accounted for in the draft HLWRS-ISG-01. Another commenter made a similar statement.

NRC does not agree with the commenter that the ISG-01 proposed methodology for seismically initiated event sequences sets forth a more stringent standard for the seismic design of repository facilities than for reactors. NRC also does not agree that the ISG-01 contradicts the intent of Part 63. The methods discussed in the draft ISG do not mandate seismic design requirements, but present approaches that NRC staff could use to review the performance of SSCs ITS for seismically initiated event sequences, as required in Part 63.

The preclosure compliance requirements in Part 63 are performance-based, in that instead of specifying specific design loads and corresponding acceptance criteria (*i.e.*, codes/standards) the regulations in 10 CFR 63.111, for the GROA, specify radiological dose limits to the public and workers. In the preclosure safety analysis (PCSA), DOE must demonstrate that the GROA design will meet these dose limits, taking into consideration credible event sequences.

The ISG-01 provides a methodology to determine if a seismically initiated event sequence is a Category 2 event sequence, as defined in 10 CFR 63.2, or if it is beyond Category 2 and can be screened out from further consideration. If the event sequence is determined to be a Category 2 event sequence, DOE has to demonstrate that the dose limit of 5 roentgen equivalent man (rem) at any point on the boundary of the site is met. These performance-based requirements in Part 63 necessarily result in a different type of compliance demonstration than is traditionally used for reactor licensing.

For reactors, a seismic event is directly related to the characteristics of a specified safe shutdown earthquake (10 CFR Part 50, Appendix S), which is used as the design basis for each of the safety-related SSCs, and demonstration of compliance with regulations. In contrast, Part 63 does not specify seismic or other design bases or SSCs, but instead requires consideration of credible event sequences and their potential consequences. The guidance in the draft ISG shows how the fragilities of one or more SSCs in an event sequence can be combined with the seismic hazard curve to determine

the likelihood of an entire event sequence, which is the metric used for compliance in Part 63. Section 63.102(f), which allows initiating events to be considered based on precedents adopted for nuclear facilities with comparable or higher risks, was not used in the ISG-01 because the compliance demonstration for Part 63 requires safe performance of SSCs in seismically initiated event sequences, instead of a single initiating seismic event (*i.e.*, safe-shutdown earthquake) that is traditionally used as a design basis in reactor licensing.

DOE will need to design to a level of performance sufficient to meet the requirements of Part 63, for seismically initiated event sequences. DOE is given broad flexibility in selecting a preferred design basis, and determining the degree of defense-in-depth contained within the GROA system. Although DOE must provide the basis for its proposed designs, compliance with Part 63 will be determined by the performance of the design during credible seismically initiated event sequences, not by adherence to a predetermined design basis for a seismic event.

No changes were made to the ISG as a result of this comment.

(d) In the commenter's view, the specific methodology in the ISG-01 may bias the staff's review against other methodologies that DOE may propose, even if these alternatives provide equal or better protection of public health and safety. The commenter also raises the concern that NRC should not dictate to DOE how to demonstrate compliance with regulations because it does not allow for a more independent review of the future DOE License Application. NRC does not agree with the comment that providing a methodology for seismically initiated event sequences in ISG-01 may preclude DOE from proposing other methodologies for complying with Part 63. Similar to the YMRP, ISGs are prepared to provide guidance to the staff for review of any future License Application, from DOE, for the proposed Yucca Mountain repository, and are not mandatory. DOE has the option of proposing alternative methodologies to comply with the regulations, which the staff would evaluate during its review of the License Application. As discussed in response to Comment 1, presenting an example methodology in an ISG does not imply a preference for that method in licensing, and does not restrict the ability of an applicant to use an alternative method.

No changes were made to the ISG as a result of this comment.

(e) In the commenter's view, the specific methodology proposed in the draft ISG-01 lacks both precedent and scientific support. The commenter raises the concern that applying technical analysis to seismic events with probability of exceedance lower than one in 10,000 per year to establish design bases is unprecedented, and that it would result in stringent design criteria. Staff disagrees with the commenter's concern because ISG-01 does not provide guidelines on the design bases or design criteria for the SSCs, of the GROA, at the repository, but provides one method for NRC staff to use in reviewing demonstration of compliance with the performance requirements for the SSCs in the PCSA. Additionally, the methodology proposed in the draft ISG has precedent in the mixed-oxide fuel fabrication facility at the Savannah River Site in South Carolina, where the applicant used a methodology similar to the one outlined in the draft ISG to demonstrate performance of the facility during seismic event sequences.

NRC disagrees with the comment that the methodology proposed in ISG-01 lacks scientific support. The proposed ISG-01 methodology to evaluate seismic performance of an SSC ITS is consistent with the performance-based methodology in the consensus standard ASCE 43-05. The methodology has the scientific support of the experts in the industry, and is not beyond the state-of-the-art for performance evaluation of SSCs for seismic hazard.

No changes were made to the ISG as a result of this comment.

14. *Comment.* Two commenters stated that NRC's decision to approve the use of the methodology that is similar to the one outlined in ASCE 43-05 appeared to be based on the method's recent use in licensing of the mixed-oxide fuel fabrication facility at the Savannah River Site. The MOX facility has a projected operating life of 20-40 years and it is assumed that the NRC operating license is for the same period of time. The commenters are concerned about the ability of ASCE 43-05 to appropriately account for uncertainty over the longer time-frame for Yucca Mountain, given that the preclosure operating period for the repository project could be 100 years or longer. The commenter adds that NRC should address this issue in the final staff guidance.

*Response.* The commenters raise a concern that the ISG-01 methodology, as suggested by ASCE 43-05, may not produce accurate results over a potential 100-year or longer operating life of the Yucca Mountain repository preclosure



operating period. The preclosure operating period of the Yucca Mountain repository may affect the ISG-01 methodology results in two ways: (i) In categorization of seismically initiated event sequences (e.g., one chance in 10,000 of occurrence during the preclosure period specified in Part 63 for category 2 event sequences); and (ii) in development of the SSCs ITS seismic fragility curves, with potential changes in material properties resulting from degradation during the preclosure period. Staff believes that the uncertainties, considered in the seismic hazard and SSCs ITS fragility curves development, would sufficiently account for potential materials degradation during the preclosure period.

No changes were made to the ISG as a result of this comment.

15. *Comment.* Two commenters stated that the example provided in Appendix A raises questions as to whether NRC has adequately considered the geometric consequence of closely spaced, recurring, seismic events in determining the mean seismic hazard and related failure probability of an SSC ITS. HLWRS-ISG-01 and/or the YMRP may need to be revised to ensure that such characteristics of seismic hazard and related failure probability are appropriately considered in computing SSC ITS probability of failure during a seismic event.

*Response.* The example of Appendix A is based on a hypothetical seismic hazard curve selected only for illustrative purpose. However, for the development of the Yucca Mountain site-specific mean seismic hazard curves (Reference, Section 6.4), DOE's current approach evaluates the potential of closely spaced, recurring, seismic events by considering simultaneous multiple ruptures on parallel dipping faults, and increasing the ground motion parameters for a given probability of exceedance value. Since the effects of the closely spaced, recurring, seismic events are considered in the seismic hazard curve, staff believes that the ISG-01 methodology would result in an appropriate value of the failure probability of an SSC ITS, and that ISG-01 or the YMRP need not be revised.

[Reference: Civilian Radioactive Waste Management System, Management and Operating Contractor (CRWMS, M&O), 1998, Probabilistic Seismic Hazard Analyses for Fault Displacement and Vibratory Ground Motion at Yucca Mountain, Nevada (I. G. Wong and J. C. Stepp, coordinators), report prepared for U. S. Geological Survey, 3 Volumes]

No changes were made to the ISG as a result of this comment.

16. *Comment.* It is unclear to the commenter whether the guidance directs NRC staff to use the suggested methodology or merely offers an alternative among possible methods. To reduce uncertainty, the commenter suggests that it would be helpful if NRC provided explicit guidance as to how the selection of an appropriate methodology would be made, and when, if at all, a given methodology might be unacceptable for use. The commenter believes that the discretion in choice of methods appears to introduce unwarranted ambiguity and uncertainty.

*Response.* An ISG provides guidance to NRC staff on suggested methodologies to use during the review of a potential license application, and do not imply a preferred methodology that an applicant must use. The review approach in an ISG provides a framework for staff to conduct an efficient review, consistent with regulatory requirements. DOE has the option of proposing alternative methodologies to comply with the regulations, which the staff would evaluate during its review of the License Application. Methodologies that demonstrate compliance with the regulations, and have adequate technical bases, would be acceptable for staff review.

No changes were made to the ISG as a result of this comment.

**FOR FURTHER INFORMATION CONTACT:** Jon Chen, Project Manager, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001 (Telephone: (301) 415-5526; fax number: (301) 415-5399; e-mail: [jcc2@nrc.gov](mailto:jcc2@nrc.gov)); Mahendra Shah, Senior Level Advisor, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001 (Telephone: (301) 415-8537; fax number: (301) 415-5399; e-mail: [mjs3@nrc.gov](mailto:mjs3@nrc.gov))

Dated at Rockville, Maryland, this 22nd day of September 2006.

For the Nuclear Regulatory Commission.

**N. King Stablein,**

*Chief, Project Management Section B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6-16017 Filed 9-28-06; 8:45 am]

**BILLING CODE 7590-01-P**

**NUCLEAR REGULATORY COMMISSION**

**Notice of Availability of Draft Interim Staff Guidance Document HLWRS-ISG-02, Preclosure Safety Analysis—Level of Information and Reliability Estimation**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**FOR FURTHER INFORMATION CONTACT:** Jon Chen, Project Manager, Project Management Section B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. *Telephone:* (301) 415-5526; *fax number:* (301) 415-5399; *e-mail:* [jcc2@nrc.gov](mailto:jcc2@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Yucca Mountain Review Plan (YMRP) (July 2003, NUREG-1804, Revision 2) provides guidance for U.S. Nuclear Regulatory Commission (NRC) staff to evaluate a U.S. Department of Energy license application for a geologic repository. NRC has prepared Interim Staff Guidance (ISG) to provide clarifications or refinements to the guidance provided in the YMRP. NRC is soliciting public comments on Draft HLWRS-ISG-02, which will be considered in the final version or subsequent revisions to HLWRS-ISG-02.

**II. Summary**

The purpose of this notice is to provide the public with an opportunity to review and comment on draft HLWRS-ISG-02, which is to supplement the YMRP for the NRC staff review of design and operation information and reliability estimates required for the preclosure safety analysis. This ISG supplements sections 2.1.1, 2.1.1.2, 2.1.1.4, 2.1.1.6, and 2.1.1.7 of the YMRP. This guidance also provides examples that illustrate commonly used approaches for estimating reliability and the level and types of supporting design and operation information that would be necessary for structures, systems, and components (SSCs) at the geologic repository operations area. A sufficient level of information and adequate technical bases for reliability estimates are needed to demonstrate compliance with the performance objectives in *Code of Federal Regulations*, Title 10, Part 63, Section 63.111 (10 CFR 63.111).

**III. Further Information**

The documents related to this action are available electronically at NRC's Electronic Reading Room, at <http://www.nrc.gov/reading-rm/adams.html>. From this site, a member of the public

can access NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are provided in the following

table. If an individual does not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference (PDR) staff at 1-800-397-4209 or (301) 415-4737, or by e-mail, at [pdr@nrc.gov](mailto:pdr@nrc.gov).

ISG	ADAMS accession number
Draft HLWRS-ISG-02, "Preclosure Safety Analysis—Level of Information and Reliability Estimation" .....	ML062360241

These documents may also be viewed electronically on the public computers located at NRC's PDR, O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee. Comments and questions on draft HLWRS-ISG-02 should be directed to the NRC contact listed below by November 13, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

*Contact:* Robert Johnson, Project Manager, Licensing and Inspection Directorate, High-Level Waste Repository Safety Division of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005-0001. Comments can also be submitted by telephone, fax, or e-mail, which are as follows: telephone: (301) 415-6900; fax number: (301) 415-5399; or e-mail: [rkj@nrc.gov](mailto:rkj@nrc.gov).

Dated at Rockville, Maryland, this 25th day of September 2006.

For the Nuclear Regulatory Commission.

**N. King Stablein,**

*Chief, Project Management Section B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6-16018 Filed 9-28-06; 8:45 am]

BILLING CODE 7590-01-P

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**Request for Public Comment on the Implications for U.S. Commercial Interests of the Accession to the European Union of Bulgaria and Romania**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for Comment.

**SUMMARY:** The Trade Policy Staff Committee gives notice that the Office of the United States Trade

Representative (USTR) requests written submissions from the public concerning the implications for U.S. trade in goods and services of the anticipated enlargement of the European Union (EU) to include Bulgaria and Romania.

USTR and other agencies are currently engaged in an assessment of the potential impact on U.S. goods and services trade of the anticipated enlargement of the EU and, in particular, any compensatory adjustments that may be due under WTO rules. Comments from the public in response to this notice will be incorporated into that assessment.

**DATES:** Submissions must be received on or before noon, October 30, 2006.

**ADDRESSES:** Submissions by electronic mail: [FR0628@ustr.eop.gov](mailto:FR0628@ustr.eop.gov). Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee (TPSC), Office of the USTR, at (202) 395-6143.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395-3475. Substantive questions concerning this review should be addressed to Laurie Molnar, Director for European and Mediterranean Trade Issues, Office of the U.S. Trade Representative, Telephone (202) 395-3320.

**SUPPLEMENTARY INFORMATION:**

**1. Background Information**

On April 25, 2005, Bulgaria and Romania signed a Treaty of Accession to the European Union. The European Commission announced on September 26, 2006, that Romania and Bulgaria will accede to the European Union on January 1, 2007.

As part of the EU accession process, Bulgaria and Romania are required to adopt the EU's common body of law or *acquis communautaire*. This will entail, *inter alia*, adoption by Bulgaria and Romania of the EU's common external tariffs for goods imported from third countries, possible adoption or

alteration by Bulgaria and Romania of tariff rate quotas (TRQs) on various products (to make them compatible with EU TRQs), and harmonization of Bulgarian and Romanian country regulatory requirements with EU regulations affecting the import of various goods and services.

Under WTO rules, the EU must notify other WTO members of its intent to modify or withdraw market access commitments it has made on goods and services in order to expand the EU to include Bulgaria and Romania. To date, the EU has not sent such notifications to the WTO, though the United States expects these to be made shortly.

*Goods*

*Applicable GATT 1994 Procedures:* If a WTO Member joining a customs union plans to modify the concessions bound in its WTO Schedule of Concessions ("bound concessions")—for example, by raising duties or adjusting tariff rate quotas—it must negotiate with certain key trading partners under Articles XXIV:6 and XXVIII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"). Unless these negotiations result in agreement on compensatory adjustments to offset the Member's modification of concessions (for example, through reduction of duties on other products), the affected trading partners are entitled to withdraw substantially equivalent concessions that had previously been negotiated with the Member.

*Submissions:* The public is encouraged to identify on a country-specific basis where Bulgaria or Romania's adoption of the EU common external tariff will result in tariff increases or changes to tariff-rate quotas (TRQs) affecting U.S. commercial interests in the accession countries.

Current applied tariff rates for Bulgaria can be found on the following Web site: [http://www.en.customs.bg/index\\_en.html](http://www.en.customs.bg/index_en.html). Current applied tariff rates for Romania can be obtained by calling the Trade Information Center at the Department of Commerce at: 1-800-USA-TRADE, selecting the option for

foreign tariff rates, and providing the harmonized system number. Current applied tariff rates for the EU can be accessed at: [http://www.trade.gov/td/tic/tariff/eu\\_schedule/index.htm](http://www.trade.gov/td/tic/tariff/eu_schedule/index.htm). (The public is being directed to sources of applied tariff rates for ease of finding such information. The assessment of compensation, as described above, will be done using bound rates.)

#### Services

*Applicable GATS Procedures:* Article V, paragraph 5, of the *General Agreement on Trade in Services* (“GATS”) provides that if a WTO Member intends to modify or withdraw a specific GATS commitment as a result of joining an economic integration agreement such as a customs union, it must provide 90 days advance notice of such modification and follow the applicable procedures set out in GATS Article XXI. Paragraph 2 of Article XXI provides that WTO Members who believe they may be affected by the proposed modification of commitments can request negotiations with the modifying Member with the purpose of reaching an agreement on compensation for the proposed modification in the form of offsetting liberalization commitments in other services sectors. If the negotiation does not result in an agreement on compensation, the Member affected by the modification may request arbitration. If the modifying Member does not comply with the findings of the arbitration, the affected Member may withdraw substantially equivalent concessions.

Bulgaria and Romania’s entry into the EU may also entail modification of the existing lists of MFN exemptions maintained by the EU or the accession countries under GATS Article II. The United States maintains that the EU must engage through a separate WTO process (namely a waiver process under Article IX of the Agreement Establishing the WTO) with its partners in cases where modifications to MFN exemption lists are contemplated. However, comments from the public on anticipated trade impacts implied by a consolidation of the existing accession country and EU MFN exemptions lists are also solicited through this notice.

*Submissions:* The public is advised to examine the existing GATS schedules of specific commitments and lists of most-favored-nation exemptions of the EU in comparison with those of Bulgaria and Romania to determine whether changes that occur as a result of the consolidation of the schedules and lists would adversely impact U.S. commercial interests. The existing schedules and lists are accessible

through the WTO’s Services Database Web site, <http://tsdb.wto.org/wto/WTOHomepublic.htm>. From that site, click on “Pre-defined Reports” and then “All Sectors in Each Country”.

#### Other Regulatory Measures

Adoption of the EU *acquis communautaire* by Bulgaria and Romania will entail adoption of the EU’s standards, regulations and conformity assessment procedures, including sanitary and phytosanitary requirements, testing, certification, labeling requirements, etc. The accession countries will also be obligated to impose import restrictions, quantitative restrictions and antidumping orders similar to those of the EU. The public is encouraged to comment where appropriate on how the introduction of these types of regulatory measures would affect U.S. commercial interests.

#### Supportive Data and Recommendations for Compensation

All submissions should describe the product or service in question, and in the case of products, should include the Harmonized System tariff heading(s). Submissions should describe the current market access for the products or services, including value and quantity of exports, any existing problems, and should identify changes that are anticipated upon accession countries’ entry into the EU. In the area of services, submissions should include, if possible, detailed information regarding conditions for market access over the period leading up to entry into the EU, because these countries may have made incremental changes over a long period of time to conform their practices and access to that of the European Union.

Submissions may also include recommendations for appropriate compensatory adjustments the United States might seek for instances of diminished market access. These recommendations could include such items as reductions in the EU common external tariff on goods, improvements to EU market access commitments on goods and services, or other changes in the EU trade regime for goods and services.

#### 2. Requirements for Submissions

To ensure prompt and full consideration of responses, USTR strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: [FR0628@ustr.eop.gov](mailto:FR0628@ustr.eop.gov). Persons making submissions by e-mail should use the following subject line: “Enlargement:

Romania and Bulgaria” Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters “BC-”, and the file name of the public version should begin with the character “P-”. The “P-” or “BC-” should be followed by the name of the submitted information. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written submissions will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6 must be clearly marked “Business Confidential” at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries will be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395-6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

**Carmen Suro-Bredie,**

*Chairperson, Trade Policy Staff Committee.*

[FR Doc. E6-15989 Filed 9-28-06; 8:45 am]

BILLING CODE 3190-W6-P

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the matter of Geographics, Inc. (n/k/a G Printing, Inc.), Window Rock Capital Corp. (n/k/a Window Rock Capital Holdings, Inc.); Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of

Geographics, Inc. (n/k/a G Printing, Inc.) because it has not filed any periodic reports since the period ended December 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Window Rock Capital Corp. (n/k/a Window Rock Capital Holdings, Inc.) because it has filed only one periodic report, a Form 10-QSB for the period ended September 30, 2005, in the last three years.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 27, 2006, through 11:59 p.m. EDT on October 10, 2006.

By the Commission.

**Nancy M. Morris,**  
Secretary.

[FR Doc. 06-8396 Filed 9-27-06; 11:58 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54496; File No. SR-NASD-2006-105]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Communications Concerning Investment Analysis Tools

September 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 7, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 2210 and Interpretive Material 2210-6 to clarify the filing requirements for communications concerning investment analysis tools. The text of the proposed rule change is available on NASD’s Web site ([www.nasd.com](http://www.nasd.com)), at the NASD’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On September 28, 2004, the Commission approved IM-2210-6, regarding “investment analysis tools.” IM-2210-6(b) defines the term “investment analysis tool” as “an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.” IM-2210-6 allows a member to use and provide customers access to investment analysis tools if the member complies with certain disclosure and other requirements. IM-2210-6 became effective on February 14, 2005.

IM-2210-6(a) requires a member that offers or intends to offer an investment analysis tool, within 10 days of first use, to (1) provide the NASD Advertising Regulation Department (Department) access to the investment analysis tool, and (2) file with the Department any template for written reports produced by, or sales material concerning, the

tool. Recently, questions have arisen regarding why the filing requirement was not included with other communications filing requirements under Rule 2210(c). Members have noted that persons reading Rule 2210(c) might not understand that there is an additional filing requirement for investment analysis tool report templates and sales material under IM-2210-6. Members have also asked NASD staff what the term “sales material” as used in IM-2210-6, is intended to include, since “sales material” is not defined in either Rule 2210 or IM-2210-6.

In response to these inquiries, NASD is including a provision in Rule 2210(c) that refers to the existing requirement set forth in IM-2210-6 to file templates for written reports produced by, or advertisements and sales literature concerning, investment analysis tools. This new provision does not make any substantive changes to the current filing requirements for communications concerning investment analysis tools. NASD also is deleting the term “sales material” throughout IM-2210-6 and replacing it with the terms “advertisement” and “sales literature” to clarify the rule’s application. This clarification is consistent with how the staff has applied the rule to date, and thus also does not make any substantive changes to the scope of IM-2210-6.

###### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, NASD rules to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that clarifying the filing requirements for communications concerning investment analysis tools will eliminate confusion regarding certain provisions of Rule 2210 and IM-2210-6.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> As required under Rule 19b-4(f)(6)(iii),<sup>8</sup> NASD provided the Commission with written notice of NASD's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii)<sup>11</sup> under the Act based upon a representation that the proposed rule change does not make any substantive changes to the current filing requirements for communications concerning investment analysis tools, and will provide clarification to member firms. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-105 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number NASD-2006-105 and should be

submitted on or before October 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-16028 Filed 9-28-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54482; File No. SR-NSCC-2006-09]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Allow Cash, Next Day, and Seller's Option Equity Trades To Be Processed in the Continuous Net Settlement System and To Modify the Clearing Fund Formula To Mitigate the Risk Associated With the Shorter Settlement Cycle of Cash and Next Day Settling Trades

September 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 24, 2006, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is seeking to modify its procedures for equity trade processing to enable cash,<sup>2</sup> next day,<sup>3</sup> and seller's option<sup>4</sup> equity trades received on a locked-in basis from self-regulatory organizations ("SROs") and Qualified Special Representatives ("QSRs") to be processed in NSCC's Continuous Net Settlement ("CNS") system.<sup>5</sup> NSCC is

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> A "cash trade" is a trade that settles on the same day as the trade.

<sup>3</sup> A "next day trade" is a trade that settles on the day after the trade ("T+1").

<sup>4</sup> A "seller's option trade" is a trade that gives the seller the right to deliver the securities on a specified date ranging from not less than two but not more than 180 days after the trade date.

<sup>5</sup> Cash and next day transactions in debt securities are compared but are not settled through NSCC. NSCC is not at this time seeking to make such transactions eligible for CNS.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

also proposing to add a new element to its clearing fund formula to cover trades, such as cash and next day settling CNS trades, that settle in less than three days.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>6</sup>

### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### A. Cash, Next Day, and Seller's Option Equity Trades Processed in CNS

Currently, cash, next day, and seller's option equity trades are recorded or compared, as applicable, and are reported by NSCC to its members but are not settled through NSCC's facilities. Instead these trades currently settle on a trade-for-trade basis directly between counterparties.

When NSCC updated and revised CNS in 2004 (referred to as the "CNS Rewrite"), a major aspect included a new platform for the system that accommodates real-time updates, including the capacity to add trades to the settlement process real-time for late input into CNS until noon of settlement day.<sup>7</sup> At that time, rule changes were made to permit as-of regular way equity trades (*i.e.*, trades settling on a T+3 basis that are either recorded or compared after trade date) to be submitted to NSCC up to the cut-off time designated by NSCC on T+3 for processing in CNS for settlement on their originally designated settlement dates. Given the system's real-time capabilities, members would now also like to have cash, next day, and seller's option equity trades in CNS-eligible CUSIPs made eligible for processing in CNS. This would provide members with the benefits of netting, automated trade processing, and NSCC's trade guaranty. Accordingly, NSCC proposes to amend its Procedure II (Trade Comparison and Recording Service) to permit cash, next day, and

seller's option equity transactions submitted by SROs and QSRs on behalf of members to be processed for settlement through the facilities of NSCC. Locked-in trade data with respect to seller's option equity transactions would be accepted for processing so long as the parties' designated settlement date is not more than 180 days beyond the trade date.

Cash trades submitted after the cut-off time designated by NSCC, which is currently 11:30 a.m., would only be recorded and reported by NSCC and must, as is the current situation, would have to be settled directly between the parties outside of NSCC.<sup>8</sup> Next day as-of transactions if received prior to the applicable cut-off time, would be processed for settlement on their originally designated settlement date.<sup>9</sup> If such trades were received after the applicable cut-off time, the trade would be assigned the next settlement day. Finally, any trades that are either (i) designated "special trades,"<sup>10</sup> (ii) in non-CNS eligible securities, (iii) in a security undergoing a corporate action, or (iv) scheduled to settle between the ex-dividend date and record date would continue to be processed on a trade-for-trade basis.

Conforming changes as needed are also being made to Procedure IV (Special Representative Service), Procedure V (Balance Order Accounting Operation), and Procedure VII (CNS Accounting Operation).

#### B. Shortened Process Trade Component in the Clearing Fund Formula

NSCC is also proposing to modify its clearing fund formula (Procedure XV) by including an additional component that is intended to mitigate the risk associated with shortened trades that are processed on a settlement cycle shorter than three days such as cash and next day settling CNS trades. Because NSCC's trade guaranty would attach to these trades prior to the scheduled collection of clearing fund monies, the proposed new additional component is intended to mitigate risk by calculating an average clearing fund requirement for this type of activity (referred to in the proposed rules and this release as

"Specified Activity") based upon historical activity.<sup>11</sup>

Specified Activity positions would be isolated and a charge would be applied using not less than two standard deviations. (This would be the same standard deviations as those derived for the daily volatility calculation provided that where a percentage charge is applied in lieu of a volatility charge, the same percentage charge would be applied to the relevant Specified Activity.) The new component would equal the average of a member's three highest calculated charges for Specified Activity over the most recent 20-day period. Specified Activity includes cash trades, next day settling trades, as-of trades compared or recorded on T+3 (including trades received after the applicable T+2 cut-off time), and similar transactions.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>12</sup> and the rules and regulations thereunder applicable to NSCC because it should facilitate the prompt and accurate clearance and settlement of securities by increasing automated trade processing and by expanding the types of trades eligible for CNS netting. In addition, the proposed rule change should assure the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible by enabling NSCC to more accurately determine and collect collateral to cover the potential additional exposures resulting from trades that are processed on a settlement cycle other than three days.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC 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. NSCC will notify the Commission of any written comments it receives.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal**

<sup>6</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>7</sup> Securities Exchange Act Release No. 50026 (July 15, 2004), 69 FR 43650 [File No. SR-NSCC-2004-01].

<sup>8</sup> NSCC announced the 11:30 a.m. cut-off time in its Important Notice A#6220, P&S#5790 (March 23, 2006), which is the same as the cut-off time for receipt of next day as-of trade input. Any changes to the cut-off times would be announced by NSCC through an Important Notice.

<sup>9</sup> *Id.*

<sup>10</sup> A "special trade" is defined in NSCC's rules to mean a transaction reported to NSCC involving a cleared security either which the parties thereto agree to settle on a member-to-member basis or which NSCC designates as settling on a member-to-member basis.

<sup>11</sup> This component is also being added to Appendix 1.

<sup>12</sup> 15 U.S.C. 78q-1.

**Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2006-09 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSCC-2006-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsc.com/legal>. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2006-09 and should be submitted on or before October 16, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-15985 Filed 9-28-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54520; File No. SR-NYSE-2006-65]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Exchange Rules Governing Certain Definitions, Systemic Processing of Certain Orders, and the Implementation Schedule of the NYSE HYBRID MARKET<sup>SM</sup>

September 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 23, 2006 the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 11, 2006, September 15, 2006, and September 26, 2006 the Exchange filed Amendment Nos. 1,<sup>3</sup> 2,<sup>4</sup> and 3<sup>5</sup> respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 ("Amendment No. 1") replaced the original filing in its entirety.

<sup>4</sup> Partial Amendment No. 2 ("Amendment No. 2") added proposed rule language to NYSE Rule 1000 governing the maximum order size of automatic executions.

<sup>5</sup> Partial Amendment No. 3 ("Amendment No. 3") removed proposed changes to NYSE Rule 13 related to At the Opening or At the Opening Only Orders and Regulation NMS-compliant Immediate or Cancel Orders.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend Exchange Rules to clarify certain definitions and systemic processes in the NYSE HYBRID MARKET<sup>SM</sup> ("Hybrid Market"). The proposed amendment further serves to differentiate between certain definitions in NYSE Rule 13 and terms in NYSE Rule 1000 (Direct +<sup>®</sup>). It also adds in the rule text a chart containing the Exchange's calculated liquidity replenishment points ("LRPs"). In addition, this filing updates the Hybrid Market implementation schedule.<sup>6</sup>

The text of the proposed rule change, as amended, is available on NYSE's Web site at (<http://www.nyse.com>), at the principal office of NYSE, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is submitting this proposed rule change to amend certain rules governing the Hybrid Market in order to clarify definitions and the operation of certain systemic processes.

The Commission approved the Hybrid Market on March 22, 2006.<sup>7</sup> The approved rules did not become effective immediately; rather they are being implemented in a series of phases over a period of time.

Implementation of Phase 1 of the Hybrid Market, which focused primarily on the ability of Floor brokers to electronically represent their customers' interest ("e-Quote") was substantially completed on April 5, 2006.

The installation of software necessary to implement Phase 2 of the Hybrid

<sup>6</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006), (SR-NYSE-2004-05) ("Hybrid Order").

<sup>7</sup> *Id.*

Market, which focuses primarily on the ability of specialists to algorithmically quote and trade, has been installed Floor-wide. Specialist firms are in the process of readying their algorithmic systems so that they can begin operating the systems as permitted in Phase 2.

In addition, on May 12, 2006, the Exchange implemented a Hybrid Market Pilot ("Pilot") that increased the availability of automatic executions in the securities participating in the Pilot by: (i) Raising the maximum size of an auto ex order to one million shares (with the ability to increase the maximum size to three million shares); (ii) eliminating the prohibition against entry of orders for the account of the same beneficial owner in less than 30-second intervals; (iii) treating all market orders in Pilot securities as auto ex orders; and (iv) implementing the approved change to NYSE Rules 13 and 1000 regarding auto execution of marketable limit orders.<sup>8</sup> Currently, the Pilot applies to one security—Lucent Technologies, Inc.

Similarly, starting June 21, 2006, specialists were permitted to algorithmically quote ("s-Quote") in their specialty securities, without the receipt of order information as such orders are entering Exchange systems.<sup>9</sup> Starting August 15, 2006, specialists were permitted to send algorithmically-generated trading messages to interact with the Exchange quotation ("hit bid/take offer"), also without receipt of order information as such orders are entering Exchange systems.<sup>10</sup>

Phase 3 of the Hybrid Market which includes, among other things, Floor broker discretionary orders, if approved by the Commission,<sup>11</sup> implementation of sweeps, auto-routing of orders to markets displaying better bids and offers, and elimination of restrictions on Direct+® availability, is scheduled to begin in or about early October 2006.

Since the approval of the Hybrid Market, the Exchange has continued to discuss Hybrid Market features with its members and advisory committees. Based on these discussions, the Exchange has decided to propose changes to certain aspects of the Hybrid Market to produce a trading venue that

best addresses the various needs of our customers and members. In addition, in order to accomplish the implementation of Phase 3 with the functionalities noted above within a similar time frame as that originally proposed, certain amendments to the approved Hybrid Market rules are necessary.

#### *Amendments to the Definitions of Orders Types—Exchange Rule 13 and Conforming Changes to Related Rules Auto Ex Order*

##### Definition

The definition of an "auto ex" order in NYSE Rule 13 originally encompassed only orders that were specifically entered for automatic execution. In other words, an "auto ex" order was one specifically designated for automatic execution and thereby immediately initiates an automatic execution upon entry. In the original definition, an order that merely participated in an automatic execution was not an "auto ex" order simply by virtue of such participation. As such, the definition focused on the order's designation when entered, not how the order was executed.

The Hybrid Market filings amended this definition by listing various types of orders that initiate or participate in automatic executions. By so doing, the concept that an "auto ex" order is one that immediately initiates an automatic execution upon entry was lost. However, the amended rule didn't include all order types that are capable of participating in an automatic execution. For example, it omitted auction limit orders which, while primarily an order type that offers an opportunity for price improvement through manual handling, may participate in or initiate automatic executions.

In addition, Exchange systems retain the concept that an "auto ex" order is one that initiates an automatic execution immediately upon entry, systemically applying the designation in those cases where the order omits it. For example, a marketable limit order entered on the Exchange will initiate an automatic execution immediately upon entry on the Exchange. Such order no longer needs to be specifically designated for automatic execution by the person entering the order; Exchange systems apply the appropriate designation.

As a result, the definition of "auto ex" order as approved in the Hybrid Market filings is not complete nor is it consistent with Exchange systems. The Exchange proposes to clarify that an "auto ex" order is an order that initiates

an automatic execution immediately upon arrival. Accordingly, reference to elected stop, stop limit orders, and CAP-DI orders will be eliminated from the rule as they do not initiate an automatic execution upon their entry on the Exchange. In addition, to assist people who may look to this definition in connection with the general topic of automatic executions, the Exchange proposes to add a section that clarifies that "non-auto-ex" orders (*i.e.*, elected stop orders, percentage orders, etc.) participate in or initiate automatic executions in accordance with the rules governing their operation.

Further, the Exchange proposes to amend NYSE Rules 1000–1004 to replace the term "auto ex" with the words "automatically executing" to reflect that these rules govern all automatic executions, not just those involving an auto ex order.

##### Market Orders

The definition of an "auto ex" order in NYSE Rule 13, as amended by the Hybrid Market filings, included a "market order designated for automatic execution." The Exchange proposes to amend this definition to include all market orders. In other words, a market order no longer needs to be designated for automatic execution to be treated as an auto ex order. The Exchange believes this change will benefit customers by simplifying order entry requirements for market orders, treating them in the same fashion as marketable limit orders. Conforming changes to NYSE Rules 104(c)(vii), 104(e)(i), 123(e)(7), 123F(b), 132B(a)(9), and 132B(b)(9) are also proposed.

##### Buy Minus—Sell Plus Orders

The reference in the definition of an "auto ex" order to a "sell 'plus'—'buy' 'minus'" order has been rephrased to "buy minus—sell plus" to track the way that order type is referred to in other places in Exchange rules.

##### Maximum Size

The maximum size of automatic executions, which had been included in NYSE Rule 13's definition of an "auto ex" order, was eliminated in the Hybrid Market filings.<sup>12</sup> However, there is a maximum order size that Exchange systems can handle, currently 3,000,000 shares. Additionally, the Exchange proposes to gradually increase the size of automatic executions, rather than start with a maximum size of 3 million shares. Accordingly, the Exchange proposes to add a rule that reflects this. The Exchange proposes to phase-in the

<sup>8</sup> See Securities Exchange Act Release No. 53791 (May 11, 2006), 71 FR 28732 (May 17, 2006). This Pilot expires on October 31, 2006.

<sup>9</sup> See Securities Exchange Act Release No. 54024 (June 21, 2006), 71 FR 36849 (June 28, 2006). This is effective until Phase 2 is fully implemented.

<sup>10</sup> See Securities Exchange Act Release No. 54316 (August 15, 2006), 71 FR 48569 (August 21, 2006). This is effective until Phase 2 is fully implemented.

<sup>11</sup> Floor broker discretionary orders are the subject of a separate filing. See Securities Exchange Release No. 54150 (July 14, 2006), 71 FR 41496 (July 21, 2006) (Notice of SR-NYSE-2006-36).

<sup>12</sup> See Hybrid Order, *supra* note 6.



maximum order size eligibility for automatic executions, beginning with a maximum size of 1,000,000 shares.

Given the change to the definition of an "auto ex" order, discussed above, NYSE Rule 13's "auto ex" definition no longer appears to be the appropriate location for this provision. Accordingly, the Exchange proposes to move it to the Direct+ rules, as the first provision under NYSE Rule 1000.<sup>13</sup>

#### Auction Market Orders

As a result of the change in the way market orders will be handled, discussed above, the Exchange proposes to add a definition for "Auction Market Order" to NYSE Rule 13. Conforming changes to NYSE Rules 104(c)(vii), 104(e)(i), 123(e)(7), 123F(b), 132B(a)(9) and 132B(b)(9) are also proposed.

#### Immediate or Cancel ("IOC") Orders

In the Hybrid Market Filings, the Exchange created two types of IOC orders which are defined in NYSE Rule 13. The first type is an IOC order that complies with the SEC's Regulation NMS ("Reg. NMS").<sup>14</sup> A Reg. NMS IOC order would not be routed during an Exchange sweep, if any, to satisfy better priced protected bids or offers<sup>15</sup> displayed by other market centers; rather, a Reg. NMS IOC order would be cancelled and the Exchange sweep would end.

The second type of IOC order is a "NYSE IOC" order. Unlike a Reg. NMS IOC order, a NYSE IOC order permits portions to be routed during a sweep, if any, to other markets to satisfy better priced protected bids or offers and cancels only when once it is no longer able to receive an execution.

In this filing, the Exchange proposes to amend NYSE Rule 13 to reflect that IOC orders discussed in NYSE Rule 13 paragraph (a) are now identified as Regulation NMS-compliant Immediate or Cancel orders.

The Exchange also seeks to amend the definition of a NYSE IOC order to clarify

<sup>13</sup> NYSE Rule 13's definition of "auto ex" order currently has a provision regarding the maximum size of an "auto ex" order applicable only to the Lucent Pilot. See Securities Exchange Act Release No. 53791, *supra* note 8. This part of the rule is designated with a "P." This rule is virtually identical to the proposed rule regarding maximum size, discussed above. However, given the limited applicability of the Lucent Pilot rule and the fact that it has been in place since mid-May, the Exchange does not propose changing its designation.

<sup>14</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7-10-04) (17 CFR parts 200, 201, 230, 240, 242, 249 and 270).

<sup>15</sup> A protected bid and offer is one that meets the definition set forth in Section 242.600(b)(57) of Regulation NMS, 17 CFR 242.600(b)(57).

that Exchange systems will accept NYSE IOC orders for participation in the re-opening trade after a trading halt.

Specifically, NYSE IOC orders received during a trading halt will be systemically maintained in their order of receipt for execution upon the re-opening of the halted security. If a NYSE IOC order is not executed as part of the re-opening trade, the order will be cancelled. This is similar to the way in which IOC orders are handled currently on the Exchange.

#### Stop Orders and Stop Limit Orders

Several changes are proposed to the definition and operation of stop orders, and references to stop limit orders is proposed to be deleted from Exchange rules, including NYSE Rule 13. These changes are discussed in detail below.

#### Modifications to Systemic Processing Stop Orders and Stop Limit Orders

The Exchange is proposing to amend its rules relating to the processing of Stop ("STP") orders and Stop Limit ("STL") orders. These order types require that the stock in question trade at a specified price ("the electing price") before the order becomes capable of execution. Once a transaction is executed on the Exchange at the electing price, the STP or STL order becomes a market order or a limit order, respectively. The proposed amendment seeks to modify the way in which STP orders are handled and processed. It further seeks to eliminate STL orders, which represent a very small percentage of the orders entered on the Exchange.

#### Elimination of Stop Limit Orders

Under the proposed amendments, the Exchange would eliminate STL orders as an acceptable order type, given their infrequent use. Currently STL orders represent a very small percentage of total order flow on the Exchange. For example, on trade dates between March 20, 2006 and March 28, 2006, STL orders represented approximately .028% of the total number of orders entered on the Exchange. Given the relatively small customer demand for this order type, the Exchange proposes to eliminate it in its entirety. Exchange systems would be programmed to reject all STL orders. Existing GTC STL orders would be purged after notice to the entering firm.

Accordingly, the definition of a STL is proposed to be deleted from NYSE Rule 13 and conforming changes eliminating references to STLs are proposed with respect to other definitions within NYSE Rule 13 and NYSE Rules 76, 118(2), 123(e)(7), 124(f),

132B(a)(9) and (b)(9), 750.91 and .92, 476A, and 1004.

#### New Processing of Stop Orders

Today, STP orders are entered primarily through SuperDOT<sup>®</sup><sup>16</sup> and are routed directly to the Display Book ("Book"),<sup>17</sup> where they reside awaiting election. The specialist assigned to each security has the ability to view the prices at which STP orders would be elected and the sizes of such orders. As a result of the specialist's ability to view information that is not available to other market participants, NYSE Rule 123A.40 requires that, in certain circumstances described below, the specialist guarantees the price that elected STP orders receive.

The Exchange proposes to migrate the processing of STP orders away from the Book so that STP orders will no longer be visible to the specialist or available to the specialist's system employing algorithms. Rather, STP orders will be maintained in a "blind file" in order of the time received. The rule has been amended to remove references to STP orders being routed to the Book because, under the proposed STP order processing, Exchange Systems will handle STP orders so that the STP order is not visible to the part of the Book the specialist "sees." When a transaction on the Exchange results in the election of a STP order that had been received prior to such transaction, the elected STP order will be sent as a market order to the Book and the specialist's system employing algorithms and will be handled in the same way as any other market order. This change removes the specialist's ability to view the electing price and size of STP orders. As a result, the specialist will no longer have any unique information regarding STP orders.

In order to maintain the integrity of the blind file, NYSE Rule 115A is being added and NYSE Rule 116.50 amended to prohibit specialists, trading assistants, and anyone on their behalf from using the opening and closing process, proposed below, in a manner designed to inappropriately discover information about unelected STP

<sup>16</sup> SuperDot<sup>®</sup> is an electronic order-routing system used by NYSE member firms to send market and limit orders to the NYSE.

<sup>17</sup> The Book is an order management and execution facility. It receives and displays orders to specialists and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. In addition, the Book is connected to a variety of other NYSE systems for purposes of comparison, surveillance, and reporting information to customers and market data and National Market Systems, such as the Intermarket Trading System, Consolidated Tape and Consolidated Quote.

orders.<sup>18</sup> Accordingly, while it is appropriate and expected that specialists and trading assistants will effect multiple searches to determine appropriate opening and closing prices, to the extent that such prices have been identified, further searches outside the identified prices for the purpose of identifying the election prices and sizes of STP orders would be inappropriate.

Opening and closing procedures on the Exchange will be modified to accommodate the fact that the specialists will no longer be able to determine and account for STP order volume that would be elected by the opening or closing execution. Currently, the specialist calculates the opening price based in part on the STP order volume that will be elected by the opening trade. The opening trade executed by the specialist is reflected in the first print. The STP order volume elected by the opening execution trades at the same price as the open, and is reflected in the second print. Similarly, on the close, the specialist calculates the closing price based in part on the STP order volume that will be elected and the volume of buy and sell market-on-close/limit-on-close (MOC/LOC)<sup>19</sup> orders that will be executed as a result of the closing price.

In order for the specialist to continue to effectively price the opening and the close, the specialist must have an accurate understanding of the total volume of shares available for purchase and sale at the opening price and at the closing price.

On the open, this will be accomplished by the specialist or trading assistant indicating to the system the price at which the specialist contemplates opening the stock. The system will then calculate the volume of shares available for execution on the open at that price, including STP order volume that would be elected by an execution at that price. There will be no indication what, if any, portion of the total volume accounts for STP orders. As a result there will only be one

opening print, and it will include STP orders that are elected by the opening trade.

Similarly, prior to the close, the specialist or trading assistant will indicate to the system the price at which the specialist is contemplating closing the stock. In turn, the system will calculate the volume of shares executable on the close at that price, including STP order volume that would be elected by an execution at that price. Once again, there will be no indication what, if any, portion of the total volume accounts for STP orders. The unelected STP orders will only be included in the total volume of shares available to trade on the close five minutes prior to the close.

The definition of a STP order in NYSE Rule 13 will be amended to reflect these changes and similar conforming changes will be made to NYSE Rules 116.40 and 123C(3)(A).

#### Elimination of Specialist's Guarantee

NYSE Rule 123A.40 requires the specialist to guarantee that elected STP orders receive the same price as the electing sale under certain conditions: Specifically, if the specialist was party to the election of such STP order and his or her bid (offer) had the effect of bettering the market or was part of an electing transaction that was more than 0.10 cents away from the prior transaction price. This rule addressed the fact that specialists have the ability to view the electing prices and sizes of all STP orders present on his or her Book, information that is not generally available to the rest of the market. Requiring the specialist to guarantee the price at which these orders are executed in the circumstances prescribed by NYSE Rule 123A.40 removes any incentive on the part of the specialist to effect proprietary trades that would cause the election of the STP orders inappropriately.

Under the Exchange proposal, the specialists will no longer have access to the electing price and size information for STP orders. Thus, the reason for the price guarantee required by current NYSE Rule 123A.40 will no longer exist and the Exchange proposes its elimination. Conforming changes to NYSE Rules 104.10(5)(ii), 115(iii), and 476A are similarly proposed.

#### Elimination of Floor Official Approval

NYSE Rule 13.30(v) currently requires a specialist to obtain Floor Official approval prior to the execution of a transaction under the circumstances outlined in sections (i), (ii), (iii) and (iv) of the rule, if the bid or offer that would elect the STP order was more than 0.10

point away from the last sale and was being made for the specialist dealer account. Similar to the price guarantee required by NYSE Rule 123A.40, this rule addresses the fact that specialists have information about STP orders that is not generally available to the rest of the market; that is, specialists have the ability to view the electing prices and sizes of all STP orders present on the Book. Requiring the specialist to obtain Floor Official approval prior to the execution of the transaction removes any incentive on the part of the specialist to effect proprietary trades that would cause the election of the STP orders inappropriately.

However, as stated above, under the Exchange proposal, specialists will no longer have access to the electing price and size information for STP orders. Accordingly, their proprietary trading decisions would not be made with knowledge that it would elect STP orders. Therefore, the reason for the Floor Official approval required by current NYSE Rule 13.30(v) will no longer exist, and the Exchange proposes its elimination.

#### Floor Broker STP Order Processing

Under the proposed amendments, a Floor broker will still be permitted to receive and execute STP orders. A Floor broker in receipt of a STP order may transmit the STP order to SuperDOT<sup>®</sup> and that order will be processed and executed as outlined above. Additionally, a Floor broker may choose to manually represent the STP order in the Crowd. However, the Floor broker would be responsible for monitoring for the election of the STP order (*i.e.*, there would be no systemic support for STP orders handled by a Floor broker in the Crowd). As explained above, once the STP order is elected, it becomes a market order, and the Floor broker would be required to appropriately execute such market order. Given the increased pace of order executions, a Floor broker who represents a STP order in the Crowd is at risk of missing the market upon election of such manually-handled STP order.<sup>20</sup> Moreover, STP orders represented by Floor brokers in the Crowd may not be included in a Floor Broker Agency Interest File ("e-Quote"). NYSE Rule 70.20 is proposed to be amended to reflect this.

#### Redefinition of Sweep

NYSE Rule 1000(d) describes the manner in which automatically

<sup>18</sup> The proposed opening and closing processes for STP order handling are not available intraday; therefore, during the trading day, it is not possible for these processes to be employed in a manner designed to inappropriately discover information about unelected STP orders.

<sup>19</sup> A MOC order is a market order, which is to be executed in its entirety at the closing price, on the Exchange, of the stock named in the order, and if not so executed, is to be treated as cancelled. A LOC order is a limit order, which may or may not receive execution on the close depending on the closing price and depth of contra side interest. The term "at the close order" also includes a limit order that is entered for execution at the closing price, on the Exchange, of the stock named in the order, pursuant to such procedures as the Exchange may from time to time establish.

<sup>20</sup> A member or member organization is deemed to have "missed the market" when it has accepted an order for execution and by reason of neglect or otherwise fails to execute an executable order in the prevailing market.

executing orders will trade. Section (iii) of that rule provides that the residual of an automatically executing order will “sweep,” trading with orders on the Book and any broker agency interest files (also referred to as “e-Quotes”) and specialist interest (also referred to as “s-Quotes”) capable of execution in accordance with Exchange rules, at a single price, such price being the best price at which such orders and files can trade with the residual to the extent possible (“clean-up price”).

The Exchange proposes to amend NYSE Rule 1000(d)(iii) to provide that during a sweep, the residual shall trade with all interest at each price capable of trading, before moving to the next price point. Accordingly, instead of a two-price execution (at the Exchange best bid or offer and the sweep clean-up price), a sweeping order may trade at multiple prices. The sweep will be automatic and uninterrupted and will only stop when the sweeping order is filled, its limit price, if any, is reached, a LRP is reached, or, in the case of a Reg. NMS IOC order, trading at a particular price on the Exchange would require cancellation because the order cannot be routed to another market center. At each execution price during the sweep, Floor broker e-Quotes and limit orders on the Book trade on parity. Elected CAP–DI orders will have an opportunity to trade prior to the sweep moving to the next price. Specialist s-Quotes yield to limit orders on the Book at each execution price and thereafter trade on parity with e-Quotes.

The Exchange is proposing this change in response to customers who, while lauding the Exchange’s initial

sweep functionality, which rewards liquidity providers—orders on the Book and in interest files—with price improvement, candidly asserted that they would manage their orders so as not to cause a sweep. Rather, they would send in orders in a manner so that they obtained the benefit of trading at each price available on the Exchange.

Accordingly, the Exchange is proposing to amend NYSE Rules 70.20(d)(i) and (ii), 123A.30(a), and 1000(d)(iii) to reflect the redefined sweep functionality.

Further, NYSE Rule 123A.30(a) has been reworded in order to clarify how and when CAP–DI orders participate in sweeps. Specifically, when an automatically executing order is sweeping the Book on the same side of CAP–DI orders, the orders will be elected at each execution price that is part of the sweep. To the extent that the order sweeping the book has additional volume, the elected same-side CAP–DI orders will not participate in a transaction at the executing price; rather, Exchange Systems will automatically and systemically unelect the CAP–DI orders in accordance with its terms. If, at the last execution price that is part of the sweep, the sweeping order is filled or unable to continue executing, and there is volume remaining on the Book or from contra-side elected CAP–DI orders, then the same-side CAP–DI orders may participate in the final transaction.

CAP–DI orders on the contra-side of an automatically executing order sweeping the Book are also elected at each execution price that is part of the sweep and participate at each of the

execution prices if there is volume available on the Book or from CAP–DI orders on the same side of the market as the sweeping order.

In addition, the Exchange is proposing a technical change to delete a repetitious sentence in NYSE Rule 1000(d)(v) and move the remaining rule text into NYSE Rule 1000(d)(iv).

**Redefinition of Liquidity Replenishment Points (LRPs)**

NYSE Rule 1000(a)(iv) provides that automatic execution is not available when a LRP has been reached, and the order triggering the LRP has been executed to the extent possible at the LRP price. LRP’s may be triggered by a sweep (*i.e.*, the sweep LRP) or automatic executions that result in rapid price movement over a short period (*i.e.*, the momentum LRP).

Given the changes to the sweep functionality described above, and in recognition that LRP’s as originally defined are complex and not easily understood, the Exchange is proposing to modify NYSE Rule 1000(a)(iv) to provide a single, simpler LRP. LRP’s will be calculated by adding and subtracting a value to the security’s last sale price. The LRP values are based on an examination of trading data and vary based on the security’s NYSE average daily volume (“ADV”), price, and volatility. A range of values for each ADV and price category are available to provide the Exchange with sufficient flexibility to ensure that the goal of a LRP is met, without unduly impacting the availability of automatic executions in such security. The proposed LRP ranges are as follows:

Price per share	<\$5	\$5–9.99	\$10–24.99	\$25–49.99	\$50–99.99	\$100–149.99	\$150–199.99	\$200–249.99	\$250–1000.00
ADV:									
< 500,000 shares	0.05 0.10	0.05 0.10	0.10 0.25	0.15 0.35	0.35 0.75	0.60 1.25	1.00 2.00	1.00 2.00	1.00 2.00
500,000–3,999,999 .....	0.05 0.10	0.05 0.10	0.10 0.20	0.10 0.25	0.25 0.50	0.50 1.00	1.00 2.00	1.00 2.00	1.00 2.00
≥ 4,000,000 shares .....	0.05 0.10	0.05 0.10	0.10 0.20	0.10 0.25	0.25 0.50	0.50 1.00	1.00 2.00	1.00 2.00	1.00 2.00

Initially, the lower values in each of the ranges will be used to calculate the LRP’s. For example, for securities with an ADV of 500,000–3,999,999 shares, the LRP values will be as follows: 0.05 for securities priced through \$9.99; 0.10 for securities priced from \$10.00 through 49.99; 0.25, for securities priced from \$50.00 through \$99.99; 0.50 for securities priced from \$100.00 through 149.99; and 1.00 for securities priced

\$150.00 or more. As the Exchange gains more experience in how these securities trade in the Hybrid Market, the higher value in a particular price category may be used instead. The values used to calculate LRP’s and LRP’s themselves will be disseminated by the Exchange.

The value used to calculate the LRP’s range will not change. LRP’s for a security will not be calculated until there is a trade on the Exchange;

accordingly, if the security opens on a quote and there are no trades on the NYSE, LRP’s will not be set.

LRP’s are volatility controls and, as such, are meant to be triggered infrequently, when there has been a large price movement (based on a security’s typical trading characteristics) over a short period of time. If the price of the security stays within the LRP range, the LRP will not be triggered. If

the price moves to the LRP in a short period of time, automatic executions will pause for one manual trade, and will then resume, with a newly calculated LRP range.

LRPs will be calculated automatically throughout the day, as follows:

- At specified time intervals (e.g., every few minutes throughout the day), as the Exchange shall determine from time to time;
- After a manual trade by the specialist; and
- When automatic executions resume after an LRP has been reached.<sup>21</sup>

Initially, LRPs will be calculated every thirty seconds during the trading day.

Further, the Exchange proposes to amend the time in which automatic executions and autoquote resume after an LRP is triggered, when the NYSE market is not locked or crossed. Currently, NYSE Rule 60(e)(ii)(C) provides that after an LRP is triggered, autoquote will resume as soon as possible or in no more than five seconds, provided the NYSE market is not locked or crossed. The Exchange proposes to amend this rule to provide that autoquote will resume in five to ten seconds. Initially, the ten second period will be used; as the Exchange gains experience in the effect of LRPs on the market in Hybrid, the time will be reduced to five seconds.

In addition to NYSE Rules 1000(a)(iv) and 60(e)(ii)(C), the following rules have also been amended to reflect the changes discussed above: NYSE Rules 60(e)(iii) and (iv), 72(j)(i) and (ii), and 1000(c).

#### Miscellaneous

##### NYSE Rule 60(e)

Currently, NYSE Rule 60(e)(iv)(c) provides, among other things, that when autoquote is suspended pursuant to a gap quote (NYSE Rule 60(e)(i)(A)), it will nevertheless continue to update the quote as specified therein. The Exchange is proposing to delete the reference to NYSE Rule 60(e)(i)(A) to correct this provision, as autoquote does not continue to update the quote when it has been gapped in accordance with Exchange procedures. Rather, in gap quote situations, autoquote is suspended on both sides of the market and resumes with a manual transaction or the publication of a non-gapped quote.

<sup>21</sup> Automatic executions resume after an LRP has been reached: (i) Automatically in 5 seconds where the NYSE is not locked or crossed; (ii) by a manual trade; or (iii) by manually resuming autoquote.

##### NYSE Rule 72

NYSE Rule 72 has been amended to remove the discussion of the priority and parity of residual interest at the momentum liquidity replenishment point to conform to the redefinition of LRPs as previously discussed herein.

##### NYSE Rule 76

NYSE Rule 76 has been amended to provide that the crossing requirement does not apply to automatic executions. This rule was designed originally to provide an opportunity for price improvement to buy and sell orders represented by the same member. Under the current rule, the member is required to clearly announce his or her offer at a price higher by the minimum variation than his or her bid before crossing such orders, to enable the Crowd to trade with the order at such bid or offer price, thereby providing price improvement to the order. NYSE Rule 76 does not apply to bonds traded in ABS<sup>®</sup>,<sup>22</sup> the Exchange's automated execution facility for bond trading, as there is no verbal Crowd participation with respect to bond trading. Similarly, automatic executions via Direct +<sup>®</sup> do not allow for verbal Crowd participation. The rule will continue to apply to auction market transactions.

“High-Priced Securities”—NYSE Rules 1000(a)(vi) and 60(e)(iv)(b)(i)

The Exchange is proposing to redefine “high-priced” securities from those trading above \$300.00 to those trading above \$1,000.00. Exchange rules provide that automatic executions will be unavailable in securities trading at \$300.00 or more. However, a \$300.00 threshold encompasses securities with sufficient trading volume where automatic executions would be appropriate, such as Chicago Mercantile Exchange (“CME”).

#### Implementation Schedule

As noted above, the implementation of the Hybrid Market is underway. The next phase—Phase 3—is scheduled to be implemented in or about early October 2006. Approval of this filing and the changes discussed herein is necessary for the implementation of Phase 3. Phase 3 will include the features previously approved by the Hybrid Market implementation schedule<sup>23</sup> and the following additional changes:

- Elimination of Direct+ suspension when a better bid or offer is displayed by another market center

<sup>22</sup> ABS<sup>®</sup> is being renamed “NYSE Bonds<sup>SM</sup>”

<sup>23</sup> See Hybrid Order, supra note 6.

- Implementation of sweeps (as redefined herein);
- Implementation of LRP (as redefined herein);
- Implementation of new stop order processing (as discussed herein);
- Exchange Rule 1002 (“Availability of Automatic Execution Feature”) will be available for all stocks through the close upon implementation of Phase 3 of the Hybrid Market.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>25</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change, as amended, is also designed to support the principles of Section 11A(a)(1) of the Act,<sup>26</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.<sup>27</sup>

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78k-1(a)(1).

<sup>27</sup> The Commission notes that it has received one comment letter. See letter from George Rutherford daed September 10, 2006.

(ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-65 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro/shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR-NYSE-2006-65 and should be submitted on or before October 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

Nancy M. Morris,

Secretary.

[FR Doc. 06-8397 Filed 9-27-06; 12:12 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54480; File No. SR-NYSE-2006-72]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change, as Amended, Relating to Exchange to Exchange Billing Under the Linkage Plan

September 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 25, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On September 7, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is approving the proposal, as amended, on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit the Exchange to bill directly, and to accept direct billing from, other participants in the proposed "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934" ("Linkage Plan") that are unable to implement Sponsoring Member billing, as described herein, on October 1, 2006.

This proposal does not require changes to the Exchange's rule text.

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240. 19b-4.

<sup>3</sup> See Amendment No. 1 which replaced the original filing in its entirety.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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 III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.<sup>4</sup>

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

On July 17, 2006, the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the Chicago Stock Exchange, Inc., The NASDAQ Stock Market LLC, the National Stock Exchange, the New York Stock Exchange LLC, and the NYSE Arca, Inc., executed and filed with the Commission the Linkage Plan. The Philadelphia Stock Exchange, Inc. ("Phlx") subsequently executed the Linkage Plan on August 1, 2006.<sup>5</sup> The Linkage Plan was filed with the Commission pursuant to Rule 608 of Regulation NMS under the Act.<sup>6</sup> The purpose of the proposed Linkage Plan is to enable the Linkage Plan participants to act jointly in planning, developing, operating and regulating the NMS Linkage System ("Linkage") that will electronically link the Linkage Plan Participant Markets to one another, as described in the Linkage Plan. The Linkage Plan participants have requested that the Commission approve the Linkage Plan by October 1, 2006. The Plan would run concurrently with the ITS Plan from October 1, 2006 until February 5, 2007.<sup>7</sup> The Linkage Plan by its terms ends on June 30, 2007;

<sup>4</sup> The staff has made minor changes to the Exchange's summaries pursuant to the telephone conversation between Karen Lorentz, Managing Director, Competitive Analysis, NYSE, and Nataliya Cowen, Special Counsel, Division of Market Regulation, Commission, on September 15, 2006.

<sup>5</sup> See Securities Exchange Act Release No. 54239 (July 28, 2006); 71 FR 44328 (August 4, 2006). A Linkage Plan, dated August 1, 2006, reflecting Phlx's inclusion as a Linkage Plan participant, was sent to the Commission on August 8, 2006.

<sup>6</sup> 17 CFR 242.608.

<sup>7</sup> The Linkage Plan participants have requested that the Commission grant appropriate exemptions from the ITS Plan to accommodate this result. See letter to Nancy Morris, Secretary, Commission, from Robert Hill, Chairman, ITS Operating Committee, dated September 18, 2006.

however, if the Linkage Plan participants wish to extend the term they could agree to do so, subject to Commission approval.<sup>8</sup>

The Linkage Plan provides that orders must be sent to a Participant Market through the auspices of a member of that Participant Market ("Sponsoring Member"). An order entered through the Linkage must specify the member of the destination market (either clearing member or default Sponsoring Member). Pursuant to the Linkage Plan, each market should maintain within the facilities of the Securities Industry Automation Corporation ("SIAC"), the facilities manager for the Linkage, a database of default Sponsoring Members for after-hours processing and billing for orders sent to a market where the originating firm is not a member of the market to which the order is sent for execution.

Historically, ITS Plan Participants have not imposed transaction charges for executions of commitments delivered through ITS, although the ITS Plan does not prohibit such charges. Under the Linkage Plan, each participant would be accessed through its own members and could charge for orders executed in its market through the Linkage. The destination market would bill the clearing or Sponsoring Member for executions in that market, pursuant to that market's transaction fee schedule,<sup>9</sup> based on the monthly reports provided by SIAC.<sup>10</sup> Certain markets, however, may be unable to supply clearing or Sponsoring Member information on orders routed through the Linkage to other markets by October 1, 2006. In this case, the Linkage Plan participants have agreed to bill each other directly, based on data supplied by SIAC.<sup>11</sup>

<sup>8</sup> Upon implementation of Rule 611 on February 5, 2007, the ITS Plan Participants expect to have submitted an amendment to eliminate the ITS Plan.

<sup>9</sup> The NYSE will bill for such executions on the NYSE in accordance with the NYSE's current transaction fee schedule. See Securities Exchange Act Release No. 54142 (July 13, 2006), 71 FR 41493 (July 21, 2006) (SR-NYSE-2006-46).

<sup>10</sup> Under the Linkage Plan, the member of the destination market would be identified by a unique clearing number. If the clearing number provided by the originating Participant Market does not identify a member of the destination market, SIAC will identify the default Sponsoring Member of the originating market at the destination market for the security in question and that Sponsoring Member's identification information will be included on the order to the destination market on all reports sent to the destination market, including any report for billing purposes. The member identified on the order will be responsible for any fees in the destination market. SIAC will provide to Participants a key to match the clearing number to the member's name.

<sup>11</sup> The National Association of Securities Dealers, Inc. ("NASD") is not a member of the Linkage Plan.

*Example:* A member of a self-regulatory organization ("SRO") A that is not a member of SRO B sends an order through the Linkage to SRO B for execution. In routing the transaction through the Linkage, SRO A is unable to include Sponsoring Member information on the report. The transaction will be included in a monthly report provided to SRO B by SIAC (without identifying Sponsoring Member information), and SRO B may bill SRO A directly for the transaction in accordance with SRO B's transaction fee schedule applicable to the Linkage.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on this proposal.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

In lieu of direct billing to or by the NASD, Linkage Plan participants expect to bill Alternative Display Facility ("ADF") market participants directly and would be directly billed by ADF market participants, based upon data supplied by SIAC.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-72 on the subject line.

## Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-72 and should be submitted on or before October 20, 2006.

## IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.<sup>14</sup> In particular, the Commission finds that the proposal, as amended, is consistent with the

<sup>14</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

provisions of Section 6(b)(5),<sup>15</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

The Linkage Plan, the purpose of which is to enable its participants to act jointly in planning, developing, operating and regulating the NMS Linkage System electronically linking the Linkage Plan Participant Markets to one another, is expected to become operative on October 1, 2006. The Linkage Plan provides for a mechanism for charging for orders executed in each Participant Market using the information about a clearing or Sponsoring Member. Certain markets have indicated that they may be unable to supply clearing or Sponsoring Member information on orders routed through the Linkage to other markets, thus under the proposed rule change, which the Commission understands will be adopted by each of the Linkage Plan participants, the participants have agreed to bill each other directly, based on data supplied by SIAC.

The Exchange has requested that the Commission approve the proposed rule change, as amended, on an accelerated basis. The Exchange notes that the Linkage Plan participants expect the Linkage Plan to become operative on October 1, 2006, and that accelerated approval would permit the Exchange to implement exchange to exchange billing procedures at the start of the Linkage Plan's operation, allowing Linkage Plan participants who do not have a Sponsoring Member at each destination market, to use the Linkage Plan and pay fees directly to the other Linkage Plan participant.<sup>16</sup>

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Granting accelerated approval would permit the Exchange to implement exchange to exchange billing

procedures at the start of the Linkage Plan's operation enabling Linkage Plan participants who were not able to find a Sponsoring Member at each of the destination markets, to use the Linkage Plan and pay fees directly to another Linkage Plan participant.

Accordingly, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,<sup>18</sup> to approve the proposed rule change, as amended, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change, as amended, (SR-NYSE-2006-72) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-15986 Filed 9-28-06; 8:45 am]

BILLING CODE 8010-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54488; File No. SR-SCCP-2006-02]

#### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of a Proposed Rule Change Relating to the Definition of a Margin Member

September 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 14, 2006, Stock Clearing Corporation of Philadelphia ("SCCP") 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 SCCP. 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 would amend the definition of "margin member" in SCCP Rule 1, Definitions, to accommodate the proposed introduction of equity Market Makers on the Philadelphia Stock Exchange ("Phlx")

and to reflect the proposed introduction of Phlx's new equity trading system, XLE, which will replace Phlx's equity trading floor.<sup>2</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to conform SCCP's Rules to the proposed change that the Phlx is making to its market structure through the introduction of XLE and market makers. Phlx has proposed to eliminate its equity trading floor and to replace it with an electronic trading system, XLE, which will provide for the entry, display, ranking, routing, and execution of orders in NMS stocks<sup>4</sup> for its members and member organizations ("XLE Participants"). As proposed by Phlx, the current equity specialists would be replaced by market makers, a type of XLE Participant, which would be liquidity providers on XLE.<sup>5</sup>

SCCP Rule 1, Definitions, currently defines "margin members" as SCCP participants that are Phlx specialists, alternate specialists, or other Phlx floor members specifically approved by the National Securities Clearing Corporation to effect trading in a margin account. Margin members that clear and settle their transactions through SCCP's "omnibus clearance and settlement account" at NSCC receive margin accounts from SCCP.<sup>6</sup> SCCP expects that many of its current margin members

<sup>2</sup> Securities Exchange Act Release No. 54329 (August 17, 2006), 71 FR 50482, (August 25, 2006) [File No. SR-Phlx-2006-43].

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> 17 CFR 242.600(b)(47).

<sup>5</sup> As proposed by Phlx, not every security on XLE will require a market maker. However, if a market maker or multiple market makers choose to register in a security, they must provide a two-sided market in that security on XLE during regular trading hours (usually 9:30 a.m. to 4 p.m.) of the security. Therefore, some securities on XLE may have no market makers or may have one or more market makers.

<sup>6</sup> SCCP Rule 9, Margin Accounts.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> The Commission understands that each of the Linkage Plan participants will file a proposed rule change similar to this one. To date, the Amex and the Phlx have done so. See file nos. SR-Amex-2006-85 and SR-Phlx-2006-58.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

that are Phlx specialists, alternate specialists, or other Phlx floor members would become XLE Participants, including market makers, upon approval of XLE. This proposed rule change would amend the definition of margin member in SCCP's rules to add the term market maker<sup>7</sup> and to remove the word floor from the term Phlx floor member. This would allow SCCP members that are currently margin members under Rule 1 of SCCP's rules to maintain their status as margin members following Phlx's transition to XLE.

SCCP believes that the proposed rule change is consistent with Section 17A of the Act<sup>8</sup> because the proposed rule change is designed to allow current SCCP Margin Members to maintain their status as they transition from the current floor based trading environment on Phlx to an electronic trading system, XLE, and would thereby promote the prompt and accurate clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

SCCP does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-SCCP-2006-02 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-SCCP-2006-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP and on SCCP's Web site at [http://www.phlx.com/SCCP/memindex\\_sccpproposals.html](http://www.phlx.com/SCCP/memindex_sccpproposals.html). 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-SCCP-2006-02 and should be submitted on or before October 20, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-15984 Filed 9-28-06; 8:45 am]

BILLING CODE 8010-01-P

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

[STB Finance Docket No. 34929]

**Jeffrey L. Sutch—Continuance in Control Exemption—SMS Rail Lines of New York, LLC**

Jeffrey L. Sutch (applicant) has filed a verified notice of exemption to continue in control of SMS Rail Lines of New York, LLC (SMSNY), upon SMSNY's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or after September 8, 2006.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34928, *SMS Rail Lines of New York, LLC—Acquisition and Operation Exemption—Northeastern Industrial Park, Inc.* In that proceeding, SMSNY seeks to acquire by lease from Northeastern Industrial Park, Inc., and to operate approximately 15 miles of rail line in Albany County, NY.

Applicant is a noncarrier that currently controls SMS Rail Service, Inc. (SMSRS), a Class III rail carrier. Applicant states that: (1) The rail lines operated by SMSRS do not connect with the rail line being acquired by lease and operated by SMSNY; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line being acquired by lease and operated by SMSNY with applicant's rail lines or with those of any other railroad within applicant's corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2). The purpose of the transaction is to allow applicant to continue in control of SMSNY after SMSNY becomes a Class III rail carrier.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail

<sup>7</sup> The proposed rule change File No. SR-Phlx-2006-43 would define the term "market maker" in Phlx Rule 1, Definitions, paragraph (m). It would also add new rules 170 through 174 to set forth the registration requirements, rights, and obligations of Phlx market makers.

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 17 CFR 200.30-3(a)(12).



carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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. 34929, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn, PC, 1920 N St., NW., Eighth Floor, Washington, DC 20036-1601.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: September 22, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-16037 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Baker & Miller, on behalf of the University of Denver's Intermodal Transportation Institute (WB981-7/28/06), for permission to use certain data from the Board's 1987-2005 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-16038 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Mayer, Brown, Rowe & Maw on behalf of The BNSF Railway Company (BNSF) (WB461-13-8/31/2006) for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-16039 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Michael Behe representing FRN, LLC (WB604-4-7/6/06) for permission to use certain data from the Board's 2005 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-16041 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### Release of Waybill Data

The Surface Transportation Board has received a request from Schmeltzer, Aptaker & Shepard, P.C. on behalf of Trinity Industries, Inc. (WB605-2-7/28/2006) for permission to use certain data from the Board's 2005 Carload Waybill Sample. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Mac Frampton, (202) 565-1541.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-16042 Filed 9-28-06; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34924]

#### **Black Hills Transportation, Inc., d/b/a Deadwood, Black Hills & Western Railroad—Modified Rail Certificate**

On August 30, 2006, Black Hills Transportation, Inc., d/b/a Deadwood, Black Hills & Western Railroad (DBHWR), filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate approximately 9.01 miles of rail line extending from milepost 0.0, at Whitewood, to milepost 9.01, at Deadwood, in Lawrence County, SD.

The line was formerly a portion of the Chicago & North Western Railway Company and was authorized for abandonment by the Interstate Commerce Commission in *Chicago & North Western Railway Co.—Abandonment—Lawrence County, SD*, Finance Docket No. 26079 (ICC served May 20, 1970). Although authorized for abandonment, the line was subsequently acquired by the State of South Dakota and ownership was

ultimately passed to the Northern Hills Regional Railroad Authority (NHRRA).

As operator of the line, DBHWR will provide both passenger and freight services pursuant to an operating agreement with NHRRA. Under the agreement, DBHWR expects to interchange with Dakota, Minnesota & Eastern Railroad at milepost 0.0, at Whitewood. DBHWR states that the period for operation is currently indefinite and that the agreement with NHRRA will be amended or supplanted prior to actual commencement of operations.

The rail segment qualifies for a modified certificate of public convenience and necessity. See *Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

DBHWR states that the line will require reconstruction for operational purposes and the imposition of certain preconditions to ensure that construction and operation costs are recoverable. DBHWR indicates that commencement of rehabilitation or operations will be contingent upon shippers meeting the following preconditions: (a) Entry into binding written commitments to provide funding for restoration purposes equal to a sum no less than \$13,000,000;<sup>1</sup> and (b) entry into binding written commitments sufficient to assure car loadings (or payments in lieu thereof) in an amount no less than 1,000 carloads per year (an amount judged adequate to cover all costs associated with maintenance, operation and capitalization of the line).

DBHWR indicates that no subsidy is involved. DBHWR also indicates that it

<sup>1</sup> This sum may be increased in the event a third party engineering study identifies needs requiring a greater amount of rehabilitation necessary to improve the facilities in order to achieve 25 mph operation in accordance with applicable standards.

has obtained liability insurance coverage, and will obtain additional insurance when it commences rehabilitation or actual operation.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, NW., Suite 7020, Washington, DC 20001.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: September 21, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-15955 Filed 9-28-06; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34928]

#### **SMS Rail Lines of New York, LLC— Acquisition and Operation Exemption—Northeastern Industrial Park, Inc.**

SMS Rail Lines of New York, LLC (SMSNY), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease from Northeastern Industrial Park, Inc., and to operate approximately 15 miles of rail line in the Northeastern Industrial Park, Guilderland Center 12085, Albany County, NY.<sup>1</sup>

<sup>1</sup> The rail lines extend from connections with the Canadian Pacific Railway at milepost 11.4 on the railroad's Vorheesville Running Track. There is a

This transaction is related to STB Finance Docket No. 34929, *Jeffrey L. Sutch—Continuance in Control Exemption—SMS Rail Lines of New York, LLC*, wherein Jeffrey L. Sutch has concurrently filed a verified notice of exemption to continue in control of SMSNY, upon its becoming a Class III rail carrier.<sup>2</sup>

SMSNY certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed \$5 million. The transaction was scheduled to be consummated on or after September 8, 2006.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34928, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn, PC, 1920 N St., NW., Eighth Floor, Washington, DC 20036-1601.

Board decisions and notices are available on our Web site at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: September 22, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. E6-16036 Filed 9-28-06; 8:45 am]

**BILLING CODE 4915-01-P**

separate connection with a rail line of CSX Transportation, Inc.

<sup>2</sup> Mr. Sutch also controls SMS Rail Service, Inc., a Class III rail carrier.



# Federal Register

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**Friday,  
September 29, 2006**

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**Part II**

## **Department of Health and Human Services**

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**Centers for Medicare & Medicaid Services**

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**Medicare and Medicaid Programs;  
Quarterly Listing of Program Issuances—  
April Through June 2006; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-9036-N]

#### Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2006

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from April 2006 through June 2006, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations (NCDs) affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. This notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations and a list of Medicare-approved carotid stent facilities. In addition, for the first time, we are also including a list of the American College of Cardiology's National Cardiovascular Data registry sites, active CMS coverage-related guidance documents, and special one-time notices regarding national coverage provisions.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

**FOR FURTHER INFORMATION CONTACT:** It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of

this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Timothy Jennings, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-2134.

Questions concerning Medicare NCDs in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to John Manlove, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1-13-04, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-6877.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Melissa Musotto, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-6962.

Questions concerning Medicare-approved carotid stent facilities in Addendum VIII may be addressed to Sarah J. McClain, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-2994.

Questions concerning Medicare's recognition of the American College of Cardiology-National Cardiovascular Data Registry sites in Addendum IX may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-7205.

Questions concerning Medicare's active coverage-related guidance documents in Addendum X may be addressed to Kimberly Long, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-5702.

Questions concerning one-time notices regarding national coverage provisions in Addendum XI may be

addressed to Ellie Lund, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-2281.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C5-14-03, 7500 Security Boulevard, Baltimore, MD 21244-1850, or you can call (410) 786-6954.

#### SUPPLEMENTARY INFORMATION:

##### I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

##### II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda,

substantive and interpretive regulations, NCDs, and FDA-approved IDEs published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare NCD Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into eight addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.

- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.

- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—

- Date published;
- **Federal Register** citation;
- Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);

- Agency file code number; and
- Title of the regulation.

- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.

- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category

A or Category B), and identified by the IDE number.

- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.

- Addendum VIII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients.

- Addendum IX includes a list of the American College of Cardiology's National Cardiovascular Data registry sites. We cover implantable cardioverter defibrillators (ICDs) for certain indications, as long as information about the procedures is reported to a central registry.

- Addendum X includes a list of active CMS guidance documents. As required by section 731 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108-173, enacted on December 8, 2003), we will begin listing the current versions of our guidance documents in each quarterly listings notice.

- Addendum XI includes a list of special one-time notices regarding national coverage provisions. We are publishing a list of issues that require public notification, such a particular clinical trial or research study that qualifies for Medicare coverage.

### III. How To Obtain Listed Material

#### A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954, Telephone (202) 512-1800, Fax number (202) 512-2250 (for credit card orders); or National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487-4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: <http://cms.hhs.gov/manuals/default.asp>.

#### B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access*. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is <http://www.gpoaccess.gov/fr/index.html>, by using local WAIS client software, or by telnet to [swais.gpoaccess.gov](mailto:swais.gpoaccess.gov), then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512-1661; type swais, then log in as guest (no password required).

#### C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is <http://cms.hhs.gov/rulings>.

#### D. CMS, Compact Disk-Read Only Memory (CD-ROM)

Our laws, regulations, and manuals are also available on CD-ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717-139-00000-3. The following material is on the CD-ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.

- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 2005. (Updated titles of the Social Security Laws are available on the Internet at [http://www.ssa.gov/OP\\_Home/ssact/comp-toc.htm](http://www.ssa.gov/OP_Home/ssact/comp-toc.htm).) The

remaining portions of CD-ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD-ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD-ROM.

Any cost report forms incorporated in the manuals are included on the CD-ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

**IV. How To Review Listed Material**

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most

Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare NCD publication titled "Cardiac Rehabilitation Programs," use CMS-Pub. 100-03, Transmittal No. 52.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: September 16, 2006.

**Jacquelyn Y. White,**

*Director, Office of Strategic Operations and Regulatory Affairs.*

**Addendum I**

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

- March 26, 2004 (69 FR 15837)
- June 25, 2004 (69 FR 35634)
- September 24, 2004 (69 FR 57312)
- December 30, 2004 (69 FR 78428)
- February 25, 2005 (70 FR 9338)
- June 24, 2005 (70 FR 36620)
- September 23, 2005 (70 FR 55863)
- December 23, 2005 (70 FR 76290)
- March 24, 2006 (71 FR 14903)
- June 23, 2006 (71 FR 36101)

**Addendum II—Description of Manuals, Memoranda, and CMS Rulings**

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

**ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS**  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
<b>Medicare General Information (CMS—Pub. 100-01)</b>	
37 .....	Scheduled Release for July 2006 Software Programs and Pricing/Coding Files.
38 .....	Files Maintenance Program Update to the Internet-Only Manual. Files Maintenance. Files Maintenance Program—General. Description of Records Maintained. Definition of a Record. Implementing a Files Management Program. Record Retention and Disposal Schedule. Disposition Instructions—Destruction of Records. Disposition Instructions When Operating Under a Freeze. Disposition Instructions When Medicare Records Are Microfilmed. Disposition for Paper-Only Medicare Records. Disposition for Medicare Records That Are Imaged/Scanned. Disposition for Medicare Records When Potential Fraud or Overutilization Has Been Identified. Description of Records. Retention of Claims File Materials. Segment File Accumulation Period. Standard Retention Periods—Microfilmed Claims. Retention Period Microfilmed Material. Microfilming of Files Material. Microfilming Procedures. Microfilming Index Label. Retention and Destruction of Microfilm. Annual Report of Medicare Records. Disposition of Non-Claims Materials. Standards for All Records Storage Facilities.
39 .....	Update—Inpatient Psychiatric Facilities Prospective Payment System Rate Year 2007. Inpatient Psychiatric Facility Services Certification and Recertification.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
<b>Medicare Benefit Policy (CMS—Pub. 100–02)</b>	
50 .....	Immunosuppressive Therapy For Kidney Transplant.
51 .....	Physicians Services for Kidney Transplants. Requirements for Diagnostic X-Ray, Diagnostic Laboratory, and Other Diagnostic Tests; Clinical Psychologist Services.
52 .....	Types of Clinical Psychologist Services That May Be Covered. Therapy Caps Exception Process. Coverage of Outpatient Rehabilitation Therapy Services (Physical Therapy, Occupational Therapy, and Speech-Language Pathology Services) Under Medical Insurance. Documentation Requirements for Therapy Services.
<b>Medicare National Coverage Determinations (CMS—Pub. 100–03)</b>	
51 .....	Nesiritide for Treatment of Heart Failure Patients.
52 .....	Cardiac Rehabilitation Programs.
53 .....	Clarification on Billing Requirements for Percutaneous Transluminal.
54 .....	Angioplasty Concurrent With the Placement of an Investigational or FDA-Approved Carotid Stent. Bariatric Surgery for Treatment of Morbid Obesity. Treatment of Obesity (Effective February 21, 2006). Bariatric Surgery for Treatment of Morbid Obesity (Effective February 21, 2006).
55 .....	Changes Conforming to CR3648 for Therapy Services. Neuromuscular Electrical Stimulator. Speech-Language Pathology Services for the Treatment of Dysphagia. Home Health Visits to a Blind Diabetic.
56 .....	Pancreas Transplants Alone. Pancreas Transplants (Effective April 26, 2006).
57 .....	Home Use of Oxygen in Approved Clinical Trials. Home Use of Oxygen in Approved Clinical Trials (Effective March 20, 2006).
58 .....	Intestinal and Multi-Visceral Transplantation.
59 .....	Non-Autologous Blood Derived Products for Chronic Non-Healing Wounds. Blood-Derived Products for Chronic Non-Healing Wounds (Effective April 27, 2006).
60 .....	Lumbar Artificial Disc Replacement.
<b>Medicare Claims Processing (CMS Pub. 100–04)</b>	
900 .....	Update to Chapter 24 CMS Web site URL References. Electronic Data Interchange User Guidelines. General Health Insurance Portability Accountability Act Electronic Data Interchange Requirements. Continued Support of Pre-Health Insurance Portability Accountability Act Electronic Data Interchange Formats.
901 .....	New National Uniform Billing Committee Codes and Other Chapter 25 Revisions—Revision to the Internet-Only Manual.
902 .....	Hospital Outpatient Prospective Payment System Manual Revision: Clarification of Coding and Payment for Drug Administration. Coding and Payment for Drug Administration.
903 .....	Payment for Blood Clotting Factors Administered to Hemophilia Inpatients. Non Pass-Through Drugs.
904 .....	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
905 .....	This Transmittal is rescinded and replaced by Transmittal 913.
906 .....	Full Replacement for Change Request 4266, Revision for Health Professional Shortage Area and Physician Scarcity Area Bonus Billing for Some Globally Billed Services. Change Request 4266 is rescinded. Services Eligible for Health Professional Shortage Area and Physician Scarcity Bonus Payment.
907 .....	Modify Common Working File Edit 51#L.
908 .....	Common Working File to the Medicare Beneficiary Database Data Exchange Changes. The Financial Limitation. Provider Access to Smoking and Tobacco-Use Cessation Counseling. Service Eligibility Data.
909 .....	Cardiac Rehabilitation Programs. Coding Requirements.
910 .....	New Current Procedural Terminology Codes.
911 .....	Clarification on Billing Requirements for Percutaneous Transluminal Angioplasty Concurrent With the Placement of an Investigational or FDA-Approved Carotid Stent. Percutaneous Transluminal Angioplasty for Implanting the Carotid Stent. Category B Investigational Device Exemptions Trial Coverage. Post Approval Study Coverage. Carotid Artery Stenting With Embolic Protection Coverage.
912 .....	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
913 .....	Mammography Quality Standard Act File.
914 .....	Additional \$50 Payment for New Technology Intraocular Lenses Furnished in Ambulatory Surgical Centers. Ambulatory Surgical Center Services on Ambulatory Surgical Center List Payment for Intraocular Lenses.
915 .....	Common Working File, Viable Medicare Systems and Fiscal Intermediary Shared System Analysis—Changes in Payment for Oxygen Equipment due to the Deficit Reduction Act of 2005.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
916 .....	Correct Reporting of Diagnosis Codes on Screening Mammography Claims. Healthcare Common Procedure Coding System and Diagnosis Codes for Mammography Services. Billing Requirements—Fiscal Intermediary Claims.
917 .....	Update of ICD-9 Codes Used in Common Working File Editing of Oral Anti-Cancer and Oral Anti-Emetic Drugs.
918 .....	General Provider Education for Changes in the Payment for Oxygen Equipment and Capped Rentals for Durable Medical Equipment Based on the Deficit Reduction Act of 2005.
919 .....	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
920 .....	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
921 .....	Reporting of Diagnosis Code V06.6 on Influenza Virus and/or Pneumococcal Pneumonia Virus Vaccine Claims and Acceptance of Current Procedural Terminology Code 90660 for the Reporting of the Influenza Virus Vaccine. Healthcare Common Procedure Coding System and Diagnosis Codes.
922 .....	Medicare Summary Notice Format Changes for Durable Medical Equipment Regional Carriers and the Durable Medical Equipment Maximum Allowable Charge. Title Section of the Medicare Summary Notice. Appeals Section.
923 .....	Update of Radiopharmaceutical Imaging Agents Healthcare Common. Procedure Coding System Codes Applicable to Positron Emission Tomography Tracer Codes Required for Positron Emission Tomography Scans.
924 .....	Adjustment to Health Professional Shortage Area Contractor Zip Code File Indicators.
925 .....	Installation of July Pricing Software Containing the Customer Information Control System Formatting Update.
926 .....	Common Working File Change for Skilled Nursing Facility Consolidated Billing. Annual Update Process.
927 .....	Medicare Remit Easy Print Update.
928 .....	July Quarterly Update for 2006 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule.
929 .....	Viable Medicare System and Fiscal Intermediary Shared System Analysis—Changes in Capped Rentals for Durable Medical Equipment Due to the Deficit Reduction Act of 2005.
930 .....	Benefits Exhaust and No-Payment Billing Instructions for Medicare Fiscal Intermediaries and Skilled Nursing Facilities. Inpatient Billing From Hospitals and Skilled Nursing Facilities. Total and Noncovered Charges. Ending a Benefit Period. Billing in Benefits Exhaust and No-Payment Situations. Other Billing Situations.
931 .....	Billing Requirements for Bariatric Surgery for Treatment for Morbid Obesity. General. Healthcare Common Procedure Coding System Coding for Bariatric Procedures. ICD-9/Diagnosis Codes for Bariatric Surgery. Reasons for Denial and Medicare Summary Notice, Remittance. Advice Codes and Claims Adjustment Reason Code Messages. Fiscal Intermediary Billing Requirements. ICD-9 Procedure Codes for Bariatric Procedures. Non-Covered ICD-9 Procedure Code for Bariatric Surgery. Advance Beneficiary Notice and Hospital-Issued Notice of Noncoverage Information. Competitive Acquisition Program for Part B Drugs Physician Election.
932 .....	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
933 .....	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction.
934 .....	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction.
935 .....	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction.
936 .....	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction.
937 .....	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction.
938 .....	The Inpatient Rehabilitation Facility Prospective Payment System. Criteria That Must Be Met By Inpatient Rehabilitation Hospitals. Counting a Comorbidity as one of the Listed Medical Conditions. Verification Process Used To Determine if the Inpatient Rehabilitation Facility Met the Classification Criteria. New and Converted Inpatient Rehabilitation Facility Units.
939 .....	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction.
940 .....	This Transmittal is rescinded and replaced by Transmittal 944.
941 .....	Changes Conforming to CR 3648 Instructions for Therapy Services. Billing Procedures for Entities Qualified to Receive Payment on Basis of Reassignment—for Carrier Processed Claims. Payment for Services Furnished After Termination, Expiration, or Cancellation of Provider Agreement. When Beneficiary Statement Is Not Required for Physician/Supplier Claim. Frequency of Billing for Outpatient Services to Fiscal Intermediaries. Time Limitation of Claims for Outpatient Physical Therapy or Speech Language Pathology Services Furnished by Clinic Providers. Carrier Specific Requirements for Certain Specialties/Services. Definition of Provider and Supplier. Provider Access to CMS and Carrier or Fiscal Intermediary Eligibility Data. Non-emergency Part B Medical and Other Health Services. Criteria That Must Be Met By Inpatient Rehabilitation Hospitals Background.



ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
	<p>Inpatient Part B Hospital Services. Healthcare Common Procedure Coding System Coding Requirement Reporting of Service Units With Healthcare Common Procedure Coding System—Form CMS-1500 and Form CMS-1450. Applicable Revenue Codes—Fiscal Intermediaries. Proper Reporting of Code G0128 by Comprehensive Outpatient. Rehabilitation Facilities—Fiscal Intermediaries. Consolidated Billing Requirement for Skilled Nursing Facilities. Types of Services Subject to the Consolidated Billing Requirement for Skilled Nursing Facilities. Furnishing Services That Are Subject to Skilled Nursing Facility. Consolidated Billing Under an “Arrangement” With an Outside Entity. Physician’s Services and Other Professional Services Excluded From Part A Prospective Payment System Payment and the Consolidated Billing Requirement. Utilization Edits. Billing for Inpatient Skilled Nursing Facility Services Paid Under Part B. Audiologic Tests. Adjustments of Episode Payment—Therapy Threshold. Medical and Other Health Services Not Covered Under the Plan of Care (Bill Type 34X). Carrier Processing of Claims for Hospice Beneficiaries. Bill Type Codes and Allowable Provider Numbers. Items 14–33—Provider of Service of Supplier Information. Place of Service Codes and Definitions. Inpatient, Skilled Nursing Facility, Outpatient, Home Health, and Hospice Consistency Error Codes. A/B Crossover Error Codes.</p>
942 .....	<p>Ambulatory Surgical Center Claims Processing Manual Clarification. Services Furnished in Ambulatory Surgery Centers Which Are Not Ambulatory Surgery Center Facility Services.</p>
943 .....	<p>Coverage of Services in Ambulatory Surgery Centers Which Are Not Ambulatory Surgery Center Facility Services. Deported Medicare Beneficiaries. Claims Processing Requirements for Deported Beneficiaries. Implementation of Payment Policy for Deported Beneficiaries.</p>
944 .....	<p>Full Replacement of CR 4349, Hold on Medicare Payments. CR 4349 Is Rescinded.</p>
945 .....	<p>This Transmittal is rescinded and replaced by Transmittal 955.</p>
946 .....	<p>Instructions for Downloading the Medicare Zip Code File.</p>
947 .....	<p>New Waived Tests.</p>
948 .....	<p>Stage 2 National Provider Identifier Changes for Transaction 835, and Standard Paper Remittance Advice, and Changes in Medicare Claims Processing Manual, Chapter 22—Remittance Advice. Background. General Remittance Completion Requirements. Remittance Balancing. American National Standard Institute Accredited Standards. Committee X12N 835. Generating an Electronic Remittance Advice if Required Data Is Missing or Invalid. Medicare Standard Electronic Personal Computer Print Software for Institutional Providers. Medicare Remit Easy Print Software for Professional Providers and Suppliers. Implementation Guide. Standard Paper Remittance Advice. Standard Paper Remittance Formats. Part A/Fiscal Intermediaries/Regional Home Health Intermediaries. Standard Paper Remittance Format. Part B/Carrier and Durable Medical Equipment Regional Carrier. Standard Paper Remittance Format. Carrier and Durable Medical Equipment Regional Carrier Standard. Paper Remittance Crosswalk to the 835. Claim Adjustment Reason Codes. Remittance Advice Remark Codes. Group Codes. Fiscal Intermediary/Regional Home Health Intermediary Requirement. Changes to Accommodate Outpatient Prospective Payment System and Home Health Prospective Payment System. Items Not Included in Home Health Prospective Payment System Episode Payment. 835 Version 3051.4A.01 Line Level Reporting Requirements for the Claim Payment in an Episode More Than Four Visits. 835 Version 3051.4A.01 Line Level Reporting Requirements for the Claim Payment in an Episode Four or Fewer Visits.</p>
949 .....	<p>Billing Clarification for J2505, Pegfilgrastim.</p>
950 .....	<p>Realignment of States and Medicare Claims Processing Workload from the Current Durable Medical Equipment Regional Carrier Regions A and B to the Durable Medical Equipment Maximum Allowable Cost Jurisdictions A and B.</p>
951 .....	<p>This Change Request Rescinds and Replaces Change Request 4002. Payment for Carotid Artery Stenting Post-Approval Extension Studies.</p>
952 .....	<p>Administrative Simplification Compliance Act Review Revisions.</p>

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
	Exceptions. Unusual Circumstance Waivers Subject to Provider Self-Assessment. Unusual Circumstance Waivers Subject to Contractor Evaluation and CMS Decision. Enforcement. Fiscal Intermediary Shared System Role in Administration Simplification. Compliance Act Enforcement. Multi-Carrier System & Viable Medicare System Roles in Administration Simplification Compliance Act Enforcement. Contractor Roles in Administration Simplification Compliance Act Reviews.
953	Competitive Acquisition Program—Creation of Automated Tables for Provider Information, Expansion of CAP Fee Schedule File Layout, and Additional Instructions for Claims Received from Railroad Retirement Board Beneficiaries. Competitive Acquisition Program Claims Submitted with Only the No Pay Line. Competitive Acquisition Program Fee Schedule.
954	Changes to the List of Drugs Supplied by Approved Competitive Acquisition Program Vendors. Payment for Evaluation and Management Services Provided During Global Period of Surgery.
955	Quarterly Medicare Summary Notice Printing Cycle. General Medicare Summary Notices Requirements. General Requirements for the Medicare Summary Notices. Claims Information Section. General Information Section. Sección De Información General.
956	Payment for Positron Emission Tomography Scans in CMS-Approved Clinical Trials and Coverage With Evidence Development—Use of QR and QV Modifiers. Coverage for Positron Emission Tomography Scans for Dementia and Neurodegenerative Diseases. Billing Requirements for CMS-Approved Clinical Trial Claims for Positron Emission Tomography Scans for Neurodegenerative Diseases, Previously Specified Cancer Indications, and All Other Cancer Indications Not Previously Specified.
957	Pancreas Transplants Alone. Pancreas Transplants with Kidney Transplants.
958	Chapter 24 Update to the National Council for Prescription Drug Program. Narrative Portion of Prior Authorization Segment.
959	Changes to the Laboratory National Coverage Determination Edit Software for July 2006.
960	July 2006 Non-Outpatient Prospective Payment System Outpatient Code Editor Specifications Version 21.3.
961	Home Use of Oxygen in Approved Clinical Trials. Durable Medical Equipment Prosthetic, Orthotics & Supplies Clinical Trials and Demonstrations.
962	July 2006 Outpatient Prospective Payment System Code Editor Specifications Version 7.2.
963	July Update to the 2006 Medicare Physician Fee Schedule Database.
964	This Transmittal is rescinded and replaced by Transmittal 973.
965	Quarterly Update to Correct Coding Initiative (CCI) Edits, Version 12.2, Effective July 1, 2006.
966	Intestinal and Multi-Visceral Transplants.
967	Modification to the Coordination of Benefits Agreement Claims Selection Criteria and File Transfer Protocols. Consolidated Claims Crossover Process. Claims Crossover Disposition Indicators. Consolidation of the Claims Crossover Process.
968	Chemotherapy Administration and Nonchemotherapy Injection and Infusion Coding and Payment Policy—Update to Pub. 100–04 Medicare Claims Processing Manual. Payment for Codes for Chemotherapy Administration and Nonchemotherapy Injections and Infusions.
969	July 2006 Maintenance and Update of the Temporary Hook Created to Hold Outpatient Prospective Payment System Claims That Include Certain Drug Healthcare Common Procedure Coding System Codes.
970	July 2006 Update of the Hospital Outpatient Prospective Payment System: Summary of Payment Policy Changes.
971	Clarification Regarding Effective Dates for Carrier Claim Adjustments: Denied Replacement Defibrillator Claims Lacking a QR Modifier.
972	October 2006 Maintenance and Update of the Temporary Hook Created to Hold Outpatient Prospective Payment System Claims That Include Certain Drugs Healthcare Common Procedure Coding System Codes.
973	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
974	July 2006 Quarterly Average Sales Price Medicare Part B Drug Pricing File, Effective July 1, 2006, and Revisions to January 2006 and April 2006 Quarterly Average Sale Price Medicare Part B Drug Pricing Files.
975	Ambulatory Surgical Center Claims Processing Manual Clarification Services Furnished in Ambulatory Surgery Centers Which Are Not Ambulatory Service Center Facility Services. Coverage of Services in Ambulatory Surgery Centers Which Are Not Ambulatory Surgery Center Facility Services.
976	Billing of Temporary 'C' Healthcare Common Procedure Coding System Code by Non-Outpatient Prospective Payment System Providers. Standard Method—Cost Based Facility Services, With Billing of Carrier for Professional Services. Non-Autologous Blood Derived Products for Chronic Non-Healing Wounds.
977	Update-Inpatient Psychiatric Facilities Prospective Payment System Rate Year 2007.
978	Cardiovascular System (Codes 92950–93799).
979	Changes Conforming to CR 3648 Instructions for Therapy Services.
980	Billing Procedures for Entities Qualified to Receive Payment on Basis of Reassignment for Carrier Processed Claims. Payment for Services Furnished After Termination, Expiration, or Cancellation of Provider Agreement.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
	<p>When Beneficiary Statement Is Not Required for Physician/Supplier Claim.            Frequency of Billing for Outpatient Services to Fiscal Intermediaries.            Time Limitation of Claims for Outpatient Physical Therapy or Speech-Language.            Pathology Services Furnished by Clinic Providers.            Carrier Specific Requirements for Certain Specialties/Services.            Definition of Provider and Supplier.            Provider Access to CMS and Carrier or Fiscal Intermediary Eligibility Data.            Non-emergency Part B Medical and Other Health Services.            Criteria That Must Be Met by Inpatient Rehabilitation Hospitals.            Inpatient Part B Hospital Services.            Reporting of Service Units With Healthcare Common Procedure Coding System—Form CMS-1500 and Form CMS-1450.            Applicable Revenue Codes Fiscal Intermediaries.            Off-Site Comprehensive Outpatient Rehabilitation Facility Services.            Consolidated Billing Requirement for Skilled Nursing Facilities.            Types of Services Subject to the Consolidated Billing Requirement for Skilled Nursing Facilities.            Furnishing Services That Are Subject to Skilled Nursing Facility.            Consolidated Billing Under an “Arrangement” With an Outside Entity.            Physician’s Services and Other Professional Services Excluded From Part A.            Prospective Payment System Payment and the Consolidated Billing Requirement.            Utilization Edits.            Billing for Inpatient Skilled Nursing Facility Services Paid Under Part B Audiologic Tests.            Adjustments of Episode Payment—Therapy Threshold.            Medical and Other Health Services Not Covered Under the Plan of Care (Bill Type 34X).            Carrier Processing of Claims for Hospice Beneficiaries.</p>
981 .....	<p>Update-Long Term Care Hospital Prospective Payment System Rate Year 2007.            Provider-Specific File.            Short-Stay Outliers.            Interrupted Stays.            Payment Policy for Co-Located Providers.            Inputs/Outputs to Pricer.</p>
982 .....	New Use of Hospital Issued Notice of Noncoverage.
983 .....	Healthcare Provider Taxonomy Codes Update.
984 .....	Healthcare Common Procedure Coding System Correction for the Caffeine Halothane Contracture Test for Malignant Hyperthermia Susceptibility.
985 .....	<p>Appeals Updates.            Acknowledgement of Request for a Hearing Officer Hearing.            General Procedures to Establish Good Cause.            Medicare Redetermination Notice (for Partly or Fully Unfavorable Redetermination).            Contractor Responsibilities—General.            Effectuation of Reconsiderations.            Forwarding Requests to HHS/OMHA.            Effectuation Time Limits &amp; Responsibilities.            Departmental Appeals Board—The Fourth Level of Appeal.            Effectuation of Appeals Council Orders and Decisions.            Requests for Case Files.            Payment of Interest on Appeals Council Decisions.            Effectuation of U.S. District Court Decisions.</p>
986 .....	<p>Payment for Islet Cell Transplantation in NIH-Sponsored Clinical Trials.            Billing Requirements for Islet Cell Transplantation for Beneficiaries in a National Institutes of Health Clinical Trial.            Applicable Modifier for Islet Cell Transplant Claims for Carriers.            Special Billing and Payment Requirements for Intermediaries.</p>
987 .....	Claim Status Category Code and Claim Status Code Update.
988 .....	Correction to CR 4136: New Waived Tests.
989 .....	Correction to CR 4122: Correction of Typographical Error in the Do Not Forward Reports.
990 .....	Reporting Requirements—Carriers.
991 .....	Medicare Contractor Annual Update of the International Classification of Disease, Ninth Revision, Clinical Modification (ICD-9-CM).
992 .....	Eligibility Rules of Behavior.
992 .....	<p>Lumbar Artificial Disc Replacement.            Billing Requirements for Lumbar Artificial Disc Replacement.            General.            Carrier Billing Requirements.            Fiscal Intermediary Billing Requirements.            Reasons for Denial and Medicare Summary Notice and Claim Adjustment.            Reason Code Messages.</p>
993 .....	<p>Advance Beneficiary Notice and Hospital Issued Notice of Noncoverage Information.            Non-Physician Practitioner Payment for Care Plan Oversight.            Care Plan Oversight.            Care Plan Oversight Services.            Care Plan Oversight Billing Requirements.</p>

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
994 .....	Special Issues Associated With the Advance Beneficiary Notice for Hospice Providers and Comprehensive Out-patient Rehabilitation Facilities.
995 .....	Special Issues Associated With the Advance Beneficiary Notice for Hospice Providers.
996 .....	Common Working File Part C Data Exchange and Data Display Changes.
	Stage 2 NPI Changes for Transaction 835, and Standard Paper Remittance.
	Advice, and Changes in Medicare Claims Processing Manual, Chapter 22.
	Remittance Advice.
	Background.
	General Remittance Completion Requirements.
	Remittance Balancing.
	Generating an Electronic Remittance Advice If Required Data Is Missing or Invalid.
	Medicare Standard Electronic PC Print Software for Institutional Providers.
	Medicare Remit Easy Print Software for Professional Providers and Suppliers.
	Implementation Guide.
	Standard Paper Remittance Advice.
	Standard Paper Remittance Formats.
	Part A/Fiscal Intermediaries/Regional Home Health Intermediaries.
	Standard Paper Remittance Format.
	Part B/Carrier and Durable Medical Equipment Regional Carrier.
	Standard Paper Remittance Format.
	Carrier and Durable Medical Equipment Regional Carrier Standard.
	Paper Remittance Crosswalk to the 835.
	Claim Adjustment Reason Codes.
	Remittance Advice Remark Codes.
	Group Codes.
	Fiscal Intermediary/Regional Home Health Intermediary Requirement Changes To Accommodate Outpatient Pro-
	spective Payment System and Home Health Prospective Payment System
	Items Not Included in Home Health Prospective Payment System Episode Payment
	835 Version 3051.4A.01 Line Level Reporting Requirements for the Claim Payment in an Episode More than
	Four Visits.
	835 Version 3051.4A.01 Line Level Reporting Requirements for the Claim Payment in an Episode Four or Fewer
	Visits.
<b>Medicare Secondary Payer (CMS—Pub. 100–05)</b>	
49 .....	Manualizing Long-Standing Medicare Secondary Payer Policy in Chapter 2 of the MSP Internet Only Manual.
	Medicare Secondary Payer Provisions for Working Aged Individuals.
	Individuals Subject to Limitations on Payment.
	Individuals Not Subject to the Limitation on Payment.
	Working Aged Exception for Small Employers in Multi-Employer Group Health Plans.
	Medicare Secondary Payer Provisions for End-Stage Renal Disease Beneficiaries.
	Dual Eligibility/Entitlement Situations.
	Individuals Not Subject to Medicare Secondary Payer Provision.
	The 100 or More Employees Requirement.
	Disabled Individuals Who Return to Work.
	Dually Entitled Individuals.
	Liability Insurance.
	Medicare's Recovery Rights.
	Billing in Liability Insurance Situations.
	Workers' Compensation.
	Effect of Payments Under Workers' Compensation Plan.
	No-Fault Insurance.
50 .....	Clarification of Exhaustible Benefits and Healthcare Integrated General Ledger Accounting System Role within
	Transmittal 20.
	Savings Calculations.
51 .....	Medicare Secondary Payer Recovery Contractor New Contractor Number.
52 .....	Medicare Secondary Payer Bankruptcy/Liquidation Notices.
	Federal Bankruptcy/State Insurer Liquidation Actions and Medicare Secondary Payer Debt.
	Types of Federal Bankruptcy Proceedings.
	State Ordered Insurer Liquidation.
	Importance of Various Dates in Bankruptcy/Liquidation Proceedings.
	Difference Between Automatic Stay, Relief, and Discharge Affiliates.
	Notice of Bankruptcy/Liquidation.
	Identifying Medicare Secondary Payer Based Debts for Entities in Bankruptcy/Liquidation.
	Contractor's Role.
	Identifying Medicare Secondary Payer Based Debts for Entities in Bankruptcy/Liquidation at Contractor Sites.
	Recovery Efforts and Managing Debts of Entities in Bankruptcy/Liquidation.
	Bankruptcy Debts Discharged by the U.S. Court/Liquidation Debts Discharged by State Court.
	Bankruptcy Debts Dismissed by the U.S. Bankruptcy Court.
	Appeal Request Citing Bankruptcy Defense.
	Spreadsheet Identifying Entities in Bankruptcy/Liquidation.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
53 .....	Example of CMS Bankruptcy/Liquidation Notice to Contractors As a Result of a Prior Treasury Notification. Modifications to Online Medicare Secondary Payer Questionnaire. Admission Questions to Ask Medicare Beneficiaries.
<b>Medicare Financial Management (CMS—Pub. 100–06)</b>	
93 .....	Clarification of the Form CMS–1522 Monthly Contractor Financial Report. Procedures for the Reconciliation of Total Funds Expended for Fiscal Intermediary Shared System Medicare Contractors Used in the Preparation of Form CMS–1522 Monthly Contractor Financial Report. Identification and Summarization of Detailed Claims Data Records For Use in the Financial Reconciliation of Total Funds Expended to Fiscal Intermediary Shared System Reports. Using the Electronic Spreadsheet to Complete the Reconciliation of the Detailed Claims Data File to Fiscal Intermediary Shared System Reports. Electronic Spreadsheet Input Schedule. Total Funds Expended (Net Disbursements and Adjustments to Net Disbursements). Reconciliation of Detailed Claims Data File to Fiscal Intermediary Shared System Reports. Reconciliation of Non-Physician Incentive Plan Payments on Fiscal Intermediary Shared System Reports. Reconciliation of Interest Received and Paid on Fiscal Intermediary Shared System Reports. Categorization of Total Funds Expended by Category.
94 .....	Notice of New Interest Rate for Medicare Overpayments and Underpayments.
95 .....	Chapter 7, Internal Control Requirements Update. Introduction. Authority. Office of Management & Budget Circular A–123. Risk Assessment. Risk Analysis Chart. Internal Control Objectives. Fiscal Year 2006 Medicare Control Objectives. Policies and Procedures. Control Activities. Testing Methods. Documentation and Working Papers. Requirements. Certification Statement. Executive Summary. Certification Package for Internal Control Report of Material Weaknesses. Certification Package for Internal Control Report of Reportable Conditions. Definitions of Reportable Conditions and Material Weaknesses. Material Weaknesses Identified During the Reporting Period. Corrective Action Plans. Submission, Review, and Approval of Corrective Action Plans. Corrective Action Plan Reports. CMS Finding Numbers. Initial Corrective Action Plan Report. Quarterly Corrective Action Plan Report. Entering Data into the Initial or Quarterly Corrective Action Plan Report. List of Fiscal Year 2006 Medicare Control Objectives.
96 .....	Development of New Report to Capture Benefits Improvements & Protection Act and Medicare Modernization Act Appeals Data. Monthly Statistical Report on Intermediary and Carrier Part A and Part B Appeals Activity Form (CMS–2592). General. Redeterminations. Qualified Independent Contractor Reconsiderations. Administrative Law Judge Results. Medicare Appeals Council Effectuations. Clerical Error Reopenings. Validation of Reports.
97 .....	Collection of Fee-for-Service Payments Made During Periods of Managed Care Enrollment.
98 .....	Correction of CROWD Form 5 Reporting for Internet Pilot Carriers.
99 .....	Instructions for Medicare Credit Balance Reporting Activities. Instructions to Fiscal Intermediaries for the Medicare Credit Balance Report. Medicare Credit Balance Report (CMS–838). Fiscal Intermediary Internal Controls. Minimum Requirements for Internal Controls. Processing CMS–838 Claims Adjustments. Checks Submitted by Providers. Suspension Warning Letter (Fiscal Intermediary Action if a Credit Balance Report Is Not Submitted). Sample Suspension Warning Letter. Issuance of Notification/Rejection Letter to Providers Regarding Non-Payment of Medicare Credit Balances or Missing/Inaccurate Information on the CMS–838 Report.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
	Sample Notification/Reminder Letter. Fiscal Intermediary Recovery of Non-Medicare Secondary Payer/Medicare. Secondary Payer Accounts Receivables and Claims Accounts Receivables. Fiscal Intermediary Issuance of a Credit Balance Demand Letter. Interest Assessment for Non-Medicare Secondary Payer and Medicare. Secondary Payer Medicare Credit Balances. Extended Repayment Schedule. Credit Balance Reporting Completion Standard and Backlog Issues. Medicare Credit Balance Summary Report. Instructions for Completing the Medicare Credit Balance Summary Report. Provider Instructions for the Medicare Credit Balance Report. Submitting the CMS-838. Completing the CMS-838. Payments of Amounts Owed Medicare. Records Supporting CMS-838 Data. Provider-Based Home Health Agencies. Exception for Low Utilization Providers. Compliance with MSP Regulations.
<b>Medicare State Operations Manual (CMS—Pub. 100-07).</b>	
19 .....	Revisions to Appendix PP—Guidance to Surveyors for Long Term Care Facilities.
20 .....	Revisions to Appendix P—“Survey Protocol for Long Term Care Facilities—Part I.”.
<b>Medicare Program Integrity (CMS—Pub. 100-08).</b>	
146 .....	Provider Enrollment Update.
	Introduction.
	Definitions.
	Contractor Duties.
147 .....	Evaluation of Local Coverage Determination Topics for National Coverage.
	Determination Consideration.
148 .....	Medicare Claims System Changes to Accept Opt Out Actions From the Provider Enrollment, Chain & Ownership System Daily Extract File.
149 .....	Notification to Provider(s) or Supplier(s) Regarding Postpayment Review Results.
150 .....	Re-issuance of Chapter 10, Introduction of Provider Enrollment.
	Introduction to Provider Enrollment.
	Definitions.
	CMS-855 Medicare Enrollment Applications.
	Medicare Contractor Duties.
	Timeliness Standards.
	Timeframes for Initial Applications.
	Timeframes for Changes of Information.
	General Timeliness Principles.
	Pre-Screening and Application Returns.
	Pre-Screening Process.
	Returning the Application.
	Application Review.
	Basic Information (Section 1 of the CMS-855).
	Identifying Information (Section 2 of the CMS-855).
	Tax Identification Numbers and Legal Business Names.
	Licenses and Certifications.
	Correspondence Address.
	Accreditation.
	Section 2 of the CMS-855A.
	Section 2 of the CMS-855B.
	Section 2 of the CMS-855I.
	Adverse Legal Actions/Convictions.
	Practice Location Information.
	Section 4 of the CMS-855A.
	Section 4 of the CMS-855B.
	Section 4 of the CMS-855I.
	Owning and Managing Organizations.
	Owning and Managing Individuals.
	Chain Organizations.
	Billing Agencies.
	Special Requirements for Home Health Agencies.
	Contact Person.
	Certification Statement.
	Delegated Official.
	Ambulance Attachment.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
 [April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
	Independent Diagnostic Testing Facility Attachment. Independent Diagnostic Testing Facility Standards. CPT–4 and Healthcare Common Procedure Coding System Codes. Interpreting Physicians. Technicians. Supervising Physicians. Desk and Site Reviews. Special Procedures and Supplier Types. Billing Issues. Processing CMS–855R Applications. National Provider Identifier. Verification and Validation. General Verification Principles. Verification of Data. Requesting and Receiving Clarifying Information. Special Verification Procedures for CMS–855B, CMS–855I, and CMS–855R Applications. Special Verification Procedures for CMS–855A Applications. Special Verification Procedures for Enrolling Independent CLIA Labs, Ambulatory Surgical Centers, and Portable X-ray Suppliers. Special Procedures for Processing Full CMS–855 Applications Submitted by Enrolled Providers. Final Application Actions. Approvals. Non-Certified Suppliers and Individuals Practitioners. Certified Providers and Certified Suppliers. Denials. Changes of Information. General Procedures. Special Instructions for Certified Providers, Ambulatory Surgery Centers, and Portable X-ray Suppliers. Voluntary Terminations. Electronic Fund Transfers. Revalidation. Documentation. Special Processing Situations. Tie-In Notices. Out-of-State Practice Locations for Certified Providers. Provider-Based. State Survey Actions. Carrier Processing of Hospital Applications. Par Agreements. Opt-Out. Provider and Supplier Types/Services. Community Mental Health Centers. Diabetes Self-Management Training. Mass Immunizers Who Roster Bill. Enrolling Indian Health Service Facilities As Durable Medical Equipment, Prosthetics, Orthotics and Supplies Suppliers. Model Correspondence Language. Provider Enrollment Chain & Ownership System. External Reporting Requirements. Maintenance and Release of CMS–855 Data. Security. Release of Information. File Maintenance. Customer Service. Web Sites. Provider Enrollment Inquiries.

**Medicare Contractor Beneficiary and Provider Communications (CMS—Pub. 100–09)**

00 .....	None.
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**Medicare Quality Improvement Organization Manual (CMS—Pub. 100–10)**

14 .....	Revisions to Chapter 8, Data Management. Introduction. Infrastructure Operations and Support Manual. Infrastructure IT Administrator Manual. Database Systems Administrator Guide. Security Handbook. Confidentiality of System. Performance Standards.
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ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued  
[April Through June 2006]

Transmittal No.	Manual/Subject/Publication No.
15 .....	Revisions to Chapter 10, Confidentiality and Disclosure. Statutory and Regulatory Requirements. General Requirements. Confidential Information. Disclosure of Confidential Quality Improvement Organization Information to Officials and Agencies. Disclosure of Quality Improvement Organization Information for Research Purposes—Quality Review Study Information. Disclosure of Quality Improvement Organization Sanction Information. Re-disclosure of Quality Improvement Organization Information. Model Data Use Agreement. Model Letter. Model Language.
16 .....	Revisions to Chapter 1, Background and Responsibilities. Authority. Purpose of Quality Improvement Organization Review. Quality Improvement Organization Responsibilities. Health Care Quality Improvement Program. Hospital Payment Monitoring Program. Quality Improvement Organization Support Center.
<b>Medicare Managed Care (CMS—Pub. 100–16)</b>	
00 .....	None.
<b>Medicare Business Partners Systems Security (CMS—Pub. 100–17)</b>	
00 .....	None.
<b>Demonstrations (CMS—Pub. 100–19)</b>	
44 .....	Additional Billing Guidance for HHA Sites in the Demonstration Project for Medical Adult Day-Care Services (MMA Section 703).
45 .....	Method of Cost Settlement for Inpatient Services for Rural Hospitals Participating Under Demonstration Authorized by Section 410A of the Medicare Modernization Act.
46 .....	Additional Clarification of CR 3816 Business Requirements.
47 .....	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
<b>One Time Notification (CMS—Pub. 100–20)</b>	
218 .....	Nesiritide for Treatment of Heart Failure Patients.
219 .....	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
220 .....	Addition of Data Elements to Common Working File Database Extract into Next Generation Desktop Datamart.
221 .....	Beneficiary Change of Address—Phase 2.
222 .....	Issued to a specific audience not posted to Internet/Intranet due to Confidentiality of Instruction.
223 .....	Contractor Number Changes for National Heritage Insurance Company—Jurisdiction A Durable Medical Equipment Maximum Allowable Cost Workload and AdminaStar Federal, Inc.—Jurisdiction B Durable Medical Equipment Maximum Allowable Cost Workload.
224 .....	Part A and Part B Medicare Administrative Contractor Jurisdiction Implementation.
225 .....	Requirements for Systems Changes Needed to Generate Unsolicited Responses to The Veteran Administration.
226 .....	Allowing Adjustments to Part A and Part B Veterans Administration Medicare Remittance Advice Claims.
227 .....	National Council of Prescription Drug Programs Coordination of Benefits. Companion Document Update.
228 .....	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
229 .....	Healthcare Integrated General Ledger Accounting System Changes for Stage 2 National Provider Identifier.
230 .....	New Remittance Advice Remark Code Message Used for the Physician's Voluntary Reporting Program.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER APRIL THROUGH JUNE 2006

Publication date	FR Vol. 71 page number	CFR parts affected	File code	Title of regulation
April 5, 2006 .....	17052	405, 412, 422, and 489 .....	CMS–4105–P ...	Medicare Program; Notification Procedures for Hospital Discharges.
April 5, 2006 .....	17021	410 .....	CMS–3017–F ...	Medicare Program; Conditions for Payment of Power Mobility Devices, Including Power Wheelchairs and Power-Operated Vehicles.
April 7, 2006 .....	17888	.....	CMS–1481–N ...	Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) Meeting—May 1 Through May 2, 2006.



ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER APRIL THROUGH JUNE 2006—  
Continued

Publication date	FR Vol. 71 page num- ber	CFR parts affected	File code	Title of regulation
April 12, 2006 .....	18654	412 and 413 .....	CMS-1531-IFC	Medicare Program; Medicare Graduate Medical Education Affiliation Provisions for Teaching Hospitals in Certain Emergency Situations.
April 21, 2006 .....	20754	420, 424, 489, and 498 .....	CMS-6002-F ...	Medicare Program; Requirements for Providers and Suppliers To Establish and Maintain Medicare Enrollment.
April 21, 2006 .....	20697	.....	CMS-2235-NC	State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriation for Fiscal Year 2003; Additional Allotments To Eliminate SCHIP Fiscal Year 2006 Funding Shortfalls; and Provisions for Continued Authority for Qualifying States To Use a Portion of Certain SCHIP Funds for Medicaid Expenditures.
April 25, 2006 .....	23996	409, 410, 412, 413, 424, 485, and 489.	CMS-1488-P ...	Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates.
April 28, 2006 .....	25179	.....	CMS-1319-N ...	Medicare Program; Meeting of the Practicing Physicians Advisory Council, May 22, 2006.
April 28, 2006 .....	25178	.....	CMS-4113-N ...	Medicare Program; Meeting of the Advisory Panel on Medicare Education, May 25, 2006.
April 28, 2006 .....	25176	.....	CMS-3171-N ...	Medicare Program; Calendar Year 2006 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs) and Correction.
April 28, 2006 .....	25124	136 and 489 .....	CMS-2206-P ...	Section 506 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003—Limitation on Charges for Services Furnished by Medicare Participating Inpatient Hospitals to Indians.
April 28, 2006 .....	25092	146 .....	CMS-4094-F4	Amendment to the Interim Final Regulation for Mental Health Parity.
April 28, 2006 .....	25085	433 .....	CMS-2231-IFC	Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2006.
May 1, 2006 .....	25654	411, 414, and 424 .....	CMS-1270-P ...	Medicare Program; Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Other Issues.
May 1, 2006 .....	25651	.....	CMS-2235-NC (OFR-generated correction).	State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriation for Fiscal Year 2003; Additional Allotments To Eliminate SCHIP Fiscal Year 2006 Funding Shortfalls; and Provisions for Continued Authority for Qualifying States To Use a Portion of Certain SCHIP Funds for Medicaid Expenditures. (Correction).
May 9, 2006 .....	27040	412 and 424 .....	CMS-1306-F ...	Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2006 (RY 2007).
May 12, 2006 .....	27798	412 .....	CMS-1485-F ...	Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2007: Annual Payment Rate Updates, Policy Changes, and Clarification.
May 15, 2006 .....	28106	412 .....	CMS-1540-P ...	Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2007.
May 17, 2006 .....	28644	412 .....	CMS-1488-P2	Medicare Program; Hospital Inpatient Prospective Payment Systems Implementation of the Fiscal Year 2007 Occupational Mix Adjustment to the Wage Index.
May 26, 2006 .....	30423	.....	CMS-1324-N ...	Medicare Program; Public Meeting in Calendar Year 2006 for New Clinical Laboratory Tests for Payment Determinations.
May 26, 2006 .....	30422	.....	CMS-4117-FN	Medicare Program; Approval of URAC for Deeming Authority for Medicare Advantage Health Maintenance Organizations and Local Preferred Provider Organizations.
May 26, 2006 .....	30358	414 .....	CMS-1317-P ...	Medicare Program; Revisions to the Payment Policies of Ambulance Services Under the Fee Schedule for Ambulance Services.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER APRIL THROUGH JUNE 2006—  
Continued

Publication date	FR Vol. 71 page number	CFR parts affected	File code	Title of regulation
May 26, 2006 .....	30289	403 .....	CMS-4005-F ...	Medicare Program; State Health Insurance Assistance Program (SHIP).
May 31, 2006 .....	30982	413, 441, 486, and 498 .....	CMS-3064-F ...	Medicare and Medicaid Programs; Conditions for Coverage for Organ Procurement Organizations (OPOs).
June 23, 2006 .....	36120	.....	CMS-3170-N ...	Medicare Program; Meeting of the Medicare Coverage Advisory Committee—August 30, 2006.
June 23, 2006 .....	36118	.....	CMS-1295-N ...	Medicare Program; Second Biannual Meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups—August 23, 24, and 25, 2006.
June 23, 2006 .....	36101	.....	CMS-9035-N ...	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January Through March 2006.
June 23, 2006 .....	36100	.....	CMS-2228-FN	Medicare and Medicaid Programs; Denial of the TuV Healthcare Specialists Request for Deeming Authority for Hospitals.
June 23, 2006 .....	36020	423 .....	CMS-0018-IFC	Medicare Program; Identification of Backward Compatible Version of Adopted Standard for E-Prescribing and the Medicare Prescription Drug Program (Version 8.1).
June 29, 2006 .....	37170	.....	CMS-1512-PN	Medicare Program; Five-year Review of Work Relative Value Unites Under the Physician Fee Schedule and Proposed Changes to the Practice Expense Methodology.
June 30, 2006 .....	37504	420, 424, 489, and 498 .....	CMS-6002-F2	Medicare Program; Requirements for Providers and Suppliers To Establish and Maintain Medicare Enrollment; Correcting Amendment.
June 30, 2006 .....	37503	412 and 424 .....	CMS-1306-CN2	Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Update for Rate Year Beginning July 1, 2006 (RY 2007); Correction.

**Addendum V—National Coverage Determinations**

[April Through June 2006]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or

service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions

or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at <http://cms.hhs.gov/coverage>.

**NATIONAL COVERAGE DETERMINATIONS**

[April through June 2006]

Title	NCDM section	TN No.	Issue date	Effective date
Nesiritide for Treatment of Heart Failure Patients .....	200.1	R51NCD	4/07/06	3/02/06
Cardiac Rehabilitation Programs .....	20.10	R52NCD	4/21/06	3/22/06
PTA Concurrent With the Placement of Investigational or FDA-Approved Carotid Stent.	20.7	R53NCD	4/21/06	3/17/06
Bariatric Surgery for Treatment of Morbid Obesity .....	100.1	R54NCD	4/28/06	2/21/06
Pancreas Transplants Alone .....	260.3	R56NCD	5/19/06	4/26/06
Changes Conforming to CR3648 Instructions for Therapy Services .....	160.12, 170.3, 290.1	R55NCD	5/05/06	10/01/06
Changes to the Lab NCD Edit Software for July 06 .....	50.12	R959CP	5/26/06	7/01/06
Home Use of Oxygen in Approved Clinical Trials .....	240.2	R57NCD	5/26/06	3/20/06
Intestinal & Multivisceral Transplantation .....	260.5	R58NCD	5/26/06	5/11/06
Non-Autologous Blood-Derived Products for Chronic Non-Healing Wounds ....	270.3	R59NCD	6/09/06	5/13/06
Lumbar Artificial Disc Replacement .....	150.10	R60NCD	6/23/06	5/16/06

**Addendum VI—FDA-Approved Category B IDEs**

[April Through June 2006]

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the first quarter, April Through June 2006.

IDE	Category
G050017 .....	B
G050162 .....	B
G050171 .....	B
G050203 .....	B
G050218 .....	B

IDE	Category
G050233 .....	B
G050238 .....	B
G050264 .....	B
G060017 .....	B
G060029 .....	B
G060039 .....	B
G060053 .....	B
G060054 .....	B
G060055 .....	B
G060056 .....	B
G060059 .....	B
G060061 .....	B
G060062 .....	B
G060064 .....	B
G060066 .....	B
G060068 .....	B
G060071 .....	B
G060072 .....	B
G060073 .....	B
G060075 .....	B
G060077 .....	B
G060080 .....	B
G060081 .....	B
G060082 .....	B
G060084 .....	B
G060088 .....	B
G060089 .....	B
G060091 .....	B

IDE	Category
G060092 .....	B
G060093 .....	B
G060094 .....	B
G060095 .....	B
G060096 .....	B
G060097 .....	B
G060100 .....	B
G060102 .....	B
G060104 .....	B
G060105 .....	B
G060106 .....	B
G060108 .....	B
G060109 .....	B
G060112 .....	B
G060113 .....	B

**Addendum VII—Approval Numbers for Collections of Information**

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB Control No.	Approved CFR sections in title 42, title 45, and title 20 (Note: sections in title 45 are preceded by "45 CFR," and sections in title 20 are preceded by "20 CFR")
0938-0008 .....	Part 424, Subpart C
0938-0022 .....	413.20, 413.24, 413.106
0938-0023 .....	424.103
0938-0025 .....	406.28, 407.27
0938-0027 .....	486.100-486.110
0938-0033 .....	405.807
0938-0034 .....	405.821
0938-0035 .....	407.40
0938-0037 .....	413.20, 413.24
0938-0041 .....	408.6, 408.202
0938-0042 .....	410.40, 424.124
0938-0045 .....	405.711
0938-0046 .....	405.2133
0938-0050 .....	413.20, 413.24
0938-0062 .....	431.151, 435.151, 435.1009, 440.220, 440.250, 442.1, 442.10-442.16, 442.30, 442.40, 442.42, 442.100-442.119, 483.400-483.480, 488.332, 488.400, 498.3-498.5
0938-0065 .....	485.701-485.729
0938-0074 .....	491.1-491.11
0938-0080 .....	406.7, 406.13
0938-0086 .....	420.200-420.206, 455.100-455.106
0938-0101 .....	430.30
0938-0102 .....	413.20, 413.24
0938-0107 .....	413.20, 413.24
0938-0146 .....	431.800-431.865
0938-0147 .....	431.800-431.865
0938-0151 .....	493.1-493.2001
0938-0155 .....	405.2470
0938-0193 .....	430.10-430.20, 440.167
0938-0202 .....	413.17, 413.20
0938-0214 .....	411.25, 489.2, 489.20
0938-0236 .....	413.20, 413.24
0938-0242 .....	416.44, 418.100, 482.41, 483.270, 483.470
0938-0245 .....	407.10, 407.11
0938-0251 .....	406.7
0938-0266 .....	416.1-416.150
0938-0267 .....	485.56, 485.58, 485.60, 485.64, 485.66
0938-0269 .....	412.116, 412.632, 413.64, 413.350, 484.245
0938-0270 .....	405.376
0938-0272 .....	440.180, 441.300-441.305
0938-0273 .....	485.701-485.729
0938-0279 .....	424.5
0938-0287 .....	447.31

OMB Control No.	Approved CFR sections in title 42, title 45, and title 20 (Note: sections in title 45 are preceded by "45 CFR," and sections in title 20 are preceded by "20 CFR")
0938-0296	413.170, 413.184
0938-0301	413.20, 413.24, 415.60
0938-0302	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938-0313	489.11, 489.20
0938-0328	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631
0938-0334	491.9, 491.10
0938-0338	486.104, 486.106, 486.110
0938-0354	441.50
0938-0355	442.30, 488.26
0938-0358	488.26
0938-0359	412.40-412.52
0938-0360	488.60
0938-0365	484.10, 484.12, 484.14, 484.16, 484.18, , 484.36, 484.48, 484.52
0938-0372	414.330
0938-0378	482.60-482.62
0938-0379	442.30, 488.26
0938-0382	442.30, 488.26
0938-0386	405.2100-405.2171
0938-0391	488.18, 488.26, 488.28
0938-0426	480.104, 480.105, 480.116, 480.134
0938-0429	447.53
0938-0443	478.18, 478.34, 478.36, 478.42
0938-0444	1004.40, 1004.50, 1004.60, 1004.70
0938-0445	412.44, 412.46, 431.630, 476.71, 476.74, 476.78
0938-0447	405.2133
0938-0448	405.2133, 45 CFR 5, 5b; 20 CFR Parts 401, 422E
0938-0449	440.180, 441.300-441.310
0938-0454	424.20
0938-0456	412.105
0938-0463	413.20, 413.24, 413.106
0938-0467	431.17, 431.306, 435.910, 435.920, 435.940-435.960
0938-0469	417.126, 422.502, 422.516
0938-0470	417.143, 422.6
0938-0477	412.92
0938-0484	424.123
0938-0501	406.15
0938-0502	433.138
0938-0512	486.304, 486.306, 486.307
0938-0526	475.102, 475.103, 475.104, 475.105, 475.106
0938-0534	410.38, 424.5
0938-0544	493.1-493.2001
0938-0564	411.32
0938-0565	411.20-411.206
0938-0566	411.404, 411.406, 411.408
0938-0573	412.256
0938-0578	447.534
0938-0581	493.1-493.2001
0938-0599	493.1-493.2001
0938-0600	405.371, 405.378, 413.20
0938-0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 483.10, 484.10, 489.102
0938-0612	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493.1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 493.1299
0938-0618	433.68, 433.74, 447.272
0938-0653	493.1771, 493.1773, 493.1777
0938-0657	405.2110, 405.2112
0938-0658	405.2110, 405.2112
0938-0667	482.12, 488.18, 489.20, 489.24
0938-0686	493.551-493.557
0938-0688	486.301-486.325
0938-0691	412.106
0938-0692	466.78, 489.20, 489.27
0938-0701	422.152
0938-0702	45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180
0938-0703	45 CFR 148.120, 148.122, 148.124, 148.126, 148.128
0938-0714	411.370-411.389
0938-0717	424.57
0938-0721	410.33
0938-0723	421.300-421.316
0938-0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938-0732	417.126, 417.470
0938-0734	45 CFR 5b

OMB Control No.	Approved CFR sections in title 42, title 45, and title 20 (Note: sections in title 45 are preceded by "45 CFR," and sections in title 20 are preceded by "20 CFR")
0938-0739 .....	413.337, 413.343, 424.32, 483.20
0938-0749 .....	424.57
0938-0753 .....	422.000-422.700
0938-0754 .....	441.151, 441.152
0938-0758 .....	413.20, 413.24
0938-0760 .....	484.55, 484.205, 484.245, 484.250
0938-0761 .....	484.11, 484.20
0938-0763 .....	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938-0770 .....	410.2
0938-0778 .....	422.111, 422.564
0938-0779 .....	417.126, 417.470, 422.64, 422.210
0938-0781 .....	411.404, 484.10
0938-0786 .....	438.352, 438.360, 438.362, 438.364
0938-0790 .....	460.12-460.210
0938-0792 .....	491.8, 491.11
0938-0796 .....	422.64
0938-0798 .....	413.24, 413.65, 419.42
0938-0802 .....	419.43
0938-0818 .....	410.141-410.146, 414.63
0938-0829 .....	422.568
0938-0832 .....	Parts 489 and 491
0938-0833 .....	483.350-483.376
0938-0841 .....	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180
0938-0842 .....	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64
0938-0846 .....	411.352-411.361
0938-0857 .....	Part 419
0938-0860 .....	Part 419
0938-0866 .....	45 CFR Part 162
0938-0872 .....	413.337, 483.20,
0938-0873 .....	422.152
0938-0874 .....	45 CFR Parts 160 and 162
0938-0878 .....	Part 422 Subparts F and G
0938-0887 .....	45 CFR 148.316, 148.318, 148.320
0938-0897 .....	412.22, 412.533
0938-0907 .....	412.230, 412.304, 413.65
0938-0910 .....	422.620, 422.624, 422.626
0938-0911 .....	426.400, 426.500
0938-0915 .....	421.120, 421.122
0938-0916 .....	483.16
0938-0920 .....	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.604, 438.710, 438.722, 438.724, 438.810
0938-0921 .....	414.804
0938-0931 .....	45 CFR 142.408, 162.408, and 162.406
0938-0933 .....	438.50
0938-0935 .....	422 Subparts F and K
0938-0936 .....	423
0938-0939 .....	405.502 422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322,
0938-0944 .....	423.329, 423.336, 423.343, 423.346, 423.350
0938-0950 .....	405.910
0938-0951 .....	423.48
0938-0953 .....	405.1200 and 405.1202
0938-0954 .....	414.906, 414.908, 414.910, 414.914, 414.916
0938-0957 .....	Part 423 Subpart R
0938-0964 .....	403.460, 411.47
0938-0975 .....	423.562(a)
0938-0976 .....	423.568
0938-0977 .....	Part 423 Subpart R
0938-0978 .....	423.464
0938-0982 .....	422.310, 423.301, 423.322, 423.875, 423.888
0938-0990 .....	423.56
0938-0992 .....	423.505, 423.514

**Addendum VIII—Medicare-Approved Carotid Stent Facilities***[April Through June 2006]*

On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients.

*Effective Date 4/3/06*

Cullman Regional Medical Center, 1912 Alabama Highway 157, P.O. Box 1108, Cullman, AL 35056-1108, Medicare Provider #010035  
 Glendale Memorial Hospital and Health Center, 1420 South Central Avenue, Glendale, CA 91204, Medicare Provider #050058  
 Owensboro Medical Health System, P.O. Box 20007, 811 E. Parrish Avenue, Owensboro, KY 42303, Medicare Provider #180038  
 The University of Virginia Health System, P.O. Box 800788, Charlottesville, VA 22908-0788, Medicare Provider #490009  
 The William W. Backus Hospital, 326 Washington Street, Norwich, CT 06360, Medicare Provider #070024

*Effective Date 4/5/06*

Medcenter One, 300 North 7th Street, Bismarck, ND 58506, Medicare Provider #350015  
 Prince George's Hospital Center, 3001 Hospital Drive, Cheverly, MD 20785, Medicare Provider #210003

*Effective Date 4/7/06*

Flagler Hospital, Inc., 400 Health Park Boulevard, St. Augustine, FL 32086, Medicare Provider #100090  
 Ingalls Memorial Hospital, One Ingalls Drive, Harvey, IL 60426, Medicare Provider #140191  
 Tri-City Medical Center, 4002 Vista Way, Oceanside, CA 92056, Medicare Provider #050128

*Effective Date 4/13/06*

Doctors Hospital of Laredo, 10700 McPherson Road, Laredo, TX 78045, Medicare Provider #450643  
 Memorial Regional Hospital, 3501 Johnson Street, Hollywood, FL 33021, Medicare Provider #100038  
 North Oaks Medical Center, 15790 Paul Vega MD Drive, Hammond, LA 70403, Medicare Provider #190015  
 The Roy L. Schneider Hospital, 9048 Sugar Estate, St. Thomas, USVI 00802, Medicare Provider #480001

*Effective Date 4/18/06*

Coral Springs Medical Center, 3000 Coral Hills Drive, Coral Springs, FL 33065, Medicare Provider #100276  
 Crozer-Chester Medical Center, One Medical Center Boulevard, Upland, PA 19013-3995, Medicare Provider #390180  
 Mercy Hospital, 746 Jefferson Avenue, Scranton, PA 18501, Medicare Provider #390237  
 Northwest Hospital Center, 5401 Old Court Road, Randallstown, MD 21133-5185, Medicare Provider #210040  
 Orange Coast Memorial Medical Center, 9920 Talbert Avenue, Fountain Valley, CA 92708, Medicare Provider #050678

*Effective Date 4/24/06*

Crouse Hospital, 736 Irving Avenue, Syracuse, NY 13210, Medicare Provider #330203  
 Good Samaritan Regional Medical Center, 3600 NW Samaritan Drive, P.O. Box 1068, Corvallis, OR 97339, Medicare Provider #380014  
 Saint Vincent Catholic Medical Centers of New York, St. Vincent Hospital, Manhattan 170 West 12th Street, New York, NY 10011, Medicare Provider #330290  
 Tufts-New England Medical Center, 750 Washington Street, Boston, MA 02111, Medicare Provider #220116  
 Western Arizona Regional Medical Center, 2735 Silver Creek Road, Bullhead City, AZ 86442, Medicare Provider #030101

*Effective Date 4/28/06*

Brandywine Hospital, 201 Reeceville Road, Coatesville, PA 19320-0953, Medicare Provider #390076  
 Dallas County Hospital District, dba Parkland Health and Hospital System, 5201 Harry Hines Boulevard, Dallas, TX 75235, Medicare Provider #450015  
 Frisbie Memorial Hospital, 11 Whitehall Road, Rochester, NH 03867-3297, Medicare Provider #300014  
 Shelby Baptist Medical Center, 1000 1st Street North, Alabaster, AL 35007, Medicare Provider #030016  
 Suburban Hospital, Inc., 8600 Old Georgetown Road, Bethesda, MD 20814, Medicare Provider #210022

*Effective Date 5/2/06*

Porter, 814 LaPorte Avenue, Valparaiso, IN 46383, Medicare Provider #150035  
 Rowan Regional Medical Center, 612 Mocksville Avenue, Salisbury, NC 28144, Medicare Provider #340015  
 University of Kansas Medical Center, 3901 Rainbow Boulevard, Kansas City, KS 66160-7200, Medicare Provider #170040

*Effective Date 5/9/06*

Middle Tennessee Medical Center, 400 North Highland Avenue, P.O. Box 1178, Mufreesboro, TN 37133-1178, Medicare Provider #440053  
 Southcoast Hospitals Group, dba St. Luke's Hospital, 101 Page Street, New Bedford, MA 02740, Medicare Provider #22007401  
 Yuma Regional Medical Center, 2400 South Avenue A, Yuma, AZ 85364-7170, Medicare Provider #030013

*Effective Date 5/11/06*

North Broward Medical Center, 201 East Sample Road, Deerfield Beach, FL 33064, Medicare Provider #100068  
 Sacred Heart Hospital, 421 Chew Street, Allentown, PA 18102, Medicare Provider #390197

*Effective Date 5/12/06*

Denton Regional Medical Center, 3535 South I-35 East, Denton, TX 76210, Medicare Provider #450634

*Effective Date 5/15/06*

AnMed Health Medical Center, 800 North Fant Street, Anderson, SC 29621, Medicare Provider #420027  
 Boone Hospital Center, 1600 East Broadway, Columbia, MO 65201, Medicare Provider #260068  
 Riverside Regional Medical Center, 500 J Clyde Morris Blvd, Newport News, VA 23601-1976, Medicare Provider #490052

*Effective Date 5/17/06*

St. Joseph Hospital, 2700 Dolbeer Street, Eureka, CA 95501, Medicare Provider #050006  
 Stamford Hospital, 30 Shelburne Avenue, Stamford, CT 06904, Medicare Provider #070006  
 Vicksburg Medical Center, 2100 Highway 61 North, Vicksburg, MS 39183, Medicare Provider #250031

*Effective Date 5/24/06*

Genesis Medical Center, 1227 East Rusholme, Davenport, IA 52803, Medicare Provider #160033  
 Legacy Emanuel Hospital and Health Center, 2801 N. Gantenbein Avenue, Portland, OR 97227, Medicare Provider #380007  
 Longview Regional Medical Center, 2901 N. Fourth Street 75605, P.O. Box 14000, Longview, TX 75607-4000, Medicare Provider #450702  
 University Hospital of Brooklyn, Downstate Medical Center, 445 Lenox Road, Box 75, Brooklyn, NY 11203-2098, Medicare Provider #330350  
 Winter Haven Hospital, 200 Avenue F, Northeast, Winter Haven, FL 33881, Medicare Provider #100052

*Effective Date 6/1/06*

Baptist Health Medical Center, 3333 Springhill Drive, North Little Rock, AR 72117, Medicare Provider #040036  
 Park Nicollet Health Services—Methodist Hospital, 6500 Excelsior Boulevard, St. Louis Park, MN 55426, Medicare Provider #240053  
 Shore Memorial Hospital, 1 East New York Avenue, Somers Point, NJ 08244-2387, Medicare Provider #310047

*Effective Date 6/2/06*

Straub Clinic and Hospital, 888 South King Street, Honolulu, HI 96813, Medicare Provider #120022  
 Washington Regional Medical Center, 3215 N. North Hills Blvd, Fayetteville, AR 72703, Medicare Provider #040004

*Effective Date 6/12/06*

Littleton Adventist Hospital, 7700 South Broadway, Littleton, CO 80122-2628, Medicare Provider #060113  
 Jersey Shore University Medical Center, 1945 Route 33, Neptune, NJ 07754, Medicare Provider #310073  
 The Heart Center of Indiana, 10580 North Meridian Street, Indianapolis, IN 46290, Medicare Provider #150153

*Effective Date 6/19/06*

Hospital Episcopal San Lucas, Calle Guadalupe Final, P.O. Box 332027, Ponce, Puerto Rico 00733-2027, Medicare Provider #400002

*Effective Date 6/22/06*

Covenant Healthcare, 1447 N. Harrison, Saginaw, MI 48602, Medicare Provider #230070  
 J D Archbold Memorial Hospital, Gordon Avenue at Mimosa Drive, P.O. Box 1018, Thomasville, GA 31799-1018, Medicare Provider #110038  
 John C. Lincoln North Mountain Hospital, 250 East Dunlap, Phoenix, AZ 85020, Medicare Provider #030014  
 Palmetto Health Baptist, Taylor at Marion Streets, Columbia, SC 29220, Medicare Provider #420086  
 Swedish Covenant Hospital, 5145 North California Avenue, Chicago, IL 60625, Medicare Provider #140114  
 UPMC McKeesport, 1500 Fifth Avenue, McKeesport, PA 15132-2482, Medicare Provider #390002

*Effective Date 6/26/06*

Adventist Hinsdale Hospital, 120 N. Oak Street, Hinsdale, IL 60521, Medicare Provider #140122  
 Adventist La Grange Memorial Hospital, 5101 S. Willow Springs Road, La Grange, IL 60525, Medicare Provider #140065,

*Effective Date 6/30/06*

Banner Desert Medical Center, 1400 S. Dobson Road, Mesa, AZ 85202, Medicare Provider #030065  
 New York Hospital Medical Center of Queens, 56-45 Main Street, Flushing, NY 11355-5095, Medicare Provider #330055  
 Olathe Medical Center, Inc., 20333 West 151st Street, Olathe, KS 66061, Medicare Provider #170049  
 Sacred Heart Hospital, 900 West Clairemont Avenue, Eau Claire, WI 54701, Medicare Provider #520013  
 Upper Chesapeake Medical Center, 500 Upper Chesapeake Drive, Bel Air, MD 21014, Medicare Provider #210049

**Addendum IX—American College of Cardiology’s National Cardiovascular Data Registry Sites**

*[April Through June 2006]*

In order to obtain reimbursement, Medicare national coverage policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary

prevention ICD procedure. This policy became effective January 27, 2005. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare National Coverage Determination (NCD) Manual, which is on the Centers for Medicare and Medicaid Services (CMS) Web site at <http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961>.

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the American College of Cardiology’s National Cardiovascular Data Registry (ACC-NCDR) ICD registry. Therefore, in order for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry.

We maintain a list of facilities that have been enrolled in this registry. Addendum IX includes the facilities that have been designated in the quarter covered by this notice.

Client name	Address
Alegent Health Bergan Mercy Medical Center .....	7500 Mercy Road, Omaha, NE 68124.
Aspirus Wausau Hospital .....	333 Pine Ridge Boulevard Wausau, WI 54401.
Cardiovascular Center of Puerto Rico .....	P.O. Box 366528, San Juan, PR 00936.
Christus-St. Frances Cabrini Hospital .....	3330 Masonic Drive, Alexandria, LA 71301.
Elliot Hospital .....	One Elliot Way, Manchester, NH 03103.
Governor Juan F. Luis Hospital & Medical Center .....	4007 Estate Diamond Ruby, Christiansted, VI 00820.
Hospital Auxilio Mutuo .....	P.O. Box 1227, San Juan, PR 00919.
Ingalls Hospital .....	One Ingalls Drive, Harvey, IL 60426.
Inland Valley Medical Center .....	36485 Inland Valley, Wildomar, CA 92595.
Iowa Lutheran Hospital .....	1200 Pleasant Street, Des Moines, IA 50309.
Iowa Methodist Medical Center .....	1200 Pleasant Street, Des Moines, IA 50309.
Kaiser Permanente Medical Center Health Sciences Lifestyles .....	401 Bicentennial Way, Santa Fe, CA 95403.
Mercy & Unity Hospital .....	4040 Coon Rapids Boulevard, Esko, MN 55733.
Mercy Hospital .....	144 State Street, Portland, OR 04102.
Rancho Spring Medical Center .....	36485 Inland Valley, Wildomar, CA 92595.
Sharp Chula Vista Medical Center .....	8695 Spectrum Center Court, San Diego, CA 92123.
SSM St. Mary’s Health Center .....	1035 Bellevue Suite, Saint Louis, MO 63141.
St. Vincent Hospital .....	455 Staint Michaelis Drive, Sante Fe, NM 87505.
St. Vincent’s Medical Center .....	1800 Barrs Street, Jacksonville, FL 32204.
Summerlin Hospital Medical Center .....	657 Town Center Drive, Las Vegas, NV 89144.
Sutter Medical Center—Sacramento .....	5151 F Street, Sacramento, CA 95819.
Tampa General Hospital .....	P.O. Box 1289, Tampa, FL 33601.
University of Arkansas Medical Sciences Physician .....	4301 West Markham Street, Suite 532, Little Rock, AR 72205.
Washington Regional Medical Center .....	1125 N College Avenue, Fayetteville, AR 72703.
Alaska Regional Hospital .....	2801 Debarr Road, Anchorage, AK 99508.
Providence Alaska Medical Center .....	3200 Providence Drive, Anchorage, AK 99508.
Brookwood Medical Center .....	2010 Brookwood Medical Center, Birmingham, AL 35209.
Carraway Methodist Medical Center .....	1600 Carraway Boulevard, Birmingham, AL 35209.
DCH Regional Medical Center .....	809 University Blvd., E, Tuscaloosa, AL 35401.
Dekalb Regional Medical Center .....	200 Medical Center Drive, Fort Payne, AL 35968.
East Alabama Medical Center .....	2000 Pepperell Parkway, Opelika, AL 36804.
Eliza Coffee Memorial Hospital .....	205 Marengo Street, Florence, AL 35630.
Gadsden Regional Medical Center .....	1007 Goodyear Avenue, Gadsden, AL 35903.
Huntsville Hospital .....	101 Sivley Road, Huntsville, AL 35801.
Jackson Hospital and Clinic .....	1725 Pine Street, Montgomery, AL 36106.

Client name	Address
Medical Center East .....	50 Medical Park East Drive, Birmingham, AL 35235.
Mobile Infirmiry Medical Center .....	P.O. Box 2144 5 Mobile Infirmiry Circle, Mobile, AL 36652.
Princeton Baptist Medical Center .....	701 Princeton Avenue, Birmingham, AL 35211.
Providence Hospital .....	6801 Airport Boulevard, Mobile, AL 36608.
Regional Medical Center .....	400 East 10th Street, Anniston, AL 36202.
Riverview Regional Medical Center .....	600 South Third Street, Gadsden, AL 35901.
Russell Medical Center .....	3316 Hwy 280 (P.O. Box 939), Alexander City, AL 35011.
Russellville Hospital .....	15155 Highway 43, Russellville, AL 35653.
Shelby Baptist Medical Center .....	1000 First Street North, Ababaster, AL 35007.
Southeast Alabama Medical Center .....	1108 Ross Clark Circle, Dothan, AL 36301.
Springhill Memorial Hospital .....	3719 Dauphin Street, Mobile, AL 36608.
St. Vincent Hospital .....	810 St. Vincents Drive, Birmingham, AL 35205.
Stringfellow Memorial Hospital .....	301 East 18th Street, Anniston, AL 36202.
Trinity Medical Center .....	800 Montclair Rd, Birmingham, AL 35213.
University Hospital .....	620 19th Street South, Birmingham, AL 35213.
University of South Alabama/Cardiology Dept .....	2451 Fillingim Street, Mobile, AL 36617.
Vaughan Regional Medical Center .....	1015 Medical Center Parkway, Selma, AL 36701.
Walker Regional Medical Center .....	3400 Hwy 78 East, Jasper, AL 35501.
Arkansas Heart Hospital .....	1701 South Shackelford Road, Little Rock, AR 72202.
Baptist Health Medical Center .....	9601 Interstate 630, Exit 7, Little Rock, AR 72205.
Baptist Health Medical Center .....	3333 Springhill Drive, North Little Rock, AR 72117.
Baxter Regional Medical Center/Attn: A/P .....	624 Hospital Drive, Mountain Home, AR 72653.
Conway Regional Medical Center .....	2302 College Avenue, Conway, AR 72032.
Medical Center of South Arkansas, LLC .....	700 West Grove, El Dorado, AR 71730.
Mercy Health System of Northwestern Arkansas .....	1200 West Walnut, Rogers, AR 72756.
Saint Vincent Medical Center/Health Ctr .....	2 St. Vincent Circle, Little Rock, AR 72205.
Sparks Regional Medical Center .....	P.O. Box 17006 Fort Smith, AR 72917.
St. Bernards Medical Center .....	225 E. Jackson Ave, Jonesboro, AR 72401.
St. Edward Mercy Medical Center Medical Library .....	7301 Rogers Ave., P.O. Box 17000, Fort Smith, AR 72917.
St. Edwards Mercy Medical Center .....	7301 Rogers Ave., Fort Smith, AR 72917.
St. Josephs Mercy Health Center .....	300 Werner Drive, Hot Springs, AR 71913.
Summit Medical Center, East Main & South .....	20th Street, Van Buren, AR 72956.
White County Medical Center .....	3214 E Race Ave., Searcy, AR 72143.
White River Medical Center .....	1710 Harrison Street, Batesville, AR 72501.
Arizona Heart Hospital .....	1930 East Thomas Road, Phoenix, AZ 85016.
Banner Baywood Heart Hospital .....	6750 East Baywood Avenue, Mesa, AZ 85206.
Banner Desert Medical Center .....	1400 S. Dobson Road Mesa, AZ 85202.
Banner Good Samaritan Med Center .....	1111 East McDowell Road Phoenix, AZ 85006.
Banner Thunderbird Med Center .....	5555 West Thunderbird Rd, Glendale, AZ 85306.
Boswell Memorial Hospital .....	10401 W. Thunderbird Blvd., Sun City, AZ 85351.
Havasu Regional Medical Center .....	PO Box 3030, Lake Havasu City, AZ 86405.
John C Lincoln Hospital—Deer Valley .....	19829 N. 27th Ave., Phoenix, AZ 85207.
John C Lincoln Hospital—North Mountain .....	250 E. Dunlap, Phoenix, AZ 85020.
Kingman Regional Medical Center .....	3269 Stockton Hill Rd, Kingman, AZ 86401.
Mayo Clinic Arizona .....	5777 E. Mayo Blvd., Phoenix, AR 85054.
Mesa General Hospital .....	515 N. Mesa Dr., Mesa, AZ 85201.
Navapaches Regional Medical Center .....	2200 East Show Low Lake Road, Show Low, AZ 85901.
Phoenix Baptist Hospital .....	2000 W. Bethany Home Rd, Phoenix, AZ 85015.
Scottsdale Healthcare Osborn .....	9003 E. Shea Blvd—Administration, Scottsdale, AZ 85260.
Scottsdale Healthcare Shea .....	9003 E. Shea Blvd—Administration, Scottsdale, AZ 85260.
St. Luke's Medical Center .....	1800 East Van Buren, Phoenix, AZ 85006.
Tucson Heart Hospital .....	4888 North Stone Avenue, Tucson, AZ 85704.
Tucson Medical Center .....	5301 E Grant Rd, Tucson, AZ 85712-2805.
University Medical Center .....	1690 N. Warren Blvd 526B, Tucson, AZ 85724.
Western Arizona Regional Medical Center .....	2735 Silver Creek Rd., Bullhead City, AZ 86442.
Yavapai Regional Medical Center .....	1003 Willow Creek Rd, Prescott, AZ 86301.
Yuma Regional Medical Center .....	2400 South Avenue A, Yuma, AZ 85364.
Alta Bates Medical Center .....	2450 Ashby Ave, Berkeley, CA 94705.
Alta Bates Summit Medical Center .....	2450 Ashby Avenue, Berkeley, CA 94705.
Alvarado Hospital Medical Center/SDRI .....	6655 Alvarado Road, San Diego, CA 92124.
Anaheim Memorial Medical Center .....	1111 W. La Palma, Anaheim, CA 92801.
Bakersfield Heart Hospital .....	3001 Sillect Ave, Bakersfield CA 93308.
Barstow Community Hospital .....	555 South Seventh Street, Barstow, CA 92311.
Brotman Medical Center .....	3828 Delmas Terrace, Culver City, CA 90231.
California Pacific Medical Center .....	2330 Clay St, Rm 103, San Francisco, CA 94115.
Cedars-Sinai Health Systems .....	8631 West Third St, Suite 415 E, Los Angeles, CA 90048.
Centinela Hospital Medical Center .....	555 E. Hardy Street, Inglewood, CA 90301.
Community Hospital of the Monterey Peninsula .....	PO Box HH, Monterey, CA 93942-1085.
Community Memorial Hospital .....	147 N. Brent, Ventura, CA 93003.
Dameron Hospital .....	525 W. Acacia St., Stockton, CA 95203.
Desert Regional Medical Center .....	1150 N Indian Canyon, Palm Springs, CA 92262.
Desert Valley Hospital .....	16850 Bear Valley Rd, Victorville, CA 92392.
Doctors Medical Center .....	2000 Vale Road, San Pablo, CA 94806.
Downey Regional Medical .....	11500 Brookshire Avenue, Downey, CA 90241.



Client name	Address
Eisenhower Medical Center .....	39000 Bob Hope Drive, Rancho Mirage, CA 92270.
El Camino Hospital .....	2500 Grant Road, Mountain View, CA 94040.
Encino-Tarzana Regional Medical Center .....	18321 Clark St., Tarzana, CA 91356-3501.
Enloe Medical Center .....	1600 Esplanade, Chico, CA 95926.
Fountain Valley Regional Hosp .....	17100 Euclid Street, Fountain Valley, CA 92708-4004.
French Hospital Medical Center .....	1911 Johnson Ave, San Luis Obispo, CA 93401.
Fresno Community Hospital and Medical Center .....	110 N. Valeria #103, Fresno, CA 93710.
Fresno Heart Hospital .....	15 E Audubon Dr, Fresno, CA 93720.
Garden Grove Hospital .....	12601 Garden Grove Blvd., Garden Grove, CA 92843.
Glendale Adventist Medical Center .....	1509 Wilson Terrace, Glendale, CA 91206.
Good Samaritan Hospital .....	1225 Wilshire Blvd, Los Angeles, CA 90017.
Good Samaritan Hospital .....	2425 Samaritan Drive, San Jose, CA 95124.
Henry Mayo Newhall Memorial Hospital .....	23845 McBean Parkway, Valencia, CA 91355.
Hoag Memorial Hospital Presbyterian .....	One Hoag Drive, Newport Beach, CA 92658.
Huntington Hospital .....	100 W. California Blvd, Pasadena, CA 91109.
Irvine Regional Hospital & Medical Center .....	16200 Sand Canyon Ave, Irvine, CA 92618-3701.
John F. Kennedy Memorial Hospital .....	47-111 Monroe Street, Indio, CA 92201.
John Muir—Concord .....	2540 East Street, Concord, CA 94520.
John Muir—Walnut Creek .....	1601 Ygnacio Valley Rd, Walnut Creek, CA 94550.
Kaiser Foundation Hospital .....	6600 Bruceville Road, Sacramento, CA 95823.
Kaiser Permanente .....	4647 Zion Ave, San Diego, CA 92120.
Kaweah Delta Hospital District .....	400 West Mineral King, Visalia, CA 93291.
Lakewood Regional Medical Center .....	3700 E. South Street, Lakewood, CA 90712.
Lancaster Community Hospital .....	43830 North 10th St West, Lancaster, CA 93534.
Little Company of Mary Hospital .....	4101 Torrance Blvd, Torrance, CA 90503.
Loma Linda University Medical Center .....	11234 Anderson St., Loma Linda, CA 92354.
Long Beach Memorial Medical Center .....	2801 Atlantic Ave., Long Beach, CA 90806.
Los Robles Hospital & Medical Center .....	215 W. Janss Road, Thousand Oaks, CA 91360.
Marin General Hospital .....	250 Bon Air Road, Greenbrae, CA 94904.
Methodist Hospital of South CA .....	300 W Huntington Dr., Arcadia, CA 91007-3402.
Mills-Peninsula Hospital .....	1783 Elcamino Real, Burlingame, CA 94010.
Mission Hospital Regional Med Center .....	27700 Medical Center Road, Mission Viejo, CA 92691-6426.
North Bay Medical Center .....	1200 B. Gale Wilson Blvd, Fairfield, CA 94533.
Northbay Vaca Valley Hospital .....	1200 B. Gale Wilson Blvd, Fairfield, CA 94533.
O'Connor Hospital .....	2105 Forest Ave, San Jose, CA 95128.
Orange Coast Memorial Medical Center .....	9920 Talbert Ave, Fountain Valley, CA 92708.
Palomar Medical Center .....	555 East Valley Parkway, Escondido CA 92025.
Paradise Valley Hospital .....	2400 E Fourth Street, National City, CA 91950.
Pomona Valley Hospital Med Center .....	1798 N. Garey Avenue, Pomona, CA 91722.
Presbyterian Intercommunity Hospital .....	12401 Washington Blvd, Whittier, CA 90602.
Providence Holy Cross Medical Center .....	15031 Rinaldi Street, Mission Hills, CA 91346.
Providence Saint Joseph .....	501 S Buena Vista Street, Burbank, CA 91505.
Regional Medical Center .....	225 N. Jackson St, San Jose, CA 95116.
Rideout Memorial Hospital .....	726 4th St, Maryville, CA 95901.
Ridgecrest Regional Hospital .....	1081 N. China Lake Blvd, Ridgecrest, CA 93555.
Riverside Community Hospital .....	4445 Magnolia Ave, Riverside, CA 92501.
Saddleback Memorial Medical Center .....	24451 Health Center Drive, Laguna Hills, CA 92653.
Saint Agnes Medical Center .....	1303 East Herndon Ave, Fresno, CA 93720.
Saint Johns Health Center .....	1328 22nd Street, Santa Monica, CA 90404.
Saint Joseph Hospital .....	2700 Dolbeer St, Eureka, CA 95501-4799.
Salinas Valley Memorial Hospital .....	450 E Romie Lane, Salinas, CA 93901-4098.
San Antonio Community Hospital .....	999 San Bernardino Rd, Upland, CA 91786.
San Francisco Heart and Vascular Institute .....	1900 Sullivan Avenue, Daly City, CA 94015.
San Joaquin Community Hospital .....	2615 Eye Street, Bakersfield, CA 93301.
San Ramon Regional Medical Center .....	6001 Norris Canyon Road, San Ramon, CA 94583.
Santa Barbara Cottage Hospital .....	PO Box 689, Santa Barbara, CA 93102-0689.
Santa Rosa Memorial Hospital .....	1165 Montgomery Drive, PO Box 522, Santa Rosa, CA 95402.
Santa Teresa Community Hospital .....	250 Hospital Parkway, San Jose, CA 95119.
Scripps Green Hospital—La Jolla .....	10666 North Torrey Pines Road, La Jolla, CA 92037.
Scripps Memorial Hospital—Encinitas .....	354 Santa Fe Dr., Encinitas, CA 92024.
Scripps Memorial Hospital—La Jolla .....	9888 Genesee Ave LJ101, La Jolla, CA 92037.
Scripps Mercy Hospital—San Diego .....	4077 5th Ave. MER 74, San Diego, CA 92103.
Scripps Mercy Hospital—Chula Vista .....	435 H St., Chula Vista, CA 91912.
Senton Medical Center .....	1900 Sullivan Avenue (Attn: SFHVI), Daly City, CA 94015.
Sharp Grossmont .....	5555 Grossmont Center Drive, La Mesa, CA 91942.
Sharp Memorial Hospital .....	7901 Frost Street, San Diego, CA 92123.
Shasta Regional Medical Center .....	1100 Butte Street, Redding, CA 96001.
Sierra Vista Regional Medical Center .....	1010 S Murray Ave., San Luis Obispo, CA 93420.
Simi Valley Hospital & Health Care Services .....	2975 N Sycamore Dr., Simi Valley, CA 93065.
Southwest Health Plan, Inc .....	25500 Medical Center Drive, Murrieta, CA 92562.
St. Francis Medical Center .....	3630 Imperial Hwy., Lynwood, CA 90265.
St. Helena Hospital .....	10 Woodland Road, St. Helena, CA 94574.
St. Rose Hospital .....	27200 Calaroga Avenue, Hayward, CA 94539.
St. Vincent Medical Center .....	2131 W. 3rd St., Los Angeles, CA 90703.

Client name	Address
Stanford Hospital and Clinics .....	300 Pasteur Road, Stanford, CA 94305.
Sutter Delta Medical Center .....	3901 Lone Tree Way, Antioch, CA 94509.
Sutter Medical Center of Santa Rosa .....	3325 Chanate Rd., Santa Rosa, CA 95404.
Torrance Memorial Medical Center .....	3330 Lomita Blvd., Torrance, CA 90505.
Tri-City Medical Center .....	4002 Vista Way, Oceanside, CA 92056.
Tulare District Hospital .....	869 Cherry St., Tulare, CA 93274.
Twin Cities Community Hospital .....	1100 Las Tablas Road, Templeton, CA 93465.
UC San Diego Medical Center .....	200 W. Arbor Drive, MC 8411, San Diego, CA 92103-8411.
University Of California (Santa Monica) .....	1250 16th Street, Los Angeles, CA 90404.
University of California (UCLA) .....	10833 Le Conte Avenue, Los Angeles, CA 90095.
University Of California Davis .....	2315 Stockton Blvd., Room 6312, Sacramento, CA 95817.
University of California San Francisco Medical Center .....	513 Parnassus Ave., San Francisco, CA 94143.
USC University Hospital .....	1500 San Pablo, Los Angeles, CA 90033.
Valley Care Medical Center .....	1111 East Stanley Blvd., Livermore, CA 94550.
Valley Presbyterian Hospital .....	15107 Vanowen Street, Van Nuys, CA 91405.
Washington Hospital .....	2000-Mowry Ave., Fremont, CA 94538.
Watsonville Community Hospital .....	75 Nielson, Watsonville, CA 95076.
West Hills Hospital .....	7300 Medical Center Drive, West Hills, CA 91307.
Western Medical Center Anaheim .....	1025 South Anaheim Blvd., Anaheim, CA 92805.
Western Medical Center Santa Ana .....	1001 North Tustin Ave., Santa Ana, CA 92705.
White Memorial Medical Center .....	1720 Cesar Chavez Ave., Los Angeles, CA 90033.
Boulder Community Hospital .....	1100 Balsam Avenue, Boulder, CO 80304.
Denver Health .....	777 Bannock St., Denver, CO 80204.
Exempla Good Samaritan Medical Center .....	200 Exempla Circle, Lafayette, CO 80026.
Exempla Lutheran Medical Center .....	8300 W 38th Ave., Wheat Ridge, CO 80033.
Exempla Saint Joseph Hospital .....	2420 W 26th Avenue, Bldg D, Suite 140, Denver, CO 80211.
Longmont United Hospital .....	1950 Mountain View Ave., Longmont, CO 80501.
McKee Medical Center .....	2000 Boise Ave., Loveland, CO 80538.
Medical Center of Aurora .....	1501 S. Potomac, Aurora, CO 80012.
Memorial Hospital .....	1400 E Boulder St., Colorado Springs, CO 80909-5599.
Mercy Regional Medical Center .....	1010 Three Springs Blvd., Durango, CO 81301.
North Colorado Medical Center .....	1801 16th Street, Greeley, CO 80631-5199.
North Suburban Medical Center .....	9191 Grant Street, Denver, CO 80229.
Parkview Medical Center .....	400 West 16th Street, Pueblo, CO 81003.
Penrose-St. Francis Health Services .....	2222 North Nevada, #220, Colorado Springs, CO 80907.
Porter Adventist Hospital .....	2525 S Downing St., Mail Stop 33F, Denver, CO 80210-5817.
Poudre Valley Hospital 1 .....	024 Lemay Ave., Ft. Collins, CO 80524.
Presbyterian/St. Lukes Medical Center .....	1719 E 19th Ave., Denver, CO 80218-1235.
Rose Medical Center .....	4567 E 9th Ave., Denver, CO 80220-3941.
Saint Anthony Central Hospital .....	4231 W 16th Ave., Denver, CO 80204-1335.
Saint Mary Corwin Medical Center .....	1008 Minnequa Ave., Pueblo, CO 81004-3798.
Saint Mary's Hospital and Regional Medical Center .....	2635 N. 7th Street, Grand Junction, CO 81501-8209.
Sky Ridge Medical Center .....	10101 Ridgeway Parkway, Lone Tree, CO 80124.
Swedish Medical Center .....	501 East Hampden Avenue, Englewood, CO 80113.
University of Colorado Hospital Authority .....	4200 East Ninth St., Denver, CO 80262.
Bridgeport Hospital .....	267 Grant Street, Bridgeport, CT 06610.
Danbury Hospital .....	24 Hospital Ave., Danbury, CT 06810-6099.
Greenwich Hospital .....	5 Perryridge Road, Greenwich, CT 06830.
Hartford Hospital .....	80 Seymour St., Hartford, CT 06102.
Hospital of St. Raphael .....	Section of Cardiology Pvt 207, 1450 Chapel Street, New Haven, CT 06511.
Lawrence & Memorial Hospital .....	365 Montauk Ave., New London, CT 06375.
New Britain General Hospital .....	100 Grand Street, PO Box 100, New Britain, CT 06050.
Northwalk Hospital .....	34 Maple St., Norwalk, CT 06902.
Saint Mary's Hospital .....	56 Franklin Street, Waterbury, CT 06706.
St. Francis Hospital & Medical Center Health Science .....	114 Woodland Street, Hartford, CT 06105.
University of CT Health Center/John Dempsey Hospital .....	263 Farmington Avenue, Farmington, CT 06030.
Waterbury Hospital .....	PO Box 2153, Waterbury, CT 06722.
Yale New Haven Hospital .....	20 York Street, New Haven, CT 06510.
Georgetown University Hospital .....	3800 Reservoir Rd. NW., Washington, DC 20007.
Howard University Hospital .....	2041 Georgia Ave., Washington, DC 21044.
Sibley Memorial Hospital .....	5255 Loughboro Rd. NW., Washington, DC 20016.
The George Washington Univ. Hospital .....	900 23rd Street NW., Washington, DC 20037.
Washington Hospital Center .....	110 Irving St. NW., Washington, DC 20010.
Bayhealth Medical Center (KGH) .....	640 S. State St., Dover, DE 19901.
Christiana Care Health System .....	4755 Oglethorpe-Stanton Road, Newark, DE 19718.
St. Francis Hospital .....	701 N. Clayton Street, Wilmington, DE 19805.
Aventura Hospital and Medical Center .....	20900 Biscayne Blvd., Aventura, FL 33180.
Baptist Hospital .....	1000 W. Moreno Street, Pensacola, FL 32501.
Baptist Medical Center .....	800 Prudential Drive, Jacksonville, FL 32207.
Bartow Regional Medical Center .....	PO Box 1050, Bartow, FL 33831-1050.
Bay Medical Center .....	615 North Bonita Ave., Panama City, FL 32401.
Bayfront Medical Center .....	701 Sixth Street South, St. Petersburg, FL 33701.
Bert Fish Medical Center .....	401 Palmetto St., New Smyrna Beach, FL 32168.

Client name	Address
Bethesda Memorial Hospital	2815 S. Seacrest Blvd., Boynton Beach, FL 33435.
Blake Medical Center	2020 59th St. W., Bradenton, FL 34209.
Boca Raton Community Hospital	800 Meadows Road, Boca Raton, FL 33486.
Brandon Regional Hospital	119 Oakfield Drive, Brandon, FL 33511.
Brooksville Regional Hospital	17240 Cortez Blvd., Brooksville, FL 34601.
Broward General Medical Center	1600 S Andrews Ave., Ft Lauderdale, FL 33316.
Cape Canaveral Hospital	701 West Cocoa Beach Causeway, Cocoa Beach, FL 32931.
Central Florida Regional Hospital	1401 W. Seminole Blvd., Sandford, FL 32771.
Charlotte Regional Medical Center	809 East Marion Avenue, Punta Gorda, FL 33950.
Citrus Memorial Health System	502 W. Highland Blvd., Inverness, FL 34452.
Cleveland Clinic Hospital	3100 Weston Road, Weston, FL 33331.
Coral Gables Hospital	3100 Douglas Road, Coral Gables, FL 33134.
Coral Springs Medical Center	3000 Coral Hills Drive, Coral Springs, FL 33065.
Delray Medical Center	5352 Linton Blvd., Delray Beach, FL 33484.
Doctors Hospital of Sarasota	5731 Bee Ridge Road, Sarasota, FL 34233.
Fawcett Memorial Hospital	21298 Olean Blvd., Port Charlotte, FL 33949-4960.
Flagler Hospital	400 Health Park Blvd., St. Augustine, FL 32086.
Florida Hospital	220 Winter Park St., Orlando, FL 32803.
Florida Hospital Ormond Memorial	875 Sterthaus Ave., Ormond Beach, FL 32174.
Florida Hospital Zephyrhills	7050 Gall Blvd, Zephyrhills, FL 33541.
Florida Hospital Ormond Memorial	875 Sterthaus Ave., Ormond Beach, FL 32174.
Florida Hospital Waterman Inc	1000 Waterman Way, Tavares, FL 32778.
Florida Medical Center	5000 W Oakland Park Blvd, Fort Lauderdale, FL 33313-1585.
Fort Walton Beach Medical Center	1000 Mar Walt Dr, Fort Walton Beach, FL 32547.
Gulf Coast Medical Center	449 W. 23rd Street, Panama City, FL 32406-5309.
Halifax Medical Center	303 N Clyde Morris Blvd., Daytona Beach, FL 32114-2732.
Heart of Florida Regional Medical Center	40100 Hwy 27, Davenport, FL 33837.
Helen Ellis Memorial	1395 South Pinellas Ave., Tarpon Springs, FL 34689.
Hialeah Hospital	651 E. 25th Street, Hialeah, FL 33013.
Hollywood Medical Center	3600 Washington St, Hollywood, FL 33021.
Holmes Regional Med Center	1355 South Hickory Street, Suite 203, Melbourne, FL 32901.
Holy Cross Hospital	4725 N. Federal Highway, Ft. Lauderdale, FL 33308.
Imperial Point Medical Center	6401 N Federal Highway, Ft. Lauderdale, FL 33308.
Indian River Memorial Hospital	1000 36th St, Vero Beach, FL 32960.
Jackson Memorial Hospital	1611 N.W. 12th Avenue, Miami, FL 33136.
JFK Medical Center	5631 Glencrest Blvd, Tampa, FL 33625-1008.
Lakeland Regional Medical	1324 Lakeland Hills Blvd, Lakeland, FL 33805.
Largo Medical Center	201 14th St. SW, Largo, FL 33770.
Lee Memorial Health System—Cape Coral Hospital	276 Cleveland Avenue, Fort Myers, FL 33901.
Lee Memorial Health System—Health Park Med Center	276 Cleveland Avenue, Fort Myers, FL 33901.
Leesburg Regional Medical Center	600 East Dixie Ave., Leesburg, FL 34748.
Lehigh Regional Medical	1500 Lee Boulevard, Lehigh Acres, FL 33963.
Lower Keys Medical Center	5900 College Road, Key West, FL 33040.
Manatee Memorial Hospital	206 2nd Street East, Bradenton, FL 34208.
Martin Memorial Medical Center	300 SE Hospital Ave, Stuart, FL 34994.
Mease Countryside Hospital	3231 McCullen Booth Road, Safety Harbor, FL 34695.
Mease Dunedin Hospital	207 Jeffords St MS 142, Clearwater, FL 33756.
Memorial Hospital Miramar	1901 SW 172 Ave, Miramar, FL 33029.
Memorial Hospital Pembroke/South Broward Hospital District	7800 Sheridan Street, Pembroke Pines, FL 33024.
Memorial Hospital West/South Broward Hospital District	703 North Flamingo Road, Pembroke Pines, FL 33028.
Memorial Hospital—Jacksonville	3625 University Boulevard South, Jacksonville, FL 32216.
Memorial Regional Hospital/South Broward Hospital	3501 Johnson Street, Hollywood, FL 33021.
Mercy Hospital Attn: Accounts Payable	3663 South Miami Ave, Miami, FL 33133.
Morton Plant Hospital	207 Jeffords St, MS 142, Clearwater, FL 33756.
Morton Plant North Bay Hospital	6600 Madison Street, New Port Richey, FL 34652.
Mount Sinai Medical Center	4300 Alton Road, Miami Beach, FL 33140.
Munroe Regional Medical Center	131 SW 15th St, PO Box 6000, Ocala, FL 34478.
Naples Community Hospital	350 7th Street South, Naples, FL 34102.
North Broward Hospital District	1600 S Andrews Ave, Ft Lauderdale, FL 33316.
North Broward Medical Center	201 E Sample Road, Pompano Beach, FL 33064.
North Florida Regional Medical Center	6500 Newberry Road, Gainesville, FL 32605.
North Ridge Medical Center	5757 N Dixie Hwy, Fort Lauderdale, FL 33334.
North Shore Medical Center	1100 NW 95th Street, Miami, FL 33150.
Northside Hospital	6000 49th Street North, St. Petersburg, FL 33709.
Northwest Medical Center	2801 N. State Rd. 7, Margate, FL 33063.
Oak Hill Hospital	11375 Cortez Blvd, Brooksville, FL 34613.
Ocala Regional Medical Center	1431 SW First Avenue, Ocala, FL 34474.
Osceola Regional Medical Center	700 W. Oak Street, Kissimmee, FL 34745.
Palm Beach Gardens Medical Center	3360 Burns Road, Palm Beach Gardens, FL 33410.
Palmetto General Hospital	2001 West 68th Street, Hialeah, FL 33029.
Parkway Regional Medical Center	160 N.W. 170th Street, North Miami, FL 33169.
Pasco Regional Medical Center	13000 100 Fort King Rd, Dade City, FL 33525.
Peace River Regional Medical	2500 Harbor Blvd, Port Charlotte, FL 33952.
Plantation General Hospital	401 N.W. 42nd Avenue, Plantation, FL 33317.

Client name	Address
Sacred Heart Health System	5151 North Ninth Avenue, Pensacola, FL 32504.
Saint Joseph Hospital	3001 W. Martin Luther King Blvd, Tampa, FL 33607.
Saint Mary's Medical Center	4016 Sun City Center Blvd, Sun City Center, FL 33573.
Sarasota Memorial Hospital	1700 S. Tamiami Trail, Sarasota, FL 34239.
Sebastian River Medical Center	13695 U.S. Highway 1, Sebastian, FL 32962.
Shands at AGH	801 SW 2nd Ave, Gainesville, FL 32607.
Shands Jacksonville Medical Center	655 West 8th St, Jacksonville, FL 32209-6511.
Southlake Hospital	1099 Citrus Tower Blvd, Clermont, FL 34711.
Southwest Florida Regional	2727 Winkler Ave., Fort Myers, FL 33901.
St. Cloud Regional Medical Center	2906 17th Street, St. Cloud, FL 34769.
St. Luke's Hospital—Mayo Clinic	4201 Belfort Rd, Jacksonville, FL 32216.
St. Mary's Medical Center	901 45th St, West Palm Beach, FL 33407.
Sun Coast Hospital	2025 Indian Rocks Road, Largo, FL 33774.
Tallahassee Memorial Hospital	1310 N. Magnolia Dr., Tallahassee, FL 32308.
The Village Regional Hospital	1451 El Camino Real, The Villages, FL 32159.
Twin Cities Hospital	2190 Hwy 85 N, Niceville, FL 32578.
University Community Hospital	3100 Fletcher Avenue, Tampa, FL 33613.
University of Florida (Shands) College of Medicine	1600 SW Archer Road, Gainesville, FL 32610.
Val Verde Regional Medical Center	3600 Washington St, Hollywood, FL 33021.
Venice Regional Medical Center	540 The Rialto, Venice, FL 34285.
West Boca Medical Center	21644 State Road 7, Boca Raton, FL 33428.
West Florida Hospital	8383 N. Davis Highway, Pensacola, FL 32514.
West Florida Hospital	8383 N. Davis Highway, Pensacola, FL 32514.
Westside Regional Medical Center	8201 West Broward Blvd, Plantation, FL 33324.
Winter Haven Hospital	20005 Ave F Northeast, Winter Haven, FL 33881.
Wuesthoff Health System	110 Longwood Ave, Rockledge, FL 32956-5002.
Athens Regional Medical Center	1199 Prince Ave, Athens, GA 30606.
Atlanta Medical Center	303 Parkway Dr NE, Atlanta, GA 30312.
Candler Hospital, Inc	5353 Reynolds Street, Savannah, GA 31405.
Doctors Hospital—Augusta	3651 Wheeler Dr, Augusta, GA 30909.
East Georgia Regional Medical Center	1499 Fair Rd (PO Box 1048), Statesboro, GA 30459.
Emory Crawford Long Hospital	550 Peachtree St, Atlanta, GA 30308.
Emory Dunwoody Medical Center	4575 North Shallowford Road, Atlanta, GA 30338.
Emory Eastside Medical Center	1700 Medical Way (PO Box 587), Snellville, GA 30078.
Emory University Hospital	1364 Clifton Road, NE C408, Atlanta, GA 30322.
Fairview Park Hospital	200 Industrial Blvd, Dublin, GA 31021.
Floyd Medical Center	304 Turner McCall Blvd., Rome, GA 30162.
Gwinnett Hospital System	1000 Medical Center Blvd, Lawrenceville, GA 30045.
Hamilton Medical Center	1200 Memorial Dr, Dalton, GA 30720.
Henry Medical Center, In.	1133 Eagles Landing Parkway, Stockbridge, GA 30281.
Kennestone Hospital	677 Church St., Marietta, GA 30066.
MCG Health Inc	1120 15th Street BBR-6524, Augusta, GA 30912.
Medical Center of Central Georgia	777 Hemlock St. Box 53, Macon, GA 31201.
Memorial Health University Medical Center	4700 Waters Ave, Savannah, GA 31404.
Newton Medical Center	5126 Hospital Drive, Covington, GA 30014.
Northeast Georgia Medical Center	743 Spring St NE, Gainesville, GA 30501-3899.
Northlake Medical Center	1455 Montreal Road, Tucker, GA 30084.
Northside Hospital	1000 Johnson Ferry Road, Atlanta, GA 30342.
Piedmont Healthcare Physicians Cath Lab LLC	1968 Peachtree Rd NW, Atlanta, GA 30309.
Piedmont Hospital	95 Collier Road Suite 5005, Atlanta, GA 30309.
Redmond Regional Medical Center	501 Redmond Road, Rome, GA 30165.
Saint Francis Hospital	2122 Manchester Expressway, Columbus, GA 31904.
Saint Josephs Hospital of Atlanta	5665 Peachtree Dunwoody Road, Atlanta, GA 30342.
Smith Northview Hospital	PO Box 10010, Valdosta, GA 31604.
South Fulton Medical Center	1170 Cleveland Ave, East Point, GA 30344.
South, GA Medical Center	PO Box 1727, Valdosta, GA 31603-1727.
Southern Regional Medical Center	11 Upper Riverdale Rd, Riverdale, GA 30274.
Spalding Regional Medical Center	601 South 8th Street, Griffin, GA 30224.
St Mary's Health Care Systems	1230 Baxter Street, Athens, GA 30606.
St. Joseph's Hospital	11705 Mercy Boulevard, Savannah, GA 31419.
Tift Regional Medical Center	PO Box 747, Tifton, GA 31794.
University Hospital	1350 Walton Way, Augusta, GA 30901-2629.
Wellstar Cobb Hospital	531 Roselane Street, Marietta, GA 30060.
Kaiser Permanente—Moanalua Med Center	3288 Moanalua Road, Honolulu, HI 96819.
Kapi'olani Medical Center Pali Momi	98-1079 Moanalua Road, Aiea, HI 96701.
Kuakini Medical Center	347 North Kuakini Street, Honolulu, HI 96817.
Queens Medical Center	1301 Punchbowl Street, Honolulu, HI 96813.
St Francis Medical Center	2230 Liliha St., Honolulu, HI 96817.
Straub Clinic & Hospital: Cath Lab	888 S King St. Makai, 2nd Floor #22, Honolulu, HI 96813.
Genesis Medical Center	1236 East Rusholme St, Suite 190, Davenport, IA 52803-2459.
Jennie Edmundson Memorial Hospital	933 E. Pierce Street, Council Bluffs, IA 51503.
Mary Greeley Medical Center	1111 Duff Ave, Ames, IA 50010.
Mercy Iowa City	500 E. Market Street, Iowa City, IA 52245.
Mercy Medical Center	701 10th St. SE, Cedar Rapids, IA 52403.

Client name	Address
Mercy Medical Center .....	801 5th Street, Sioux City, IA 51101.
Mercy Medical Center .....	1111—6th Ave, Des Moines, IA 50314–2611.
Mercy Medical Center-North Iowa .....	1000 4th St. SW, Mason City, IA 50401.
Saint Lukes Hospital .....	1026 A Ave, NE, Cedar Rapids, IA 52406–3026.
St. Luke's Methodist Hospital .....	1026 A Ave NE (PO Box 3026), Cedar Rapids, IA 52406–3026.
Trinity Regional Medical Center .....	802 Kenyon Road, Fort Dodge, IA 50501.
Trinity Regional Medical Center .....	4500 Utica Ridge Rd, Bettendorf, IA 52722.
University of Iowa Hospitals and Clinics .....	200 Hawkins Drive, Iowa City, IA 52242.
Eastern Idaho RMC .....	3100 Channing Way, Idaho Falls, ID 83404.
Kootenai Medical Center .....	2003 Lincoln Way, Coeur D Alene, ID 83814.
Portneuf Medical Center .....	651 Memorial Drive, Pocatello, ID 83201.
Saint Lukes Regional Medical Center .....	190 E Bannock Street, Boise, ID 83712–6241.
St. Alphonsus Regional Medical Center .....	1055 N. Curtis Rd., Boise, ID 83706.
St. Mary Medical Center .....	1500 South Lake Park Avenue, Hobart, ID 46342.
The Indiana Heart Hospital .....	8075 North Shadeland Avenue, Indianapolis, ID 46250.
Advocate Christ Medical Center .....	4440 West 95th Street #127NOB, Oak Lawn, IL 60453.
Advocate Illinois Masonic Medical Center .....	836 W. Wellington, Chicago, IL 60657.
Advocate Lutheran General Hospital .....	1775 Dempster Street, Park Ridge, IL 60068.
Advocate South Suburban Hospital .....	17800 S Kedzie Ave, Hazel Crest, IL 60429.
Alexian Brothers Medical Center .....	800 Biesterfeld Rd, Elk Grove Village, IL 60007–3311.
Alton Memorial Hospital .....	1 Memorial Drive, Alton, IL 62067.
Blessing Hospital .....	11th and Broadway Street, PO Box 7005, Quincy, IL 62301.
BroMenn Hospital .....	P.O. Box 2850, Bloomington, IL 61702–2850.
Carle Foundation Hospital .....	611 W. Park Street, Urbana, IL 61801.
Central DuPage Hospital .....	25 N Winfield Rd, Winfield, IL 60190.
CGH Medical Center .....	100 East Le Fevre Road, Sterling, IL 61081.
Condell Medical Center .....	801 S. Milwaukee Ave, Libertyville, IL 60048.
Edward Hospital .....	120 Spalding Drive #205, Naperville, IL 60540.
Elmhurst Memorial Hospital Marquardt Memorial Library .....	200 Berteau Ave, Elmhurst, IL 60126.
Evanston Hospital .....	2650 Ridge Ave, Evanston, IL 60626.
FHN Memorial Hospital .....	1045 W Stephenson St, Freeport, IL 61032.
Freeport Health Network .....	1045 W. Stephenson St, Freeport, IL 61032.
Gateway Regional Medical Center .....	2100 Madison Ave, Granite City, IL 62040.
Genesis Medical Center .....	801 Illini Drive, Silvis, IL 61282.
Glenbrook Hospital .....	Evanston, IL 60026.
Good Samaritan Hospital .....	605 N 12th St, Mount Vernon, IL 62864.
Good Samaritan Hospital .....	3815 Highland Avenue, Downers Grove, IL 60515.
Good Shepherd Hospital .....	450 W. Hwy 22, Barrington, IL 60010.
Heartland Regional Medical Center .....	3333 W. Deyoung St, Marion, IL 62959.
Highland Park Hospital .....	718 Glenview Ave., Highland Park, IL 60035.
Hinsdale Hospital .....	120 N Oak Street, Hinsdale, IL 60521.
Holy Cross Hospital .....	2701 W 68th Street, Chicago, IL 60629.
Iroquois Memorial Hospital .....	200 Fairman Ave, Watseka, IL 60970.
Katherine Shaw Bethea Hospital .....	403 E First St, Dixon, IL 61021.
LaGrange Memorial Hospital .....	120 North Oak Street, Hinsdale, IL 60521.
Little Company of Mary Hospital .....	2800 W. 95th St, Evergreen Park, IL 60805.
MacNeal Hospital .....	3249 S. Oak Park Ave, Berwyn, IL 60402.
Memorial Hospital Carbondale .....	405 W Jackson Street, Carbondale, IL 65902.
Memorial Medical Center .....	701 N. First, Springfield, IL 62781.
Mercy Hospital & Medical Center .....	2525 South Michigan Ave, Chicago, IL 60616.
Methodist Medical Center of Illinois .....	221 NE Glen Oak Ave, Peoria, IL 61636.
Michael Reese Hospital .....	2929 S. Ellis Ave, Chicago, IL 60616.
Morris Hospital .....	150 West High Street, Morris, IL 60450.
Northern Illinois Medical Center .....	4201 Medical Center Drive, McHenry, IL 60050.
Northwest Community Hospital .....	800 W Central Rd, Arlington Heights, IL 60005.
Northwestern Memorial Hospital .....	251 E Huron; Galter 3–210, Chicago, IL 60611.
OSF Saint Anthony Medical Center .....	5666 East State Street, Rockford, IL 61108.
OSF Saint Joseph Medical Center .....	2200 E Washington, Bloomington, IL 61701.
OSF Saint Francis Medical Center .....	530 NE Glen Oak, Peoria, IL 61637.
Our Lady of the Resurrection Medical Center .....	5645 W. Addison, Chicago, IL 60634.
Palos Community Hospital .....	12251 S 80th Ave., Palos Heights, IL 60463–0930.
Proctor Hospital .....	5409 N. Knoxville Ave, Peoria, IL 61614.
Protestant Memorial Medical .....	4500 Memorial Drive, Belleville, IL 62226.
Provena Covenant Medical Center .....	1400 West Park Street, Urbana, IL 61801–9901.
Provena Mercy Medical Center .....	1325 North Highland Avenue, Aurora, IL 60506.
Provena Saint Joseph Medical Center .....	333 N. Madison St., Joliet, IL 60435.
Provena Saint Mary's Hospital .....	500 West Court Street, Kankakee, IL 60901.
Resurrection Medical Center .....	7435 W. Talcott Ave, Chicago, IL 60631.
Rockford Memorial Hospital .....	2400 N Rockton Ave, Rockford, IL 61103.
Rush North Shore Medical Center .....	9600 Gross Point Road, Skokie, IL 60076.
Rush University Medical Center .....	1653 West Congress Parkway, Chicago, IL 60612.
Rush-Copley Medical Center/Attn: Health Science Library .....	2000 Ogden Ave, Aurora, IL 60504.
Rush-Riverside Heart Care Center .....	350 N. Wall Street, Kankakee, IL 60901.
Saint Elizabeth's Hospital .....	211 South 3rd Street, Belleville, IL 62220–1915.

Client name	Address
Saint Francis Hospital and Health Center .....	12935 Gregory St, Blue Island, IL 60406-2470.
Saint Francis Hospital of Evanston .....	355 Ridge Avenue, Evanston, IL 60202.
Saint Johns Hospital .....	800 E. Carpenter, Springfield, IL 62769.
Saint Joseph Hospital (Provena) .....	77 North Airlite Street, Elgin, IL 60123-4912.
Sherman Hospital .....	934 Center Street, Decision Support, Elgin, IL 60120.
Silver Cross Hospital .....	1200 Maple Road, Joliet, IL 60432.
St. James Hospital and Health Centers .....	20201 S Crawford, Olympia Fields, IL 60461.
St. Mary's Good Samaritan .....	400 North Pleasant, Centralia, IL 62801.
St. Elizabeth Hospital .....	2233 W. Division, Chicago, IL 60622.
St. Joseph Medical Center .....	2200 E. Washington St., Bloomington, IL 61701.
St. Mary of Nazareth Hospital Center .....	2233 W. Division, Chicago, IL 60622.
St. Mary's Hospital .....	1800 East Lake Shore Dr, Decatur, IL 62521.
Swedish American Hospital .....	1401 E. State Street, Rockford, IL 61104.
Swedish Covenant Hospital .....	5145 N. California, Chicago, IL 60625.
Trinity Medical Center .....	2701 17th St., Rock Island, IL 61201.
Weiss Memorial Hospital .....	4646 N. Marine Drive, Chicago, IL 60640.
West Suburban Hospital Medical Center .....	3 Erie Court, Oak Park, IL 60302.
Allen Memorial Hospital .....	1825 Logan Ave, Waterloo, IN 50703.
Ball Memorial Hospital .....	2401 University Avenue, Muncie, IN 47303.
Bloomington Hospital .....	601 W. Second St., Bloomington, IN 47403.
Clarian Health Partners-Methodist Hospital Campus .....	1701 N. Senate Blvd, Room A1082, Indianapolis, IN 46202.
Clark Memorial Hospital .....	1220 Missouri Avenue, Jeffersonville, IN 47130.
Columbus Regional Hospital .....	2400 E. 17th St., Columbus, IN 47201-5360.
Community Hospital .....	901, Mac Arthur Blvd., Munster, IN 46321.
Community Hospital East .....	1500 North Ritter Avenue, Indianapolis, IN 46219.
Community Hospital South .....	1500 N Ritter Ave, Indianapolis, IN 46219-3027.
Deaconess Hospital .....	600 Mary Street, Evansville, IN 47747.
Dunn Memorial Hospital .....	1600 23rd Street, Bedford, IN 47421.
Elkhart General Hospital .....	600 East Boulevard, 3 South Suites Elkhart, IN 46514-2499.
Floyd Memorial Hospital .....	1850 State Street, New Albany, IN 47150.
Good Samaritan Heart Center .....	520 South 7th St, Vincennes, IN 47591.
Heart Center of Indiana .....	8333 Nabb Road, Suite 330, Indianapolis, IN 46290.
Howard Regional Health System .....	3500 South Lafountain Street, Kokomo, IN 46904-9011.
Lutheran Hospital of Indiana .....	7950 W. Jefferson Blvd, Ft. Wayne, IN 46804.
Marion General Hospital .....	441 N Wabash Ave, Marion, IN 46952.
Memorial Hospital of South Bend .....	615 N. Michigan, South Bend, IN 46601-1033.
Methodist Hospital Southlake Campus .....	8701 Broadway, Merrillville, IN 46410-7035.
Parkview Hospital .....	2200 Randallia Drive, Fort Wayne, IN 46805.
Porter Valparaiso Hospital Campus .....	814 Laporte Ave., Valparaiso, IN 46383.
Reid Hospital & Healthcare Services .....	1401 Chester Blvd, Richmond, IN 47374.
Riverview Hospital .....	395 Westfield Road, Noblesville, IN 46060.
Saint Anthony Medical Center .....	1201 S. Main Street, Crown Point, IN 46307.
Saint Margaret Mercy .....	5454 Hohman, Hammond, IN 46320.
Saint Mary's Medical Center .....	3700 Washington Ave, Evansville, IN 47750.
St Joseph Hospital .....	700 Broadway, Fort Wayne, IN 46802.
St. Catherine Hospital E Chicago .....	1500 South Lake Park Avenue, Hobart, IN 46342.
St. Francis Heart Center .....	8111 S. Emerson Avenue, Indianapolis, IN 46237.
St. Joseph Reg. Medical Center .....	801 E. Lasalle Avenue, South Bend, IN 46617.
St. Vincent Hospital and Health Center .....	8333 Naab Rd, Suite 330, Indianapolis, IN 46260.
Terre Haute Regional Hospital .....	3901 South 7th Street, Terre Haute, IN 47802.
Union Hospital .....	1606 N. 7th St., Terre Haute, IN 47804.
Wishard Health Services/Attn: A/P .....	1001 W 10th Street, Indianapolis, IN 46202.
Galichia Heart Hospital .....	2610 N Woodlawn, Wichita, KS 67220.
Hays Medical Center .....	2220 Canterbury, Hays, KS 67601.
Hutchinson Hospital .....	1701 E. 23rd Ave., Hutchinson, KS 67502.
Kansas Heart Hospital .....	3601 N Webb Rd, Wichita, KS 67226.
Kansas University Hospital Authority .....	3901 Rainbow, Kansas City, KS 66160.
Labette County Medical Center .....	1920 S. U.S. Highway 59, PO Box 956, Parson, KS 67357.
Menorah Medical Center .....	5721 W 119th St., Overland Park, KS 66209.
Olathe Medical Center .....	20333 W 151st, Olathe, KS 66061-7211.
Overland Park Regional Medical Center/Health Midwest .....	10500 Quivira, Overland Park, KS 66215.
Providence Medical Center .....	8929 Parallel Parkway, Kansas City, KS 66112-1689.
Salina Regional Health Center .....	400 S. Santa Fe, Salina, KS 67401.
Shawnee Mission Medical Center .....	9100 West 74th Street, Shawnee Mission, KS 66204-4004.
St. Francis Health Center .....	1700 SW. 7th St., Topeka, KS 66605.
Stormont-Vail Regional Medical Center .....	1500 SW 10th, Topeka, KS 66604.
Via Christi Regional Medical Center St. Francis .....	929 N. St. Francis, Wichita, KS 67214.
Via Christi Regional Medical St. Joseph .....	929 N. St Francis, Wichita, KS 67214.
Wesley Medical Center .....	550 N. Hillside, Wichita, KS 67214.
Western Plains Medical Center .....	3001 Ave A, Dodge City, KS 67801.
Baptist Hospital East .....	4000 Kresge Way, Louisville, KY 40207.
Central Baptist Hospital .....	1800 Nicholasville Road, Suite 401, Lexington, KY 40503.
Frankfort Regional Medical Center .....	299 Kings Daughter Dr, Frankfort, KY 40601.
Hardin Memorial Hospital .....	913 N Dixie Ave., Elizabethtown, KY 42701-2599.

Client name	Address
Hazard ARH Regional Medical Center .....	100 Medical Center Drive, Hazard, KY 41701.
Highlands Regional Medical Center .....	5000 U.S. 321, Prestonsburg, KY 41653.
Jewish Hospital .....	200 Abraham Flexner Way, Louisville, KY 40202.
Kings Daughters Medical Center .....	2201 Lexington Avenue, Ashland, KY 41101.
Lake Cumberland Regional Hospital .....	305 Langdon Street, Somerset, KY 42503.
Lourdes Hospital .....	1530 Lone Oak Road, Paducah, KY 42003.
Marymount Medical .....	310 East 9th Street, London, KY 40741.
Medical Center at Bowling Green .....	250 Park Street, Bowling Green, KY 42101.
Norton Audubon .....	233 E. Gray Street, Suite 608, Louisville, KY 40202.
Norton Hospital .....	233 E. Gray Street, Suite 608, Louisville, KY 40202.
Owensboro Medical Health System .....	811 E. Parrish Ave., Owensboro, KY 42303.
Pikeville Medical Center .....	911 Bypass Road, Pikeville, KY 41501.
Regional Medical Center .....	900 Hospital Drive, Madisonville, KY 42431-1644.
Saint Elizabeth Medical Center-South .....	1 Medical Village Drive, Edgewood, KY 41017-3403.
St. Joseph Hospital .....	1 Saint Joseph Drive, Lexington, KY 40504.
St. Luke Hospital East .....	85 N Grand Ave, Ft. Thomas, KY 41075.
St. Luke Hospital West .....	7380 Turfway Rd, Florence, KY 41042.
T. J. Samson Community Hospital .....	1301 North Race St, Glasgow, KY 42141.
Trover Foundation Regional Medical Center .....	900 Hospital Dr, Madisonville, KY 42431.
University of Kentucky .....	800 Rose Street, Lexington, KY 40536.
Western Baptist Hospital .....	2501 Kentucky Avenue, Paducah, KY 42003.
Baton Rouge General Medical Center .....	3600 Florida Blvd., Baton Rouge, LA 70806.
Christus St. Patrick Hospital .....	524 South Ryan Street, Lake Charles, LA 70602-3401.
Christus-Schumpert Highland Hospital .....	One St. Mary Place, Shreveport, LA 71101.
East Jefferson General Hospital .....	4200 Houma Boulevard, Metairie, LA 70006.
Glenwood Regional Medical Center .....	503 McMillan Road, West Monroe, LA 71291.
Heart Hospital of Lafayette .....	1105 Kaliste Saloom, Lafayette, LA 70508.
Iberia Medical Center .....	2315 East Main Street, New Iberia, LA 70560.
Kenner Regional Medical Center .....	180 West Esplanade Avenue, Kenner, LA 70065.
Lafayette General Medical Center .....	1214 Coolidge, Lafayette, LA 70505.
Lake Charles Memorial Hospital .....	1701 Oak Park Blvd., Lake Charles, LA 70601.
Lakeview Regional Medical Center .....	95 East Fairway Dr, Covington, LA 70433-7500.
Louisiana Heart Hospital .....	64030 Louisiana Highway 434, Lacombe, LA 70445.
LSUHSC-Cath Lab .....	1501 Kings Hwy, Shreveport, LA 71130.
Meadowcrest Hospital .....	2500 Belle Chasse Hwy, Gretna, LA 70056.
North Oaks Medical Center .....	15790 Paul Vega MD Dr, Hammond, LA 70403.
Northshore Regional Medical Center .....	100 Medical Center Drive, Slidell, LA 70461.
Ochsner Medical Center—Baton Rouge .....	17000 Medical Center Dr, Baton Rouge, LA 70816.
Ochsner Medical Foundation .....	1514 Jefferson Hwy, New Orleans, LA 70121.
Opelousas General Health System .....	539 E. Prudhomme Street, Opelousas, LA 70570.
Our Lady of Lourdes Regional Medical Center .....	611 St Landry (PO Box 4027), Lafayette, LA 70506.
Our Lady of The Lake Regional .....	7777 Hennessy Blvd., Suite 2007, Baton Rouge, LA 70808.
Rapides Regional Medical Center .....	211 4th Street (Box 30101), Alexandria, LA 71301.
SOUTHWEST MEDICAL CENTER .....	2810 Ambassador Caffery Parkway, Lafayette, LA 70506.
St. Francis Medical Center .....	309 Jackson St, Monroe, LA 71210.
St. Francis North Hospital .....	3421 Medical Park Drive, Monroe, LA 71203.
St. Tammany Parish Hospital .....	1202 S. Tyler Street, Covington, LA 70433.
Terrebonne General Medical Center .....	8166 Main Street, Houma, LA 70360.
The Outpatient Cath Lab-BRCC .....	7777 Hennessy Blvd., Suite 2007, Baton Rouge, LA 70817.
The Outpatient Cath Lab-LCA .....	7777 Hennessy Blvd., Suite 2007, Baton Rouge, LA 70808.
Touro Infirmary Medical Center .....	1401 Foucher St, New Orleans, LA 70115.
Tulane University Hospital and Clinic .....	1415 Tulane Ave., HC-63, New Orleans, LA 70112.
West Jefferson Medical Center .....	1101 Medical Center Blvd, Marrero, LA 70072.
Willis Knighton Medical Center .....	2600 Greenwood Road, Shreveport, LA 71103.
Willis-Knighton Medical Center .....	2600 Greenwood Road, Shreveport, LA 71103.
Baystate Medical Center .....	759 Chestnut Street, s4553, Springfield, MA 01199.
Beth Israel Deaconess Medical Center .....	185 Pilgrim Rd, Boston, MA 02215.
Beverly Hospital .....	85 Herrick St, Beverly, MA 01915.
Boston Medical Center .....	One Boston Medical Place, Boston, MA 02118.
Boston University Medical Center .....	One Boston Medical Place, Boston, MA 02118.
Brigham & Womens Hospital .....	75 Francis Street, Boston, MA 02115.
Cape Cod Hospital .....	27 Park Street, Hyannis, MA 02601.
Caritas Norwood Hospital .....	800 Washington Street, Norwood, MA 02062.
Caritas St. Elizabeths Medical Center .....	736 Cambridge St, Boston, MA 02135.
Cooley Dickinson Hospital .....	30 Locust St, Northampton, MA 01060.
Lahey Clinic .....	41 Mall Road, Burlington, MA 01805.
Lowell General Hospital .....	295 Varnum Ave, Lowell, MA 01854.
Massachusetts General Hospital .....	55 Fruit Street, Boston, MA 02114.
Mercy Hospital/Attn: A/P .....	271 Carew St, PO Box 9012, Springfield, MA 01102.
MetroWest Medical Center .....	115 Lincoln Street, Framingham, MA 01702-6327.
Milford Regional Medical Center .....	14 Prospect Street, Milford, MA 01568.
Mount Auburn Hospital .....	330 Mount Auburn Street, South 2-Administration, Cambridge, MA 02138.
Nasoba Valley Medical Center .....	200 Groton Road, Ayer, MA 01432.

Client name	Address
North Shore Medical Center-Salem Hospital	81 Highland Avenue, Davenport 5 Salem, MA 01970.
Saint Vincent Hospital	123 Summer Street, Worcester, MA 01608.
South Shore Hospital	55 Fogg Rd, S. Weymouth, MA 02190-2432.
Southcoast Hospitals Group	363 Highland Avenue, Fall River, MA
Tufts-New England Medical Center	750 Washington Street, Boston, MA 02111.
UMASS Memorial Medical Center	55 Lake Ave North, Worcester, MA 01655-0002.
Anne Arundel Medical Center	2001 Medical Parkway, Annapolis, MD 21401.
Braddock Campus	900 Seton Dr, Cumberland, MD 21502.
Carroll Hospital Center	200 Memorial Avenue, Westminster, MD 21157.
Chester River Hospital Center	100 Brown Street, Chestertown, MD 21620.
Franklin Square Hospital	9000 Franklin Square Drive, Baltimore, MD 21237.
Good Samaritan Hospital of Maryland	5601 Loch Raven Blvd, Baltimore, MD 21239.
Greater Baltimore Medical Center	6701 N. Charles St., Baltimore, MD 21204.
Harbor Hospital Center	3001 S. Hanover Street, Baltimore, MD 21225.
Howard County General Hospital	5755 Cedar Lane, Columbia, MD 21044.
Johns Hopkins Bayview Medical Center	4940 Eastern Avenue, Baltimore, MD 21224.
Johns Hopkins Hospital	600 North Wolfe Street, Baltimore, MD 21287.
Mercy Medical Center McGlannan Library	301 St. Paul Place, Baltimore, MD 21202.
Peninsula Regional Medical Center	100 East Carroll Street, Salisbury, MD 21801.
Prince George's Hospital Center	3001 Hospital Drive, Cheverly, MD 20785.
Shady Grove Adventist Hospital	9901 Medical Center Dr, Rockville, MD 20850.
Shore Health System of Maryland	219 South Washington Street, Easton, MD 21601.
Sinai Hospital of Baltimore	2401 West Belvedere Ave., Baltimore, MD 21215-5271.
St. Agnes Hospital	900 Caton Ave, Baltimore, MD 21229.
St. Joseph Medical Center	7601 Osler Drive, Towson, MD 21204.
Suburban Hospital	8600 Old Georgetown Road, Bethesda, MD 20814.
Union Memorial Hospital	201 E University Pkwy, Baltimore, MD 21218-2891.
University of Maryland Medical Center Cardiology	22 S. Greene Street, Baltimore, MD 21201-1544.
Washington Adventist Hospital	7600 Carroll Avenue, Takoma Park, MD 20912.
Washington County Hospital/Wroth Memorial Library	251 East Antietam Street, Hagerstown, MD 21740.
Central Maine Medical Center	300 Main Street, Lewiston, ME 04240.
Eastern Maine Medical Center	489 State St, Bangor, ME 04401.
Maine Medical Center	22 Bramhall Street, Portland, ME 04102.
St. Joseph Hospital	360 Broadway, Bangor, ME 04401.
York Hospital	15 Hospital Drive, York, ME 03909.
Alpena Regional Medical Center	1501 W. Chisholm Street, Alpena, MI 49707.
Battle Creek Health System	300 North Avenue, Battle Creek, MI 49016.
Bay Regional Medical Center	1900 Columbus Ave., Bay City, MI 48708.
Borgess Medical Center	1521 Gull Road, Kalamazoo, MI 49048.
Botsford General Hospital	28050 Grand River Avenue, Farmington Hills, MI 48336.
Bronson Methodist Hospital	601 John Street, Kalamazoo, MI 49007-5348.
Covenant Healthcare	1447 N. Harrison, Saginaw, MI 48602.
Crittenton Hospital Medical Center	1101 W University Dr, Rochester, MI 48307-1831.
Garden City Hospital	6245 Inkster Road, Garden City, MI 48135.
Genesys Regional Medical Center	One Genesys Parkway, Grand Blanc, MI 48439.
Gratiot Medical Center	300 East Warwick Drive, Alma, MI 48801.
Hackley Hospital General Fund	1700 Clinton St, Muskegon, MI 49443.
Harper University Hospital	3990 John Road, Detroit, MI 48201.
Henry Ford Hospital	2799 West Grand Blvd, Detroit, MI 48202.
Ingham Regional Medical Center	401 West Greenlawn Ave, Lansing, MI 48910.
Lakeland Hospital	1234 Napier Avenue, Saint Joseph, MI 49085-2112.
Marquette General Health System	420 West Magnetic St, Marquette, MI 49855.
Marquette General Hospital System/Attn: Mary Tikkan	580 W College Ave, Marquette, MI.
Mclaren Regional Medical Center	401 S. Ballenger Hwy, Flint, MI 48532.
Mercy General Health Partners	1500 E. Sherman Blvd., Muskegon, MI 49444.
Metro Health Hospital	1919 Boston SE, Grand Rapids, MI 49546.
Mount Clemens General Hospital	1000 Harrington St, Mount Clemens, MI 48043-2992.
Munson Medical Center	1105 Sixth Street, Traverse City, MI 49684-2386.
Northern Michigan Hospital	416 Connable Ave, Petoskey, MI 49770.
Oakwood Hospital & Medical Center	18101 Oakwood Blvd. Suite 124, Dearborn, MI 48124.
Phelps County Regional Medical Center	1000 W 10th St, Rolla, MI 65401.
Pontiac Osteopathic Hospital	50 North Perry Street, Pontiac, MI 48342.
Port Huron Hospital	1221 Pine Grove Ave., Port Huron, MI 48060.
Regents of the University of Michigan	1500 E. Medical Center Dr. Ann Arbor, MI 48109.
Saint John Macomb Hospital	11800 E. 12 Mile Rd, Room #2510, Warren, MI 48093.
Saint Mary Hospital	36475 W. 5 Mile Road, Livonia, MI 48154.
Saint Mary's Mercy Medical Center	310 Lafayette Avenue, STF#315, Grand Rapids, MI 49503.
Sinai—Grace Hospital	6071 W. Outer Drive, Detroit, MI 48235.
Sparrow Health System	1210 W Saginaw Hwy. Lansing, MI 48915.
Spectrum Health	100 Michigan NE, Grand Rapids, MI 49503.
St Mary's of Michigan	800 S. Washington, City, State Saginaw, MI 48601.
St. John Hospital & Medical Center	22151 Moross Road, City, State Detroit, MI 48236-2148.
St. Joseph Mercy Hospital	5325 Elliot Drive, City, State Ann Arbor, MI 48106.
St. Joseph Mercy, Oakland	44405 Woodward Avenue, Pontiac, MI 48341-5023.



Client name	Address
St. Joseph's Healthcare .....	15855 Nineteen Mile Road, Clinton Township, MI 48038.
W.A. Foote Memorial Hospital .....	205 N. East Ave, Jackson, MI 49201.
William Beaumont Hospital .....	3601 West Thirteen Mile Road, Royal Oak, MI 48073.
William Beaumont Hospital .....	44201 Dequindre Road, Troy, MI 48085.
Abbott Northwestern Hospital .....	800 East 28th Street (Internal Zip 11007), Minneapolis, MN 55407.
Central Minnesota Heart Center at St. Cloud Hospital .....	1406 Sixth Ave. North, St. Cloud, MN 56303.
Fairview Southdale Hospital .....	6401 France Avenue South, Edina, MN 55435.
Hennepin County Medical Center .....	701 Park Ave, Minneapolis, MN 55415-1829.
Immanuel-St. Joseph's Hospital .....	1025 Marsh St. Mankato, MN 56002.
Mayo Clinic-St. Mary's Hospital .....	200 First St SW, Rochester, MN 55905.
Methodist Hospital .....	6500 Excelsior Blvd, 2nd floor HVC, St. Louis Park, MN 55426.
North Memorial Medical Center .....	3300 Oakdale Ave. N., Robbinsdale, MN 55422.
Regions Hospital .....	640 Jackson Street, St. Paul, MN 55101.
St John's Hospital .....	69 W Exchange St, St. Paul, MN 55102.
St Josephs Hospital .....	69 W Exchange St, St. Paul, MN 55102.
St. Luke's Hospital .....	915 E First St, Duluth, MN 55805.
St. Mary's Medical Center .....	407 East Third St, Duluth, MN 55805.
United Hospital .....	333 N Smith Avenue, St. Paul, MN 55102.
Unity Hospital .....	550 Osbourne Road NE, Minneapolis, MN 55432.
Audrain Medical Center .....	620 E. Monroe, Mexico, MO 65265.
Barnes Jewish Hospital/Washington University .....	600 S. Taylor Avenue, Mailstop 90-59-315, Saint Louis, MO 63110-9930.
Capital Regional Medical Center .....	1125 Madison Street PO Box 1128, Jefferson City, MO 65102-1128.
Carondelet Heart Institute at St Joseph HC .....	1000 Carondelet Drive, Kansas City, MO 64114.
Columbia Regional Hospital .....	1 Hospital Drive, Columbia, MO 65212.
Cox Medical Center South .....	3801 S National Ave, Springfield, MO 65807.
DePaul Health Center .....	12303 DePaul Drive, Bridgeton, MO 63044.
Des Peres Hospital .....	2345 Dougherty Ferry Road, St. Louis, MO 63122.
Freeman Hospital .....	Clinical Data Services, 1102 West 32nd Street, Joplin, MO 64804.
Hannibal Regional Hospital .....	6000 Hospital Drive, Hannibal, MO 63401.
The Heart Center—Cardiac Cath Lab Heartland Regional Medical Center.	5325 Faraon Street, Saint Joseph, MO 64506-3373.
Jefferson Memorial Hospital .....	1400 US Highway 61 South, Crystal City, MO 63019.
Lake Regional Health System .....	54 Hospital Drive, Osage Beach, MO 65065.
Liberty Hospital .....	2525 Glenn Hendren Drive, Liberty, MO 64068.
Lincoln County Medical Center .....	1000 E. Cherry St., Troy, MO 63379.
Mid America Heart Institute .....	St. Lukes Hospital, 4401 Wornall Road, Kansas City, MO 64111.
Missouri Baptist Medical Center .....	3105 North Ballas Road, Saint Louis, MO 63131-2374.
Moberly Regional Medical Center .....	1515 Union Avenue, Moberly, MO 65270.
North Kansas City Hospital .....	2800 Clay Edwards Drive, North Kansas City, MO 64116.
Northeast Regional Medical Center .....	315 S. Osteopathy, Kirksville, MO 63501.
Ozarks Medical Center .....	1100 Kentucky Avenue, West Plains, MO 65775.
Poplar Bluff Regional Medical Center .....	2620 N. Westwood Blvd, Poplar Bluff, MO 63901.
Research Medical Center .....	2316 East Meyer Blvd, Kansas City, MO 64132.
Saint Anthonys Medical Center .....	10010 Kennerly Road, Saint Louis, MO 63128-2106.
Saint Francis Medical Center .....	211 Saint Francis Drive, Cape Girardeau, MO 63703.
Saint John's Regional Health Center .....	1235 E Cherokee St, Springfield, MO 65804-2203.
Saint Johns Mercy Medical Center .....	615 S New Ballas Road, Saint Louis, MO 63141-8221.
Saint Louis University Hospital .....	3635 Vista at Grand, Saint Louis, MO 63110.
Saint Luke's Hospital .....	4401 Wornall Road (MAHI 5th Floor), Kansas City, MO 64111.
Saint Lukes Hospital .....	232 S Woods Mill Road, Heart Failure Center, Chesterfield, MO 63017-3417.
Skaggs Community Health Center .....	PO Box 650, Branson, MO 65615-0650.
Southeast Missouri Hospital .....	1701 Lacey Street, Cape Girardeau, MO 63701.
SSM St. Joseph Health Center .....	300 First Captol Dr, St Charles, MO 63301.
St. Francis Medical Center .....	211 Saint Francis Dr., Cape Girardeau, MO 63703-5049.
St. John Regional Health Center .....	1235 E. Cherokee, Springfield, MO 65804.
St. Johns Regional Medical Center .....	2727 McClelland Boulevard, Joplin, MO 64804.
St. Mary's Health Center .....	6420 Clayton, Richmond Heights, MO 63117.
University of Missouri Hospital and Clinics .....	1 Hospital Dr. Columbia, MO 65212.
Baptist Memorial Hospital Golden Triangle .....	2520 5th Street North P.O. Box 1307, Columbus, MS 39703.
Baptist Memorial Hospital North Mississippi .....	2301 South Lamar Blvd, Oxford, MS 38655.
Baptist Memorial Hospital-Desoto .....	7601 Southcrest Pkwy, Southaven, MS 38671.
Central Mississippi Medical Center .....	1850 Chadwick Drive, Jackson, MS 39204.
Forrest General Hospital .....	6051 Hwy 49 South, Hattiesburg, MS 39404-6389.
Jeff Anderson Regional Medical Center .....	2124 14th Street, Meridian, MS 39301.
Magnolia Regional Health Center .....	611 Alcorn Drive, Corinth, MS 38834.
Memorial Hospital at Gulfport .....	4500 13th St, PO Box 1810, Gulfport, MS 39502.
Mississippi Baptist Medical Center .....	1225 N State St., Jackson, MS 39202-2097.
Natchez Community Hospital .....	129 Jefferson Davis Blvd., Natchez, MS 39120.
Natchez Regional Medical Center .....	54 Sgt. Prentiss Drive, Natchez, MS 39120.
North Mississippi Medical Center .....	830 S. Gloster St., Tupelo, MS 38801.
Northwest Mississippi Regional Medical Center .....	1970 Hospital Drive, Clarksdale, MS 38614.
Ocean Springs Hospital .....	3109 Bienville Blvd, Ocean Springs, MS 39564.

Client name	Address
Rankin Medical Center	350 Crossgates Blvd, Brandon, MS 39042.
Riley Hospital	1102 Constitution Avenue, Meridian, MS 39301.
River Oaks Hospital	1030 River Oaks Drive, Jackson, MS 39232.
River Region Medical Center	2100 Hwy 61 North, Vicksburg, MS 39180.
River Regions Health System	2100 Hwy 61 North, Vicksburg, MS 39180.
Rush Hospital	1314 19th Ave, Meridian, MS 39301.
Singing River Hospital	2809 Denny Avenue, Pascagoula, MS 39567.
Southwest MS Regional Med Center	215 Marion Avenue, McComb, MS 39648.
St. Dominic-Jackson Memorial Hospital	969 Lakeland Dr., Jackson, MS 39216.
University of Mississippi Medical Center	2500 N. State Street, Jackson, MS 39216.
Wesley Medical Center	5001 Hardy St., Hattiesburg, MS 39402.
Benefis Healthcare	1101 26th Street S, Great Falls, MT 59405-5161.
Billings Clinic	2800 10th Ave North, Billings, MT 59101.
St. James Health Care	400 South Clark Street, Butte, MT 59701.
St. Patrick Hospital and Health Sciences Center	500 W. Broadway, Missoula, MT 59801.
St. Vincent Healthcare	1233 N. 30th Street, Billings, MT 59101.
Blue Ridge HealthCare	2201 South Sterling Street, Morganton, NC 28655.
Cape Fear Valley Health System	303 Wagoner Drive, Fayetteville, NC 28303-4646.
Carolinas Medical Center	PO Box 32861, Charlotte, NC 28232.
Carolinas Medical Center—Mercy	2001 Vail Ave, Charlotte, NC 28207.
Craven Regional Medical Center	2000 Neuse Blvd, New Bern, NC 28561.
Duke Health Raleigh Hospital	DUMC Box 3973, (3400 Wake Forest Rd), Raleigh, NC 27609.
Duke Regional Hospital	DUMC Box 3973, (3643N Roxboro Rd), Durham, NC 27710.
Duke University Hospital	3000 Erwin Road, Durham, NC 28137.
FirstHealth Moore Regional Hospital	155 Memorial Drive, Pinehurst, NC 28374.
Forsyth Medical Center	3333 Silas Creek Pkwy, Winston-Salem, NC 27103.
Frye Regional Medical Center	420 N Center St, Hickory, NC 28601.
Gaston Memorial Hospital	2525 Court Dr, Gastonia, NC 28054.
High Point Regional Hospital	High Point Regional Hospital, High Point, NC 27261.
Iredell Memorial Hospital	557 Brookdale Drive, Statesville, NC 28687.
Lake Norman Regional Medical Center	171 Fairview Road, Mooresville, NC 28117.
Mission Hospitals Inc	509 Biltmore Avenue, Asheville, NC 28801-4690.
Moses Cone Health System	1200 N. Elm Street, Greensboro, NC 27401.
New Hanover Regional Medical Center	2131 S. 17th Street, Wilmington, NC 28402.
North Carolina Baptist Hospital	Medical Center Blvd., Winston-Salem, NC 27157.
NorthEast Medical Center	920 Church St. North, Concord, NC 28025.
Pitt County Memorial Hospital	2100 Stantonsburg Rd., Greenville, NC 27834-2832.
Presbyterian Hospital	200 Hawthorne Lane, Charlotte, NC 28204.
Rex Hospital	4420 Lake Boone Trail, Raleigh, NC 27607.
University of North Carolina Hospitals	101 Manning Drive, Chapel Hill, NC 27514.
WakeMed Cary Hospital	3000 New Bern Avenue, Raleigh, NC 27610.
WakeMed Raleigh Campus	3000 New Bern Avenue, Raleigh, NC 27610.
Altru Health System	1200 South Columbia Road, Grand Forks, ND 58206-6002.
Dakota Clinic	3000 32nd Avenue SW., Fargo, ND 58104.
Heart and Lung Clinic	900 East Broadway, Box 5510, Bismarck, ND 58502.
Medcenter One	300 North 7th Street, Bismarck, ND 58501.
MeritCare Hospital	MeritCare Hospital/Heart Services Data/Research, Route 108, Fargo, ND 58122.
Trinity Hospitals	PO Box 5020, Minot, ND 58702-5020.
Alegent Health Immanuel Medical Center	6901 N. 72nd Street, Suite 3000, N Omaha, NE 68122.
Bryan LGH Medical Center	3924 Village Ct, Lincoln, NE 68516.
Creighton University Medical Center	601 N. 30th St, Omaha, NE 68131.
Fremont Area Medical Center	450 East 23rd Street, Fremont, NE 68025.
Good Samaritan Hospital	10 East 31st Street, PO Box 1990, Kearney, NE 68848.
Lakeside Hospital	6901 N. 72nd Street, Ste 3300, Omaha, NE 68122.
Midlands Community Hospital	6901 N. 72nd Street, Ste 3000, Omaha, NE 68122.
Nebraska Heart Hospital	7500 South 91st Street, Lincoln, NE 68526.
Nebraska Methodist Hospital	8303 Dodge Street, Omaha, NE 68114.
Saint Elizabeth Regional Medical Center	555 S 70th Street, Lincoln, NE 68510-2462.
The Nebraska Medical Center	987551 Nebraska Medical Center, Omaha, NE 68198.
Catholic Medical Center	100 McGregor Street, Manchester, NH 03102-3770.
Cheshire Medical CTR	580 Court Street, Keene, NH 03431.
Concord Hospital	250 Pleasant Street, Concord, NH 03301.
Exeter Hospital	Exeter Hospital Cardiac Cath Lab, 5 Alumni Dr, Exeter, NH 03833.
Mary Hitchcock Memorial Hospital	One Medical Center Dr., Lebanon, NH 03756.
Portsmouth Regional Hospital	333 Borthwick Avenue, Portsmouth, NH 03801.
Southern New Hampshire Medical Center	8 Prospect St, Nashua, NH 03060.
St. Joseph Hospital	172 Kinsley St, Nashua, NH 03060.
Atlanticare Regional Medical Center	2500 English Creek Avenue, Egg Harbour Township, NJ 08234.
Community Medical Center	99 Highway, 37 West, Toms River, NJ 08775.
Cooper University Hospital	One Cooper Plaza, Camden, NJ 08103.
Deborah Heart & Lung Center	200 Trenton Road, Browns Mills, NJ 08015.
Englewood Hospital & Medical Center	350 Engle St, Englewood, NJ 07631.
Hackensack University Medical Center	30 Prospect Ave, Hackensack, NJ 07601.

Client name	Address
Jersey City Medical Center .....	355 Grand Street, Jersey City, NJ 07307.
Jersey Shore University Medical Center .....	1945 State Route 33, Neptune, NJ 07753.
Morristown Memorial Hospital .....	100 Madison Ave, Morristown, NJ 07962.
Newark Beth Israel Medical Center .....	201 Lyons Ave. at Osborne Terrace, Newark, NJ 07112 .
Our Lady of Lourdes Medical Center .....	1600 Haddon Avenue, Camden, NJ 08103.
PBI Regional Medical Center .....	350 Boulevard, Passaic, NJ 07055.
St. Barnabas Medical Center .....	94 Old Short Hills Road, Livingston, NJ 07039.
St. Francis Medical Center .....	601 Hamilton Avenue, Trenton, NJ 08629.
St. Joseph Regional Medical Center .....	703 Main Street, Paterson, NJ 07503.
The Valley Hospital .....	223 North Van Dien Avenue, Ridgewood, NJ 07450.
University Hospital UMDNJ .....	150 Bergen Street, Newark, NJ 07101.
Gerald Champion Regional Medical .....	2669 North Scenic Drive, Alamogordo, NM 88310.
Heart Hospital of New Mexico .....	504 Elm St NE, Albuquerque, NM 87102.
Lovelace Medical Center .....	5400 Gibson SE, Albuquerque, NM 87108.
Memorial Medical Center .....	2450 S. Telshor, Las Cruces, NM 88011.
Presbyterian Healthcare Services .....	PO Box 26666, Albuquerque, NM 87125.
San Juan Regional Medical Center .....	801 West Maple, Farmington, NM 87401.
North Vista Hospital .....	1409 E Lake Mead Blvd, North Las Vegas, NV 89030.
Northern Nevada Medical Center .....	2375 E Prater Way, Sparks, NV 89434.
Saint Mary's Regional Medical Center .....	235 W. Sixth Street, Reno, NV 89503.
Southern Hills Hospital .....	9300 West Sunset Road, Las Vegas, NV 89148.
Sunrise Hospital and Medical Center .....	3186 S. Maryland Pkwy, Las Vegas, NV 89109.
University Medical Center of Las Vegas .....	1800 W. Charleston Blvd., Las Vegas, NV 89102.
Valley Hospital Medical Center .....	620 Shadow Lane, Las Vegas, NV 89106.
Washoe Medical Center .....	77 Pringle Way, Reno, NV 89502.
Albany Medical Center Dept of Med Division of Cardiology .....	43 New Scotland Ave., Albany, NY 12208.
Arnot-Ogden Medical Center .....	Arnot Heath Heart & Vascular Institute, Elmira, NY 14905-1629.
Bassett Healthcare (Mary Imogene Bassett Hospital) .....	One Atwell Road, Cooperstown, NY 13326.
Bellevue Hospital Center .....	462 First Avenue, New York, NY 10016.
Binghamton General Hospital-United Health Services Hospital, Inc .....	20-42 Mitchell Avenue, Binghamton, NY 13903.
Brookdale Hospital & Medical Center .....	1 Brookdale Plaza, Brooklyn, NY 11212.
Brooklyn Hospital Center .....	121 Dekalb Avenue, Brooklyn, NY 11201.
Buffalo General Hospital Aaron Health Science Library 4D .....	100 High Street, Buffalo, NY 14203.
Crouse Hospital .....	736 Irving Avenue, Syracuse, NY 13210.
Degraff Memorial Hospital .....	445 Tremont Street, North Tanawanda, NY 14120.
Ellis Hospital .....	1101 Nott St, Schenectady, NY 12308.
Erie County Medical Center .....	462 Grider Street, Buffalo, NY 14215.
F.E. Lajam, MD, PC .....	140-04 58th Road, Flushing, NY 11355.
Glens Falls Hospital .....	100 Park Street, Glens Falls, NY 12801.
Good Samaritan Hospital .....	255 Lafayette Ave, Suffern, NY 10901.
Good Samaritan Hospital Cardiology .....	1000 Montauk Hwy, West Islip, NY 11795.
Huntington Hospital .....	270 Park Ave., Huntington, NY 11743.
Kaleida Health Buffalo General Foundation .....	726 Exchange St, Buffalo, NY 14210.
Kenmore Mercy Hospital .....	515 Abbott Road, Buffalo, NY 14220.
Lawrence Hospital .....	55 Palmer Ave, Bronxville, NY 10708-3491.
Lenox Hill Heart and Vascular Institute of New York .....	100 East 77th St, New York, NY 10021.
Long Island College Hospital/Attn: A/P .....	339 Hicks Street, Brooklyn, NY 11201.
Long Island Jewish Medical Center .....	270-05 76th Avenue, New Hyde Park, NY 11040.
Maimonides Medical Center/Division of Cardiology .....	4802 10th Ave., Brooklyn, NY 11219.
Mercy Hospital of Buffalo .....	565 Abbott Rd., Buffalo, NY 14220.
Mercy Medical Center .....	1000 North Village Ave, Rockville Centre, NY 11571.
Millard Fillmore Hospital .....	3 Gates Circle, Buffalo, NY 14209.
Montefiore Medical Center .....	111 East 210th Street, Bronx, NY 10467-2490.
Mount St Mary's Hospital .....	5300 Military Road, Lewiston,, NY 14092.
New York Community Hospital .....	2525 Kings Highway, Brooklyn, NY 11229.
New York Hospital Med. Center of Queens Health Ed Library .....	56-45 Main ST EP Lab/3rd Floor, Flushing, NY 11355.
New York Methodist Hospital .....	506 6th St Brooklyn, New York City, NY 11215.
New York Presbyterian Hospital .....	622 West 168th Street, New York, NY 10032.
Nicholas H. Noyes Memorial Hospital .....	111 Clara Barton Street, Dansville, NY 14437.
North Shore University Hospital .....	300 Community Drive, Manhasset, NY 11030.
Orange Regional Medical Center .....	60 Prospect Avenue, Middletown, NY 10940.
Park Ridge Hospital .....	1555 Long Pond Road, Rochester, NY 14626.
Peconic Bay Medical Center .....	1300 Roanoke Avenue, Riverhead, NY 11901.
Rochester General Hospital .....	1425 Portland Ave, Rochester, NY 14621.
Saint Peter's Hospital .....	315 South Manning Blvd, Albany, NY 12208.
Saint Vincent Hospital Manhattan .....	170 W 12th St, New York, NY 10011.
Saint Vincent's Staten Island .....	355 Bard Avenue, Staten Island, NY 10310.
Sisters of Charity Hospital .....	2157 Main St., Buffalo, NY 14220.
Sound Shore Medical Center .....	16 Guion Place, New Rochelle, NY 10801.
South Nassau Communities Hospital .....	One Healthy Way, Oceanside, NY 11572.
Southampton Hospital .....	240 Meeting House Lane, Southampton, NY 11968.
Southside Hospital .....	301 East Main Street, Bayshore, NY 11706.
St Josephs Hospital Health Center .....	301 Prospect Ave., Syracuse, NY 13203.
St Luke's Cornwall Hospital .....	70 Dubois St., Newburgh, NY 12550.

Client name	Address
St. Catherine of Siena .....	50 Route 25A, Smithtown, NY 11787.
St. Charles Hospital .....	200 Belle Terre Road, Port Jefferson, NY 11777.
St. Elizabeth Medical Center .....	2209 Genesee St., Utica, NY 13501.
St. Francis Hospital .....	100 Port Washington Blvd., Roslyn, NY 11576.
St. John's Queens Hospital .....	90-02 Queens Boulevard, Elmhurst, NY 11373.
St. Joseph Intercommunity Hospital .....	515 Abbott Road, Buffalo, NY 14220.
St. Joseph's Medical Center .....	127 South Broadway, Yonkers, NY 10701.
St. Luke's-Roosevelt Hospital Center .....	1111 Amsterdam Avenue, New York, NY 10025.
Stacia Hansen .....	45 Read Place, Poughkeepsie, NY 12601.
Staten Island University Hospital .....	475 Seaview Ave., Staten Island, NY 10305.
The Mount Sinai Hospital of Queens .....	25-10 30th Avenue, Long Island City, NY 11102.
The Mount Sinai Medical Center .....	Mt Sinai Medical Center, New York, NY 10029.
United Health Services Hospitals/Wilson Regional M .....	33-57 Harrison St, Johnson City, NY 13790.
University of Rochester Medical Center .....	601 Elmwood Ave, Rochester, NY 14642.
Westchester County Medical Center .....	Valhalla Campus, Valhalla, NY 10595.
Winthrop University Hospital .....	259 First St, Mineola, NY 11501.
Woman's Christian Assoc. Hospital .....	207 Foote Ave, Jamestown, NY 14701.
Wyckoff Heights Medical Center .....	374 Stockholm Street, Brooklyn, NY 11237.
Akron City Hospital .....	525 East Market Street, Akron, OH 44309-2090.
Akron General Medical Center .....	400 Wabash Ave, Akron, OH 44307.
Aultman Hospital .....	2600 Sixth St. S.W., Canton, OH 44710.
Barberton Citizens Hospital .....	155 5th St NE, Barberton, OH 44203.
Bethesda North Hospitals .....	375 Dixmyth Ave., Cincinnati, OH 45220-2489.
Blanchard Valley Regional Health Center .....	145 W Wallace St, Findlay, OH 45840-1299.
Cleveland Clinic Foundation .....	9500 Euclid Ave, Cleveland, OH 44195.
Community Health Partners .....	3700 Kolbe Road, Lorain, OH 44053.
Community Hospital .....	2615 E. High Street, Springfield, OH 45505.
Community Hospital and Wellness Center .....	433 West High Street, Bryan, OH 43506.
Dayton Heart Hospital .....	707 S. Edwin C. Moses Blvd, Dayton, OH 45408.
Deaconess Hospital .....	311 Straight St, Cincinnati, OH 45219.
Doctors Hospital .....	5100 West Broad St., Columbus, OH 43228.
Doctors Hospital of Stark .....	400 Austin Ave, Massillon, OH 44646.
East Ohio Regional Hospital .....	90 N. 4th St., Martins Ferry, OH 43935.
EMH Regional Medical Center .....	630 East River St, Elyria, OH 44035.
Fairfield Cardiac Cath Labs .....	3000 Mack Rd., Suite 200, Fairfield, OH 45014.
Fairfield Medical Center .....	401 North Ewing Street, Lancaster, OH 43130.
Fairview General Hospital .....	18101 Lorain Ave, Cleveland, OH 44111.
Forum Health—Northside Medical Center .....	500 Gypsy Lane, Youngstown, OH 44501-0240.
Good Samaritan Hosp & Health Center .....	2222 Philadelphia Dr, Dayton, OH 45406.
Good Samaritan Hospital .....	375 Dixmyth Ave., Cincinnati, OH 45220-2489.
Grandview Medical Center .....	405 Grand Avenue, Dayton, OH 45405.
Grant Medical Center .....	111 S Grant Avenue, Columbus, OH 43215.
Hillcrest Hospital .....	6780 Mayfield Road, Mayfield Heights, OH 44124.
Kettering Medical Center .....	35235 Southern Blvd, Kettering, OH 45429.
Lake Hospital System .....	36000 Euclid Ave., Willoughby, OH 44094.
Lakewood Hospital .....	14519 Detroit Avenue, Lakewood, OH 44107.
Lima Memorial Hospital .....	1001 Bellefontaine Ave., Lima, OH 45804.
Marion General Hospital .....	1000 McKinley Park Dr., Marion, OH 43302-6397.
Mary Rutan Hospital .....	205 Palmer Avenue, Bellefontaine, OH 43311.
Med Central Mansfield .....	335 Glessner Ave, Mansfield, OH 44903.
Medical University of Ohio .....	3065 Arlington Ave., DH2261 Toledo, OH 43614.
Mercy Medical Center .....	1343 North Fountain Blvd., Springfield, OH 45503.
Mercy Medical Center .....	1320 Mercy Dr NW, ATTN: SCU Canton, OH 44708.
MetroHealth Medical Center .....	2500 MetroHealth Drive, Cleveland, OH 44109.
Miami Valley Hospital .....	One Wyoming Street, Dayton, OH 45409.
Mount Carmel East .....	777 West State Street, Columbus, OH 43222.
Mount Carmel St. Ann's Hospital .....	6150 East Broad Street, Columbus, OH 43213.
Mount Carmel West .....	777 West State Street, Suite 505A Columbus, OH 43222-1560.
Ohio State University Medical Center .....	410 W. 10th Ave., 142 Doan Hall Columbus, OH 43210-1228.
Parma Community General Hospital .....	7007 Powers Blvd., Parma, OH 44129.
Riverside Methodist Hosp .....	3535 Olentangy River Road, Columbus, OH 43214.
Robinson Memorial Hospital .....	6847 N. Chestnut St., Ravenna, OH 44266.
Saint Elizabeth Health Center .....	1044 Belmont Ave., Youngstown, OH 44501.
Saint Ritas Medical Center .....	730 West Market Street, Lima, OH 45801-4602.
Southern Ohio Medical Center .....	1805 27th Street, Portsmouth, OH 45662.
Southwest General Health Center .....	18697 Bagley Rd, Middleburg Heights, OH 44130-3417.
St Vincent Mercy Medical Center .....	2213 Cherry Street, Toledo, OH 43608.
St. John West Shore Hospital .....	29000 Center Ridge Rd, Westlake, OH 44145.
St. Luke's Hospital .....	5901 Monclova Rd, Maumee, OH 43537.
St. Vincent Charity Hospital .....	2351 E 22nd Street, Cleveland, OH 44115.
The Christ Hospital .....	2139 Auburn Ave, Cincinnati, OH 45219.
The Toledo Hospital .....	2142 North Cove Blvd, Toledo, OH 43606.
Trinity Medical Center West .....	4000 Johnson Road, Steubenville, OH 43952.
University Hospital .....	234 Goodman Street, Cincinnati, OH 45219.

Client name	Address
University Hospitals of Cleveland .....	11100 Euclid Ave., Cleveland, OH 44106.
Wilson Memorial Hospital .....	915 West Michigan, Sidney, OH 45365.
Wooster Community Hospital .....	1761 Beall Ave., Wooster, OH 44691.
Comanche County Memorial Hospital .....	3401 W Gore Blvd, Lawton, OK 73505.
Deaconess Hospital .....	5501 N. Portland Avenue, Oklahoma City, OK 73112.
Great Plains Regional Medical Center .....	PO Box 2339, Elk City, OK 73648.
Hillcrest Medical Center .....	1120 South Utica, Tulsa, OK 74104.
Integris Baptist Medical Center .....	3300 NW Expressway, 100-4282, Oklahoma City, OK 73112.
Integris Health .....	600 S. Monroe, Enid, OK 73701.
Integris Southwest Medical Center .....	4401 S. Western, Oklahoma City, OK 73109.
Jane Phillips Memorial Medical Center .....	3500 Frank Phillips Blvd, Bartlesville, OK 74006.
McAlester Regional Health Center .....	1 Clark Bass Blvd., McAlester, OK 74501.
Midwest Regional Medical Center .....	2825 Parklawn Drive, Midwest City, OK 73110.
Muskogee Regional Medical Center .....	300 Rockefeller Drive, Muskogee, OK 74401.
Norman Regional Hospital .....	PO Box 1308, Norman, OK 73070-1308.
Oklahoma Heart Hospital .....	4050 W Memorial Road, Oklahoma City, OK 73120.
OU Medical Center .....	1200 Everett Drive, Oklahoma City, OK 73104.
Saint Francis Heart Hospital .....	10501 E 91st Street South, Tulsa, OK 74133.
Saint Francis Hospital .....	6161 S. Yale, Tulsa, OK 74136.
South Crest Hospital .....	8801 S 101st E Ave, Tulsa, OK 74133.
Southwestern Medical Center .....	5602 SW Lee Blvd, Lawton, OK 73505.
St Mary's Regional Medical Center .....	305 S. 5th Street, Enid, OK 73701.
St. John Medical Center .....	1923 S. Utica, Tulsa, OK 74104.
Tahlequah City Hospital .....	1400 East Downing, Tahlequah, OK 74465.
Tulsa Regional Medical Center .....	744 W. 9th, Tulsa, OK 74127.
Adventist Medical Center .....	10123 SE Market St, Portland, OR 97216.
Good Samaritan Regional Medical Center .....	3600 NW Samaritan Drive, Corvallis, OR 97330.
Legacy Emanuel Hospital .....	1919 NW Lovejoy, Portland, OR 97209.
Legacy Good Samaritan .....	1919 NW Lovejoy, Portland, OR 97209.
Providence Portland Medical Center .....	9205 South West. Barnes Road, Portland, OR 97225.
Providence Saint Vincent Med Center .....	Regional Heart Data Services, 9205 South West Barnes Road #33, Portland, OR 97225.
Rogue Valley Medical Cent .....	2825 E. Barnett Road, Medford, OR 97504.
Sacred Heart Medical Center .....	1155 Hilyard St, Eugene, OR 97401.
Salem Hospital (Regional Health Services) .....	665 Winter St. SE, Salem, OR 97309-5014.
St. Charles Medical Center .....	2500 North East Neff Road, Bend, OR 97701-6015.
Abington Memorial Hospital .....	1200 York Road, Abington, PA 19446.
Albert Einstein Medical Center .....	5501 Old York Rd, Philadelphia, PA 19141.
Allegheny General Hospital .....	320 East North Ave, Pittsburgh, PA 15212.
Altoona Hospital .....	620 Howard Ave., Altoona, PA 16601.
Brandywine Hospital .....	201 Reeceville Rd., Coatesville, PA 19320.
Bryn Mawr Hospital .....	100 Lancaster Avenue, Wynnewood, PA 19096.
Chester County Hospital .....	701 East Marshall Street, West Chester, PA 19380.
Community Medical Center .....	1800 Mulberry Street, Scranton, PA 18510.
Crozer Chester Medical Center .....	1 Medical Center Blvd, Chester, PA 19013-3995.
Crozer Chester Medical Center .....	1 Medical Center Blvd, Upland, PA 19013.
Doylestown Hospital .....	595 West State Street, Doylestown, PA 18901.
DuBois Regional Medical Center .....	PO Box 447, DuBois, PA 15801-1440.
Easton Hospital (Northampton Hospital Corp) .....	250 South 21st St., Easton, PA 18042.
Excelsa Health Westmoreland Hospital .....	532 West Pittsburgh Street, Greensburg, PA 15601.
Frankford Hospital .....	Knights and Red Lion Roads, Philadelphia, PA 19114.
Geisinger Medical Center .....	100 North Academy Avenue, Danville, PA 17822-2160.
Geisinger Wyoming Valley Medical Center .....	100 N. Academy Avenue, Danville, PA 17822-2160.
Graduate Hospital .....	1800 Lombard St., Philadelphia, PA 19146.
Grand View Hospital .....	700 Lawn Ave, Sellersville, PA 18960.
Hahnemann University Hospital .....	230 N. Broad Street, Mail Stop # 301, Philadelphia, PA 19102.
Hamot Medical Center .....	201 State Street, Erie, PA 16550.
Heart of Lancaster Regional Medical Center .....	250 College Avenue, Lancaster, PA 17604.
Heritage Valley Health System .....	1000 Dutch Ridge Road, Beaver, PA 15009.
Holy Spirit Health System .....	503 N 21st St, Camp Hill, PA 17011-2204.
Hospital of the University of Pennsylvania .....	9011 E Gates 3400 Spruce St, Philadelphia, PA 19104.
Indiana Regional Medical Center/Cardiology Department .....	835 Hospital Road, Indiana, PA 15701.
Jefferson Regional Medical Center .....	565 Coal Valley Road, Pittsburgh, PA 15236-0119.
Lancaster General Hospital .....	555 North Duke Street, Lancaster, PA 17604-3555.
Lancaster Regional Medical Center .....	250 College Avenue, Lancaster, PA 17604.
Lankenau Hospital .....	100 Lancaster Avenue, Wynnewood, PA 19096.
Lehigh Valley Hospital .....	1200 South Cedar Crest Blvd, Allentown, PA 18103.
Lehigh Valley Hospital/Muhlenberg .....	2545 Schoenersville Rd., Bethlehem, PA 18017.
Lower Bucks Hospital .....	501 Bath Road, Bristol, PA 19007.
Mercy Fitzgerald Hospital .....	1500 Lansdowne Ave, Darby, PA 19023.
Mercy Hospital—Scranton .....	746 Jefferson Avenue, Scranton, PA 18501.
Mercy Hospital of Pittsburgh .....	1400 Locust Street, Pittsburgh, PA 15219.
Paoli Hospital .....	100 Lancaster Avenue, Wynnewood, PA 19096.
Penn Presbyterian Medical Center .....	39th & Market Sts, Philadelphia, PA 19104.

Client name	Address
Penn State Hershey Medical Center, .....	PO Box 850 H139, Hershey, PA 17033.
Pennsylvania Hospital .....	800 Spruce Street, Philadelphia, PA 19107-6192.
Phoenixville Hospital .....	140 Nutt Road, Phoenixville, PA 19460-3906.
Pinnacle Health Invasive Cardiology .....	111 South Front St, Harrisburg, PA 17101-2099.
Robert Packer Hospital .....	1 Guthrie Square, Sayre, PA 18840.
Saint Vincent Health Center .....	232 West 25th Street, Erie, PA 16544.
St. Joseph Medical Center .....	12th & Walnut Street, Reading, PA 19603.
St. Lukes Hospital & Health Network .....	801 Ostrum St., Bethlehem, PA 18020.
St. Mary Hospital .....	1201 Langhorne Newtown Road, Langhorne, PA 19047.
Temple University Hospital .....	3401 North Broad St, Philadelphia, PA 19140.
The Reading Hospital and Medical Center .....	Sixth Avenue and Spruce Street, West Reading, PA 19611.
The Western Pennsylvania Hospital .....	4800 Friendship Ave., Pittsburgh, PA 15224.
Thomas Jefferson University Hospital .....	111 S. 11th Street Gibbon Bldg., Philadelphia, PA 19107.
UPMC Passavant Hospital .....	9100 Babcock Blvd., Pittsburgh, PA 15237.
UPMC Presbyterian Hospital .....	5230 Centre Ave, Pittsburgh, PA 15232.
UPMC Shadyside Hospital .....	5230 Centre Ave, Pittsburgh, PA 15232.
Wyoming Valley Health Care System .....	575 North River Street, Wilkes-Barre, PA 18764.
York Hospital .....	1001 South George Street, York, PA 17405.
Landmark Medical Center .....	115 Cass Ave, Woonsocket, RI.
Memorial Hospital of Rhode Island/Brown University .....	111 Brewster Street, Pawtucket, RI.
Rhode Island Hospital .....	593 Eddy St, Providence, RI 02903.
Aiken Regional Medical Center .....	302 University Parkway, Aiken, SC 29802.
AnMed Health .....	800 Fant Street, Anderson, SC 29621.
Carolina Pines Regional Medical Center .....	1304 W Bobo Newsom Hwy, Hartsville, SC 29069.
Carolinas Hospital System .....	805 Pamplico Hwy, Florence, SC 29505.
Greenville Memorial Hospital .....	701 Grove Road, Greenville, SC 29605.
Kershaw Medical Center .....	1315 Roberts St, Camden, SC 29020.
Mary Black Hospital .....	1700 Skylyn Drive, Spartanburg, SC 29307.
McLeod Regional Medical Center .....	555 E. Chaves St., Florence, SC 29501.
Medical University of South Carolina .....	165 Ashley Ave, PO Box 250915, Charleston, SC 29425.
Palmetto Health Heart Hospital .....	5 Richland Medical Park Drive, Columbia, SC 29203.
Piedmont Medical Center .....	222 S. Herlong Avenue, Rock Hill, SC 29732.
Providence Hospital .....	2435 Forest Drive, Columbia, SC 29204.
Regional Medical Center .....	3000 St. Matthews Road, Orangeburg, SC 29118.
Roper Hospital .....	316 Calhoun Street, Charleston, SC 29401.
Self Regional Healthcare .....	1325 Spring Street, Greenwood, SC 29646.
Spartanburg Regional Med Center .....	101 East Wood St., 3rd Floor Heart Center, Spartanburg, SC 29303.
Springs Memorial Hospital .....	800 West Meeting Street, Lancaster, SC 29720.
St. Francis Hospital .....	One St. Francis Drive, Greenville, SC 29601.
Trident Regional Medical Center .....	9330 Medical Plaza Drive, Charleston, SC 29406.
Tuomey Healthcare System, Tuomey Regional Medical Center .....	129 N. Washington Street, Sumter, SC 29150.
Avera Heart Hospital of South Dakota .....	4500 West 69th Street, Sioux Falls, SD 57108.
Avera Sacred Heart Hospital .....	501 Summit, Yankton, SD 57078.
Rapid City Regional Hospital .....	353 Fairmont Blvd, Rapid City, SD 57702.
Sioux Valley Hospitals & Health System .....	1305 West 18th Street, Sioux Falls, SD 57117.
Baptist Hospital .....	2000 Church Street, Nashville, TN 37236.
Baptist Hospital of East Tennessee .....	137 Blount Ave., Knoxville, TN 37920.
Baptist Hospital West .....	10820 Parkside Drive, Knoxville, TN 37934.
Baptist Memorial Hospital .....	6019 Walnut Grove Road, Memphis, TN 38120.
Centennial Medical Center .....	2300 Patterson Street, Nashville, TN 37203.
Chattanooga-Hamilton County Hospital Authority/Erlanger Health System.	975 E. Third Street, Chattanooga, TN 37403.
Cookeville Regional Medical Center .....	142 W 5th St, Cookeville, TN 38501-1760.
Fort Sanders Regional Med Center .....	1901 Clinch Avenue, Knoxville, TN 37916-2307.
Gateway Medical Center, Gateway Health System .....	1771 Madison Street, Clarksville, TN 37043.
Harton Regional Medical Center .....	1801 N Jackson St, Tullahoma, TN 37388.
Jackson Madison General Hospital .....	708 West Forrest, Jackson, TN 38301.
Johnson City Medical Center Hospital .....	400 N. State of Franklin, Johnson City, TN 37604.
Maury Regional Hospital .....	1224 Trotwood Avenue, Columbia, TN 38401.
Memorial Hospital .....	2525 Desales Ave, Chattanooga, TN 37404-1102.
Memphis Hospital (Germantown Campus) .....	1265 Union Ave., Memphis, TN 38104-3499.
Memphis Hospital (North Campus) .....	1265 Union Ave., Memphis, TN 38104-3499.
Memphis Hospital (South Campus) .....	1265 Union Ave., Memphis, TN 38104-3499.
Memphis Hospital (University Campus) .....	1265 Union Ave., Memphis, TN 38104-3499.
Methodist Medical Center .....	280 Fort Sanders Blvd., Bldg 4, Suite 218, Knoxville, TN 37922.
Parkridge Medical Center .....	2333 McCallie Ave., Chattanooga, TN 37404.
Parkwest Medical Center .....	9352 Parkwest Blvd, Knoxville, TN 37923.
Regional Hospital of Jackson .....	367 Hospital Blvd., Jackson, TN 38305.
Saint Francis Hospital .....	5959 Park Ave, Memphis, TN 38119.
Saint Thomas Health Care Services .....	4220 Harding Road, PO Box 380 Nashville, TN 37202-0380.
Saint Thomas Health Services .....	4220 Harding Road, Nashville, TN 37203.
Skyline Medical Center/HTI Memorial Hospital Corp .....	3441 Dickerson Pike, Nashville, TN 37207.
St. Mary's Medical Center .....	900 Oak Hill Ave, Knoxville, TN 37917-4556.
University Medical Center .....	1411 Baddour Parkway, Lebanon, TN 37087.

Client name	Address
University of Tennessee Medical Center .....	1924 Alcoa Highway, Knoxville, TN 37920-6999.
Vanderbilt University/Accounts Payable Section .....	VU Station B-351810, Nashville, TN 37235.
Wellmont Holston Valley Medical Center .....	130 W Ravine St, Kingsport, TN 37664.
Abilene Regional Medical Center .....	6250 Hwy 83/84, Abilene, TX 79601.
Alliance Hospital .....	515 North Adams, Odessa, TX 79761.
Arlington Memorial Hospital .....	800 W Randol Mill Rd., Arlington, TX 76012-2504.
Baptist Health System .....	215 E Quincy, Suite 200, San Antonio, TX 78215.
Baptist Medical Center .....	111 Dallas St, San Antonio, TX 78205.
Baptist St. Anthony's Health Systems .....	1600 Wallace Blvd, Amarillo, TX 79106.
Baylor All Saints Medical Center .....	1400 Eighth Ave, Fort Worth, TX 76104.
Baylor Jack and Jane Hamilton Heart and Vascular Hospital .....	621 North Hall Street, Dallas, TX 75226.
Baylor Medical Center at Garland .....	2300 Marie Curie, Garland, TX 75042.
Baylor Medical Center at Irving .....	1901 North MacArthur Blvd, Irving, TX 75061.
Baylor Regional Medical Center at Grapevine .....	1650 West College, Grapevine, TX 76051.
Baylor Regional Medical Center of Plano .....	4700 Alliance Blvd, Plano, TX 75093.
Baylor University Medical Center .....	3500 Gaston Ave, Dallas, TX 75246.
Bayshore Medical Center .....	4000 Spencer Hwy., Pasadena, TX 77504.
Centennial Medical Center .....	12505 Lebanon Rd., Frisco, TX 75035.
Christus Hospital—St. Mary .....	3600 Gates Blvd., Port Arthur, TX 77642.
Christus Saint Elizabeth Hospital .....	2830 Calder St., Beaumont, TX 77702.
Christus Spohn Hospital Corpus Christi—Shoreline .....	600 Elizabeth Street, Corpus Christi, TX 78404.
Christus St. Michael Health System .....	2600 St. Michael Drive, Texarkana, TX 75501.
Clear Lake Regional Medical Center .....	500 Medical Center Blvd., Webster, TX 77598.
College Station Medical Center .....	1602 Rock Prairie Road, College Station, TX 77842.
Columbia North Hills Hospital .....	4401 Booth Calloway Rd., North Richland Hills, TX 76180.
Conroe Regional Medical Center .....	504 Medical Center Blvd., Conroe, TX 77304.
Covenant Heart Institute .....	3615 19th Street, Lubbock, TX 79410.
Del Sol Medical Center .....	10301 Gateway West, El Paso, TX 79925.
Denton Regional Medical Center .....	3535 South I-35E, Denton, TX 76205.
Doctors Hospital .....	9440 Poppy Drive, Dallas, TX 75218.
Doctors Hospital at Renaissance .....	5501 South McColl, Edinburg, TX 78539.
Doctors Hospital of Laredo .....	10700 McPherson Road, Laredo, TX 78045.
East Texas Medical Center .....	1000 S. Beckham, Tyler, TX 75711.
Good Shepherd Medical Center .....	700 E. Marshall, Longview, TX 75601.
Gulf Coast Medical Center .....	1400 Hwy. 59, Wharton, TX 77488.
Harlingen Medical Center .....	5501 South Expressway 77, Harlingen, TX 78550.
Harris County Hospitals .....	1504 Taub Loop, Houston, TX 77030.
Harris Methodist Fort Worth .....	1301 Pennsylvania Avenue, Fort Worth, TX 76104.
Harris Methodist HEB .....	1600 Hospital Parkway, Bedford, TX 76022.
Heart Hospital of Austin .....	3801 N. Lamar Blvd., Austin, TX 78756.
Hendrick Medical Center .....	1900 Pine Street, Abilene, TX 79601.
Houston Northwest Medical Center/Accounts Payable .....	710 FM 1960 West, Houston, TX 77090.
Huguley Memorial Medical Center .....	11801 S. Freeway, Ft. Worth, TX 76115.
Kingwood Medical Center .....	22999 Highway 59 N, Kingwood, TX 77339.
Laredo Medical Center .....	1720 Bustamante Street, Laredo, TX 78044.
Las Colinas Medical Center .....	6700 North MacArthur Boulevard, Irving, TX 75039.
Las Palmas Medical Center .....	1801 N Oregon, El Paso, TX 79902.
Longview Regional Medical Center .....	PO Box 14000, Longview, TX 75607.
Lubbock Heart Hospital .....	4810 N. Loop 289, Lubbock, TX 79416.
McAllen Medical Center .....	301 W Expressway 83, McAllen, TX 78503.
Medical Center Hospital .....	500 W. 4th St., Odessa, TX 79760.
Medical Center of Arlington .....	3301 Matlock Road, Arlington, TX 76015.
Medical Center of Lewisville .....	500 West Main, Lewisville, TX 75057.
Medical Center of McKinney .....	4500 Medical Center Dr., McKinney, TX 75069.
Medical Center of Mesquite .....	1011 N. Galloway Ave., Mesquite, TX 75149.
Medical Center of Plano .....	3901 W 15th St., Plano, TX 75075-7738.
Medical City Dallas Hospital .....	7777 Forrest Lane, Dallas, TX 75230.
Memorial Hermann Hospital .....	6411 Fannin; 1 Jones, Ste. 1.466, Houston, TX 77030.
Memorial Hermann South West .....	7600 Beechnut, Houston, TX 77074.
Memorial Hermann Texas Medical Center .....	6411 Fannin, Houston, TX 77030.
Memorial Hermann the Woodlands Hospital .....	9250 Pinecroft, The Woodlands, TX 77380.
Mesquite Community Hospital .....	3500 I-30, Mesquite, TX 75150.
Methodist Hospital .....	7700 Floyd Curl Drive, San Antonio, TX 78229.
Methodist Sugarland Hospital .....	16655 Southwest Freeway, Sugarland, TX 77479.
Midland Memorial Hospital .....	2200 W. Illinois Ave., c/o Heart Institute, Midland, TX 79701.
Mission Regional Medical Center .....	900 S Bryan Rd., Mission, TX 78572.
Mother Frances Hospital .....	800 E. Dawson, Tyler, TX 75701.
Nix Healthcare System .....	414 Navarro Street, San Antonio, TX 78205.
North Austin Medical Center .....	12221 MoPac Expressway North, Austin, TX 78758.
North Central Baptist Hospital .....	520 Madison Oak, San Antonio, TX 78258.
Northeast Baptist Hospital .....	8811 Village Dr., San Antonio, TX 78217.
Northwest Texas Surgical Hospital .....	3501 Soncy Road Suite 118, Amarillo, TX 79119.
Odessa Regional Hospital .....	520 East Sixth Street, Odessa, TX 79760.
Paris Regional Medical Center .....	820 Clarksville, Paris, TX 75460.

Client name	Address
Park Plaza Hospital .....	1313 Hermann Drive, Houston, TX 77004.
Plaza Medical Center of Fort Worth .....	900 Eighth Avenue, Fort Worth, TX 76104.
Presbyterian Hospital of Dallas .....	8200 Walnut Hill Lane, Dallas, TX 75231.
Presbyterian Hospital of Plano .....	6200 West Parker Road, Plano, TX 75093-7914.
Providence Health Center .....	6901 Medical Parkway, Waco, TX 76712.
Providence Memorial Hospital .....	2001 North Oregon, El Paso, TX 79902.
RHD Memorial Medical Center .....	7 Medical Parkway, Dallas, TX 75234.
Rio Grande Regional Hospital .....	101 E. Ridge Rd., McAllen, TX 78503.
Round Rock Medical Center .....	2400 Round Rock Ave., Round Rock, TX 78681.
Saint Joseph Regional Health Center .....	2801 Franciscan St., Bryan, TX 77802-2544.
San Jacinto Methodist Hospital .....	4401 Garth Rd., Baytown, TX 77521.
Scott and White Clinic and Hospital .....	2401 South 31st Street, Alexander Bldg., Temple, TX 76508.
Seton Medical Center .....	1201 W 38th St., Austin, TX 78705.
Sierra Medical Center .....	1625 Medical Center Drive, El Paso, TX 79902.
South Austin Hospital .....	901 W. Ben White Blvd., Austin, TX 78704.
Southeast Baptist Hospital .....	4214 E. Southcross, San Antonio, TX 78222.
Southwest General Hospital .....	7400 Barlite Blvd., San Antonio, TX 78224.
St. David's Medical Center .....	919 East 32nd, Austin, TX 78765.
St. Joseph Medical Center .....	1401 St. Joseph Pkwy., Houston, TX 77002.
St. Luke's Baptist Hospital .....	7830 Floyd Curl Dr., San Antonio, TX 78229.
St. Luke's Episcopal Hospital/Cardiology Education .....	6720 Bertner Ave., Houston, TX 77030.
Texoma Medical Center .....	1000 Memorial Dr., Denison, TX 75020.
Texsan Heart Hospital .....	6700 IH-10 West, San Antonio, TX 78201.
The Heart Hospital of Northwest Texas .....	1501 S. Coulter, Amarillo, TX 79106.
The Hospital at Westlake Medical Center .....	5656 Bee Caves Rd., M-302, Austin, TX 78746.
The Medical Center of Southeast Texas .....	2555 Jimmy Johnson Blvd., Port Arthur, TX 77640.
The Methodist DeBakey Heart Center .....	6565 Fannin, Mail Station A1001, Houston, TX 77030.
Tomball Regional Hospital .....	605 Holderrieth Street, Tomball, TX 77375.
Twelve Oaks Medical Center .....	4200 Twelve Oaks Drive, Houston, TX 77027.
United Regional Healthcare System .....	1600 11th Street, Wichita Falls, TX 76302.
University Medical Center .....	602 Indiana Ave., Lubbock, TX 79410.
University of Texas Medical Branch at Galveston .....	301 University Blvd., Galveston, TX 77555-0294.
University of Texas Southwestern-University Hospital .....	5323 Harry Hines Blvd., Dallas, TX 75390-9013.
Val Verde Regional Medical Center .....	801 Bedell Ave., Del Rio, TX 78840.
Valley Baptist Medical Center .....	2101 Pease St., Harlingen, TX 78550.
Valley Baptist Medical Center-Brownsville .....	1040 W. Jefferson, Brownsville, TX 78520.
Valley Regional Medical Center .....	100 Unit A East Alton, Gloor Blvd., Brownsville, TX 78526.
Wadley Regional Medical Center .....	1000 Pine Street, Texarkana, TX 75501.
West Houston Medical Center .....	12141 Richmond Ave., Houston, TX 77082.
West Texas Medical Center .....	25 Village Circle, Midland, TX 79701.
Wilson N. Jones Medical Center .....	500 N Highland Ave., Sherman, TX 75092.
Castleview Hospital .....	300 North Hospital Dr., Price, UT 84501.
Davis Hospital .....	1600 West Antelope Dr., Layton, UT 84041.
Dixie Regional Medical Center .....	1380 E. Medical Drive St. George, UT 84790.
LDS Hospital .....	8th Ave. & C St., Salt Lake City, UT 84143.
McKay-Dee Hospital Center .....	4401 Harrison Blvd., Ogden, UT 84405.
Ogden Regional Medical Center .....	5475 South 500 East, Ogden, UT 84403.
Salt Lake Regional Medical Center .....	1050 East South Temple, Salt Lake City, UT 84102.
St. Marks Hospital/Northern Utah Healthcare Corporation .....	1250 East 3900 South Street, Salt Lake City, UT 84124.
Timpanogos Regional Hospital .....	750 W. 800 N., Orem, UT 84057.
University of Utah Hospital and Clinic/Division of Cardiology .....	50 North Medical Drive, Salt Lake City, UT 84132.
Utah Valley Regional Medical Center .....	1034 North 500 West, Provo, UT 84604.
Bon Secours DePaul Medical Center .....	150 Kingsley Lane, Norfolk, VA 23505.
Bon Secours Maryview Medical Center .....	3636 High Street, Portsmouth, VA 23707.
Bon Secours—Memorial Regional Medical Center .....	8260 Atlee Road, Mechanicsville, VA 23116.
Bon Secours—St. Mary's Hospital .....	5801 Bremono Road, Richmond, VA 23226.
Carilion Roanoke Memorial Hospital .....	Attn: Cardiac Cath Lab, P.O. Box 13367, Roanoke, VA 24033-3367.
Chesapeake General Hospital .....	736 Battlefield Blvd North, Chesapeake, VA 23320.
CJW Medical Center .....	7101 Jahnke Rd., Richmond, VA 23225-4044.
Halifax Regional Hospital .....	2204 Wilborn Avenue, South Boston, VA 24592.
Henrico Doctors Hospital .....	1602 Skipwith Drive, Richmond, VA 23229.
Inova Alexandria Hospital .....	4320 Seminary Road, Alexandria, VA 22304.
Inova Fairfax Hospital .....	3300 Gallows Road, Falls Church, VA 22042.
Lewis Gale Medical Center .....	1900 Electric Rd., Salem, VA 24153.
Lynchburg General Hospital .....	1901 Tate Springs Road, Lynchburg, VA 24501-1167.
Martha Jefferson Hospital .....	459 Locust Avenue, Charlottesville, VA 22902.
Mary Washington Hospital .....	1001 Sam Perry Blvd., Fredericksburg, VA 22401.
Memorial Hospital of Martinsville .....	320 Hospital Drive, Martinsville, VA 24112.
Northern Virginia Community Hospital .....	601 South Carlin Springs Rd., Arlington, VA 22204.
Obici Hospital .....	2800 Godwin Blvd., Suffolk, VA 23434.
Reston Hospital Center .....	1850 Town Center Pkwy, Reston, VA 20190.
Riverside Regional Medical Center .....	500 J Clyde Morris Blvd., Newport News, VA 23601.
Sentara Norfolk General Hospital .....	600 Gresham Drive, Norfolk, VA 23507.
Sentara Virginia Beach General Hospital .....	1060 First Colonial Rd., Virginia Beach, VA 23454-0685.



Client name	Address
Sid Peterson Memorial Hospital .....	710 Water St., Kerrville, VA 78028.
University of Virginia Medical Center .....	P.O. Box 800679, Charlottesville, VA 22908-0679.
VCU-Medical College of Virginia .....	P.O. Box 980036, Richmond, VA 23298.
Virginia Hospital Center .....	1701 N George Mason Dr., Arlington, VA 22205-3698.
Winchester Medical Center Inc. ....	1840 Amherst St., Winchester, VA 22601.
Fletcher Allen Health Care .....	111 Colchester Ave., Burlington, VT 05401.
Rutland Regional Medical Center .....	160 Allen Street, Rutland, VT 05701.
Deaconess Medical Center .....	W. 800 Fifth Ave., Spokane, WA 99204.
Harrison Medical Center .....	2520 Cherry Avenue, Bremerton, WA 98310.
Northwest Hospital .....	1550 North 115th Street, Seattle, WA 98113.
Overlake Hospital Medical Center .....	1035-116th Avenue, NE., Bellevue, WA 98004.
Providence Everett Medical Center .....	1321 Coby Ave., P.O. Box 1147, Everett, WA 98206-1147.
Providence St. Peter Hospital .....	413 Lilly Road, NE., Olympia, WA 98506.
Sacred Heart Medical Center .....	101 W. Eighth Avenue, Spokane, WA 99204.
Saint Joseph Medical Center .....	1717 South J Street, Tacoma, WA 98405-4933.
Southwest Washington Medical Center .....	600 NE 92nd Ave., Vancouver, WA 98664.
St. John Medical Center .....	1615 Delaware St., Longview, WA 98632.
St. Joseph Hospital .....	2901 Squalicum Parkway, Bellingham, WA 98225.
Swedish Medical Center .....	747 Broadway, Seattle, WA 98122.
Tacoma General Hospital (Multicare Health System) .....	315 Martin Luther King Jr. Way, Tacoma, WA 98415.
University of Washington Medical Center .....	1959 NE Pacific Street, Seattle, WA 98195-6422.
Valley Medical Center .....	400 South 43rd Street, Renton, WA 98058.
Virginia Mason Medical Center .....	1100 Ninth Avenue, Seattle, WA 98111.
Yakima Regional Medical Center/Cardiac Center .....	110 South Ninth Ave., Yakima, WA 98902.
Yakima Valley Memorial Hospital .....	2811 Tieton Drive, Yakima, WA 98902.
All Saints Healthcare .....	3801 Spring St., Racine, WI 53405.
Aurora Bay Care Medical Center .....	2845 Greenbrier Road, Green Bay, WI 54308.
Aurora Sinai Medical Center .....	2900 West Oklahoma Ave., Milwaukee, WI 53215.
Bellin Memorial Hospital .....	744 S. Webster Ave., Cardiac Data Center 5th Floor, Green Bay, WI 54301.
Columbia St. Mary's Hospital Milwaukee .....	4425 N Port Washington Road, Milwaukee, WI 53212.
Columbia St. Mary's Hospital Ozaukee .....	13111 North Port Washington Rd., Mequon, WI 53097.
Community Memorial Hospital .....	W180 N8085 Town Hall Road, Menomonee Falls, WI 53051.
Froedtert Hospital .....	9200 W. Wisconsin Ave., Milwaukee, WI 53226.
Gundersen Lutheran Medical Center, Inc. ....	1910 South Ave., LaCrosse, WI 54601.
Luther Hospital .....	1221 Whipple Street, Eau Claire, WI 54703.
Mercy Medical Center .....	500 S Oakwood, Oshkosh, WI 54904.
Meriter Hospital .....	202 South Park Street, 10 Tower-Heart Center, Madison, WI 53715.
Parkview Hospital .....	1726 Shawano Ave., Green Bay, WI 54303-3282.
Sacred Heart Hospital/Attn: A/P .....	900 W. Clairemont Ave., Eau Claire, WI 54701.
Saint Clare's Hospital .....	611 St. Joseph's Ave., Marshfield, WI 54449.
Saint Elizabeth Hospital .....	1611 S Madison St., Appleton, WI 54915.
Saint Josephs Hospital/Marshfield Clinic .....	611 St. Joseph Ave., Marshfield WI 54449-1832.
St. Francis Hospital .....	5000 West Chambers, M229, Milwaukee, WI 53210.
St. Joseph Regional Medical Center .....	5000 West Chambers, M229, Milwaukee, WI 53210.
St. Lukes Medical Center .....	2900 West Oklahoma Avenue, Milwaukee, WI 53215-4330.
St. Mary's Hospital .....	707 S Mills St., Madison, WI 53715-1849.
St. Michael Hospital .....	5000 West Chambers Street, M229, Milwaukee, WI 53210.
St. Nicholas Hospital .....	3100 Superior Ave., Sheboygan, WI 53081.
The Monroe Clinic .....	515 22nd Ave., Monroe, WI 53566.
The Wisconsin Heart Hospital .....	5000 West Chambers, M229, Milwaukee, WI 53210.
United Hospital System .....	6308 8th Avenue, Kenosha, WI 53143.
University of Wisconsin Hospital & Clinics .....	600 Highland Ave., Madison, WI 53792.
Waukesha Memorial Hospital .....	725 American Ave., Waukesha, WI 53188.
Cabell Huntington Hospital .....	1340 Hal Greer Blvd., Huntington, WV 25701.
Camden-Clark Memorial Hospital .....	800 Garfield Ave., Parkersburg, WV 26101.
Charleston Area Medical Center .....	501 Morris Street, Charleston, WV 25301.
Logan General Hospital .....	20 Hospital Drive, Logan, WV 25601.
Marshall University School of Medicine .....	420 West Magnetic St., Huntington, WV 25701.
Monongalia General Hospital .....	1200 JD Anderson Dr., Morgantown, WV 26505.
Ohio Valley Medical Center .....	2000 Eoff Street, Wheeling, WV 26003.
Putnam General Hospital .....	1400 Hospital Drive, Hurricane, WV 25526.
Saint Josephs Hospital .....	1824 Murdoch Avenue, Parkersburg, WV 26102-0327.
St. Francis Hospital West Virginia .....	333 Laidley Street, Charleston, WV 25322.
United Hospital Center Inc. ....	P.O. Box 1680, Clarksburg, WV 26302-1680.
West Virginia University Hospitals Inc. ....	Medical Center Drive, Morgantown, WV 26506-8003.
Wheeling Hospital .....	1 Medical Park, Wheeling, WV 26003.
United Medical Center .....	214 E. 23rd St., Cheyenne, WY 82001.
Wyoming Medical Center .....	1233 East 2nd Street, Casper, WY 82601-2988.

**Addendum X—Active CMS Coverage-Related Guidance Documents**

[April Through June 2006]

On September 24, 2004, we published a notice in the **Federal Register** (69 FR 57325), in which we explained how we would develop coverage-related guidance documents. These guidance documents are required under section 731 of the MMA. In our notice, we committed to the public that, “At regular intervals, we will update a list of all guidance documents in the **Federal Register**.”

Addendum X includes a list of active CMS guidance documents as of the ending date of the period covered by this notice. To obtain full-text copies of these documents, visit the CMS Coverage Web site at [http://www.cms.hhs.gov/mcd/index\\_list.asp?list\\_type=mcd\\_1](http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcd_1).

*Document Name:* Factors CMS Considers in Commissioning External Technology Assessments.

*Date of Issuance:* April 11, 2006.

*Document Name:* Factors CMS Considers in Opening a National Coverage Determination.

*Date of Issuance:* April 11, 2006.

*Document Name:* (Draft) Factors CMS Considers in Referring Topics to the Medicare Coverage Advisory Committee.

*Date of Issuance:* March 9, 2005.

*Document Name:* National Coverage Determinations with Data Collection as a Condition of Coverage: Coverage With Evidence Development.

*Date of Issuance:* July 12, 2006.

**Addendum XI—List of Special One-Time Notices Regarding National Coverage Provisions**

[April Through June 2006]

As medical technologies, the contexts under which they are delivered, and the health needs of Medicare beneficiaries grow increasingly complex, our national coverage determination (NCD) process must adapt to accommodate these complexities. As part of this adaptation, our national coverage decisions often include multi-faceted coverage determinations, which may place conditions on the patient populations eligible for coverage of a particular item or service, the providers who deliver a particular service, or the methods in which data are collected to supplement the delivery of the item or service (such as participation in a clinical trial).

We outline these conditions as we release new or revised NCDs. However, details surrounding these conditions may need to be shared with the public as “one-time notices” in the **Federal Register**. For example, we may require that a particular medical service may be delivered only in the context of a CMS-recognized clinical research study, which was not named in the NCD itself. We would then use Addendum XI of this notice, along with our coverage Web site at <http://www.cms.hhs.gov/coverage>, to provide the public with information about the clinical research study that it ultimately recognizes.

Addendum XI includes any additional information we may need to share about the conditions under which an NCD was issued as of the ending date of the period covered by this notice.

**PET for Dementia Trials**

We released a final decision memorandum on this topic on September 15, 2004, entitled, “Positron

Emission Tomography (FDG) and Other Neuroimaging Devices for Suspected Dementia.” This decision stated that Medicare will consider an FDG-PET scan reasonable and necessary in patients with mild cognitive impairment or early dementia only in the context of an approved clinical trial that contains patient safeguards and protections to ensure proper administration, use and evaluation of the FDG-PET scan. Since then, we have reviewed a trial at University of California, Los Angeles (UCLA) that meets the criteria set forth in our NCD.

This **Federal Register** notice serves to announce that we have entered into a contract with the principal investigator of the trial, “Metabolic Cerebral Imaging in Incipient Dementia: Early and Long-Term Value of Imaging Brain Metabolism.” This trial is being conducted at several sites, but is headquartered at UCLA. We have entered into a contract with the trial’s principal investigator at UCLA so that we can purchase the data necessary to determine that the service is being provided within the trial in a manner consistent with the requirements under the NCD. By signing a statement of work with UCLA, we now have the clinical setting framework in place so that Medicare can begin paying for PET scans under its 2004 NCD.

Since the trial is now CMS-approved, Medicare-participating participants may be eligible for coverage of the FDG-PET scans and routine clinical costs. For more information on our national coverage policy, please refer to the September 2004 final decision memorandum, which is posted online at <http://www.cms.hhs.gov/mcd/viewdecisionmemo.asp?id=104>.

[FR Doc. 06–8266 Filed 9–28–06; 8:45 am]

BILLING CODE 4120–01–P



# Federal Register

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**Friday,  
September 29, 2006**

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**Part III**

## **Department of Homeland Security**

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**Coast Guard**

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**33 CFR Parts 148, 149, and 150  
Deepwater Ports; Final Rule**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Parts 148, 149, and 150****[USCG 1998–3884]****1625–AA20 (Formerly RIN 2115–AF63)****Deepwater Ports****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

**SUMMARY:** This final rule supersedes the temporary interim rule that was published on January 6, 2004. The temporary interim rule revised 1975 regulations that implemented the Deepwater Port Act of 1974. It updated and streamlined those regulations in accordance with the 1996 Deepwater Port Modernization Act, and extended them to include the natural gas deepwater ports authorized by Congress in the Maritime Transportation Security Act of 2002. This final rule revises and finalizes the regulations issued in the temporary interim rule.

**DATES:** This rule is effective September 29, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1998–3884 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Kevin Tone, Deepwater Port Standards Division (G–PSO–5), U.S. Coast Guard, telephone 202–372–1441. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

Abbreviations and Acronyms  
Regulatory History  
Background and Purpose  
Discussion of Comments and Changes  
Regulatory Evaluation  
Small Entities  
Collection of Information  
Federalism  
Unfunded Mandates Reform Act  
Taking of Private Property  
Civil Justice Reform  
Protection of Children

Indian Tribal Governments  
Energy Effects  
Technical Standards  
Environment  
List of Subjects

**Abbreviations and Acronyms**

ALJ Law Judge  
ATBA Area to be Avoided  
COTP Captain of the Port  
CTS Cargo Transfer System  
CE Certifying Entity  
DPA Deepwater Port Act  
DPMA Deepwater Port Modernization Act  
EPIRB Emergency Position Indicating Radio Beacon  
EPA Environmental Protection Agency  
GGDWP Gulf Gateway Deepwater Port  
IMO International Maritime Organization  
LNG Liquefied Natural Gas  
LNGRV Liquefied Natural Gas Regasification Vessel  
LOOP Louisiana Offshore Oil Port  
MARAD Maritime Administration  
MTSA Maritime Transportation Security Act  
MSDS Material Safety Data Sheet  
MOA Memorandum of Agreement  
MMS Minerals Management Service  
NEPA National Environmental Policy Act  
NOAA National Oceanic and Atmospheric Administration  
NPDES National Pollutant Discharge Elimination System  
NGTS Natural Gas Transfer System  
NVIC Navigation and Vessel Inspection Circular  
NAA No Anchoring Area  
NAD 83 North American Datum of 1983  
OCMI Officer in Charge of Marine Inspection  
OTS Oil Transfer System  
OCS Outer Continental Shelf  
PIC Person in Charge (of Transfer)  
PFD Personal Flotation Device  
ROD Record of Decision  
SEMP Safety and Environmental Management Program  
SART Search and Rescue Transponder  
SPM Single Point Mooring  
STL Submerged Turret Loading (Buoy)  
TIR Temporary Interim Rule

**Regulatory History**

This rulemaking began with publication of an advance notice of proposed rulemaking (ANPRM, 62 FR 45774, Aug. 29, 1997). The ANPRM was followed by a notice of proposed rulemaking (NPRM, 67 FR 37920, May 30, 2002). Both the ANPRM and NPRM confined their discussions to regulations for deepwater oil ports. In 2002, Congress authorized the issuance of a temporary interim rule (TIR) without prior public notice and comment, in order to extend deepwater port regulations to natural gas facilities. Our TIR (69 FR 724, Jan. 6, 2004) expires October 1, 2006, or upon replacement by a final rule, whichever comes first. We provided a 90-day public comment period following issuance of the TIR. Eight comments were received. No

public meeting was requested and none was held. Two corrections were published to the TIR; the first on January 27, 2004 (69 FR 3836) and the second on August 30, 2004 (69 FR 52830).

**Background and Purpose**

Under existing statutes and interdepartmental agreements, the Coast Guard maintains regulations for the licensing, construction, and operation of deepwater ports. As defined in the Deepwater Port Act of 1974 (DPA), a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State. The Maritime Administration (MARAD) is responsible for issuing, revoking, and reinstating deepwater port licenses, but much of the processing required for each license application is conducted by the Coast Guard, with the cooperation of MARAD and several other Federal agencies.

The Coast Guard issued its first deepwater port regulations in 1975. Under the 1974 Deepwater Ports Act (DPA) scheme, deepwater ports could handle oil, but not natural gas. Only one deepwater oil port was built in the next three decades. To encourage greater use of deepwater ports, Congress passed a Deepwater Port Modernization Act (DPMA) in 1996. The DPMA sought to ensure fair treatment for deepwater ports by eliminating unnecessary regulation and promoting innovation, flexibility, and efficiency. We began this rulemaking in 1997 in order to implement the DPMA. We issued an NPRM in 2002. Among other proposals, the NPRM incorporated references to a 1999 NPRM for a related rulemaking (USCG–1998–3868, RIN 1625–AA18, formerly RIN 2115–AA18), dealing with Outer Continental Shelf (OCS) facilities.

Several months after we issued our NPRM, the Maritime Transportation Security Act (MTSA) of 2002 amended the DPA. After that, deepwater ports were authorized to transport natural gas as well as oil. The MTSA mandated the rapid promulgation of implementing regulations. Accordingly, we issued a temporary interim rule (TIR) in January 2004. The TIR updated the 1975 regulations in light of the 1999 OCS and 2002 deepwater port NPRMs, and public comments received on both those proposals, and also adapted the 1975 regulations to accommodate both natural gas and oil deepwater ports. To facilitate development of natural gas

facilities, which employ a variety of designs, the TIR eliminated references to many specific industry standards in favor of imposing performance-based requirements. In issuing the TIR, we opened a new round of public comment.

On May 16, 2005, the Coast Guard issued Navigation and Vessel Inspection Circular No. 03-05 (NVIC 03-05; see notice of availability, 70 FR 33351, June 8, 2005). NVIC 03-05 provides nonbinding guidance to deepwater port license applicants and operators, to the Coast Guard, and to "certifying entities" that perform certification work on behalf of the Coast Guard. This guidance relates to the design, plan review, fabrication, installation, maintenance, and oversight of deepwater ports. NVIC 03-05 can be found in docket USCG-1998-3884 (see **ADDRESSES**).

Under the 2004 regulations, the Coast Guard has processed roughly a dozen applications for liquefied natural gas (LNG) deepwater ports, an impressive increase in interest compared to the three oil deepwater port applications processed, and two licensed, in the previous 30 years. Three applicants have been issued licenses by MARAD, and one LNG deepwater port is now operational. Each application involves several volumes of data and requires Federal agency processing, including the holding of public hearings and the preparation of an environmental impact statement. Under the strict timeline mandated by the DPA, all of that processing must be completed in about 11 months. Following the issuance of a license, additional Federal agency review is needed to make sure that the facility is developed, operated, and eventually decommissioned in accordance with its license and with applicable law, and that any necessary modifications receive proper approval. As a result, the Coast Guard and its Federal agency partners have acquired extensive practical experience with the workability of the 2004 regulations. Many of the changes in this final rule reflect that practical experience.

This final rule takes effect on publication, which is less than the thirty days ordinarily required by the Administrative Procedure Act. It has not been possible to complete the final rule earlier. Since the temporary interim rule expires on October 1, 2006, adhering to the thirty day rule would cause a temporary lapse in a regulatory scheme that will remain substantially unchanged since the temporary interim rule was adopted. This would jeopardize the Coast Guard's ability to process deepwater port license applications, which would be contrary to the public interest expressed through

the DPA, DPMA, and MTSA. Therefore, the Coast Guard finds it impracticable, unnecessary, and contrary to the public interest to delay the effective date of this final rule, and finds good cause under the Administrative Procedure Act for the final rule to take effect upon publication.

#### Discussion of Comments and Changes

In the following pages, we discuss the public comments received on our 2004 TIR as well as other significant changes we are making to the regulatory text in this final rule. This discussion begins with a review of general comments and then moves sequentially through the three parts of Title 33, Code of Federal Regulations (parts 148, 149, and 150) that comprise the deepwater port regulations.

Some of the changes are made to align the requirements for plan submissions and specifications in 33 CFR part 149 with NVIC 03-05, to ensure consistency in the plan approval process.

Some changes are made in response to comments from the Minerals Management Service (MMS), which is not a public commenter but one of the Coast Guard's Federal agency partners in processing deepwater port applications. Because MMS comments appear in the public docket, we include them in this discussion as appropriate. Generally we have not explicitly incorporated MMS requirements, or those of any other Federal agency, in the final rule because we lack the authority to speak for them. However, we wish to emphasize that deepwater ports must comply with all applicable statutes and regulations, regardless of the agency responsible for their enforcement.

We thank all our commenters for their interest in this rulemaking.

Two commenters made recommendations on vessel routing measures in and around the Mississippi River, and on watchstanding conditions. While the suggestions may have merit, we did not incorporate them as they are outside the scope of this rulemaking.

§ 148.3: One commenter asked us to describe the duties and responsibilities of every Federal agency involved with deepwater ports. We have retained the very general overview that this section provides, and added a link to the interagency memorandum that outlines the roles and responsibilities of agencies cooperating with MARAD and the Coast Guard.

§ 148.5: "Adjacent coastal State": We aligned this definition with the statutory definition from 33 U.S.C. 1502.

§ 148.5: "Affiliate": One commenter requested that we remove "indirect" affiliates from the definition, on the

grounds that it results in the inclusion of every affiliate regardless of the statutory 3% threshold. We are retaining the reference to "direct or indirect" ownership interests because it is similar to language that has appeared in our regulations since 1975, and mirrors the language of 33 U.S.C. 1504, which incorporates "any ownership interest in the applicant of greater than 3 percent" into 33 U.S.C. 1502's statutory definition of an "affiliate."

§ 148.5: "Applicant": One commenter requested clarification of the word "person" in this definition. The word is defined later in this section and means an individual, a public or private corporation, a partnership or other association, or a government entity.

§ 148.5: "Approved": One commenter requested that we add "or the Administrator of MARAD" to our definition. Our regulations refer to MARAD when it is necessary to do so. In this case, we refer only to Coast Guard approvals.

§ 148.5: "Area to be avoided" or "ATBA": At a commenter's suggestion, we are revising this definition to provide more information.

§ 148.5: "Certifying entity" or "CE": We have added this definition due to substantive changes elsewhere in the deepwater port regulations.

§ 148.5: "Deepwater port": We have declined one commenter's request to exclude structures or operations that, under certain circumstances, are also regulated by another Federal agency, because our definition closely follows statutory language in 33 U.S.C. 1502.

§ 148.5: "Marine site": We are revising this definition by deleting "ships' routes and anchorages," in order to avoid an undue burden to OCS lease holders and non-deepwater port marine traffic.

§ 148.5: "Maritime Administration" or "MARAD": We have revised this definition to refer specifically to the associate administrator currently responsible for deepwater port matters.

§ 148.5: "Metering platform": At a commenter's suggestion, we revised this definition to clarify that these platforms measure, but do not necessarily control, the rate of transfer.

§ 148.5: "Natural gas liquids": We are adding this definition in response to one commenter's suggestion.

§ 148.5: "Person in Charge (PIC)": Due to common usage, we added a definition for a person in charge (of transfer), abbreviated as PIC, to distinguish it from other persons in charge (for example, of vessel operations, of maintenance, etc.), that are not abbreviated by PIC.

§ 148.5: "Routing systems": At a commenter's suggestion, we are revising

this definition to provide more information and to align terminology with international standards.

§ 148.5: “*Safety zone*”: At a commenter’s suggestion, we are revising this definition to provide more information.

§ 148.5: “*Survival craft*”: We have revised this definition to align it with § 149.303.

§ 148.8: We added this section to describe how a certifying entity is designated and used to perform functions for which the Coast Guard is responsible.

Part 148, subpart B (§§ 148.100–148.125): One commenter asked us to cross-reference another agency’s requirements in this subpart. An amendment is not needed, because the other agency will consider its own requirements in evaluating an application, and any necessary conditions can be included in the license itself.

§ 148.105(a): At a commenter’s suggestion, we have revised paragraph (a)(5) to clarify the materiality standard. We also revised (a)(6) for clarity.

§ 148.105(d): We revised this section for clarity. No substantive change is intended.

§ 148.105(f): One commenter asked us to require applicants to state if the proposed deepwater port would have open or closed access. We have revised the section accordingly.

§ 148.105(g)(1): One commenter asked us to clarify that this provision applies only to those affiliates that have a direct ownership interest of greater than 3 percent or that have a direct contractual relationship with the deepwater port. We have amended the section accordingly.

§ 148.105(g)(2)(iii): One commenter requested that we add conditions or requirements for removing pipelines at decommissioning. We have revised the section to indicate that MARAD sets these conditions or requirements in the deepwater port license, and that only preliminary estimates need be included in the application.

§ 148.105(g)(5): One commenter recommended that applicants be required to report throughput of natural gas liquids as well as of oil and gas. We have added this requirement.

§ 148.105(k): At the suggestion of one commenter, we have revised this paragraph to require maps and diagrams to be certified by a professional surveyor.

§ 148.105(t), (v), and (w) (formerly (s), (u), and (v), respectively): One commenter pointed out that, as worded, these paragraphs may not provide adequate technical detail to guide

applicants who must meet MMS requirements. For reasons already noted, we are retaining the current language, but emphasize that all applicants must meet any applicable statutory or regulatory requirements regardless of which agency enforces them.

§ 148.105(m) and (n): One commenter expressed concern that the 2-year limit for the use of existing data is unreasonable because older data has already been provided for some sites subject to leases granted by the MMS, and because nowhere else in the DPA is a 2-year limit requirement specified. We think raising the 2-year limit to 5 years reasonably addresses the commenter’s concerns while ensuring that applications do not rely on obsolete data.

§ 148.105(m)(1)(i): We substituted “i.e.” with “for example”, for clarity.

§ 148.105(m)(1)(ii): One commenter recommended that we require applicants to specify distances from the deepwater port to OCS structures, and specify provisions for addressing casualties and emergency situations. Information regarding distances is required in the application, and the provisions for responses to emergencies are more appropriately addressed in the operations manual.

§ 148.105(p): We redesignated the existing paragraph as paragraph (p)(2), with minor revisions, and added new paragraph (p)(1), relating to information about the nationality of natural gas vessels servicing deepwater ports, to conform to section 304 of the 2006 Coast Guard authorization act.

§ 148.105(r): One commenter recommended that we add the word “dedicated” to fixed offshore components, to distinguish them from shared components. An example of this is a converted OCS platform with continuing OCS operations, co-located with a deepwater port. We have revised this section accordingly.

§ 148.105(s): We added this new paragraph at a commenter’s suggestion, to deal with refurbished OCS facilities and co-located fixed offshore components.

§ 148.105(t) (formerly (s)): We added (t)(7), concerning information on a pipeline that will connect to the port, at the suggestion of one commenter. This commenter also asked us to add requirements for information on metering and sampling equipment, but that information is too detailed for the application phase and is more appropriately addressed after a license is issued.

§ 148.105(y): In reviewing past hazard analyses, we added this new paragraph

to require an independent risk assessment. The risk assessment evaluates the probability and consequences of various potential accidental and intentional cargo release incidents. The site-specific requirements of the risk assessment will be dependent on many factors, including the proximity of the port to the general public, its potential for impact on the public, waterway traffic density, environmental conditions, and the current availability of LNG release data and modeling methods. To date, there has been no large-scale testing of LNG releases over water to validate the existing models. Therefore, all assessments and models should be appropriately conservative in their assumptions and conclusions.

§ 148.105(z) (formerly (x)): The MMS asked us to require more detailed technical information on environmental impacts and commingling issues. For the reasons already noted, we are retaining the current language, but emphasize that all applicants must meet any applicable statutory or regulatory requirements regardless of which agency enforces them.

§ 148.105(dd) (formerly (bb)): One commenter recommended that we require applicants to list all MMS permits and reviews. This section already requires the applicant to list all Federal permits and authorizations not otherwise specified in part 148.

§ 148.108: We revised this section for clarity, and in paragraph (c), at a commenter’s suggestion, we lengthened what was formerly a 30-day time frame for requesting additional information. One commenter asked whether paragraph (d)(1) is limited to information that the Coast Guard needs. It is not. It is broad enough to cover any information that another agency involved in processing the application might need to fulfill that agency’s obligations. For example, if a MMS-regulated facility could be affected by either the reuse of existing components or co-location with a deepwater port, the MMS could advise the Coast Guard and the applicant what data is required and whether the applicant must submit a revised Development Production Plan, or a Development Operations Coordinating Document, for a facility in the Gulf of Mexico.

§ 148.110: We made minor revisions for clarity.

§ 148.115(c): At the suggestion of one commenter, we revised this paragraph to make it clear that additional copies of the application may be requested in order to satisfy the requirements of other agencies involved in processing the application.

§ 148.125: We made minor revisions for clarity, and revised paragraph (c) to emphasize that, while payment of additional costs is due when those costs are assessed, payment must be made before a deepwater port begins operation.

§ 148.209: We made minor revisions for clarity. One commenter asked for a more comprehensive list of agencies involved in processing applications. This will vary depending on the location and specifics proposed for each port, but we have replaced a partial list of Federal agencies with a cross reference to our Interagency Memorandum of Understanding (MOU) for Processing Deepwater Port Applications.

§ 148.211(b): One commenter said that applicants should have to submit fully revised applications if changes become too voluminous. We agree, and added this paragraph accordingly.

§ 148.217(c): We revised this paragraph to clarify MARAD's role.

§ 148.221: We revised this section for clarity.

§§ 148.222, 148.227: We revised these sections to make it clear that they apply not only to the public hearing required by 33 U.S.C. 1504(g), but to any other public hearing or meeting that other applicable Federal statutes (for example, the National Environmental Policy Act) or regulations may require. Insofar as possible, we intend to employ similar procedures for hearings or meetings that applicable State or tribal law might require.

§ 148.276: At the suggestion of one commenter, we have revised this section to clarify that the statutory timeline governs MARAD's issuance of a record of decision, but not the actual issuance of a license.

§ 148.283: One commenter asked if this section addresses natural gas as well as oil deepwater ports. This section addresses any deepwater port.

Part 148, subpart D, §§ 148.300–148.320: One commenter recommended amending these sections that relate to licenses, and to permit levying additional license fees based on license conditions, amendments, transfers, and reinstatements. This is unnecessary because additional fees for such costs can be levied under section 148.125.

§ 148.305: At the suggestion of one commenter, we amended this section to clarify that the license conditions set by MARAD reflect the recommendations or requirements of all Federal agencies involved in processing an application.

§ 148.310: One commenter recommended terminating a license if port construction does not begin within 5 years, or if port operations are

suspended for more than 2 years, arguing that this would prevent an ineffective licensee from indefinitely barring other activities in the vicinity. We have revised the section to make it clear that MARAD has the authority to set conditions of termination in the license.

§ 148.315: One commenter recommended imposing an inflation-adjustable fixed fee for amending, transferring or reinstating a license. Regulatory action is not needed because MARAD can address fees in setting license conditions.

§ 148.325: In response to a commenter's suggestion, we are adding this section concerning the decommissioning of a deepwater port. The same commenter also recommended adding a requirement for applicants to demonstrate the financial capacity to restore a deepwater port site after decommissioning. Regulatory action for the second request is not necessary because applicants are already required to estimate decommissioning costs under section 148.105(g)(2)(iii), and MARAD can address the applicant's financial capability to decommission the port as a condition of the license.

§ 148.400: One commenter recommended that we require the applicant to conduct a thorough OCS operations impact analysis, and include information on consultation with other Federal agencies. Regulatory action is not needed because the first concern is already addressed as part of any environmental assessment, while the second can be provided to applicants through interagency coordination.

§ 148.405(c)(3): At the suggestion of one commenter, we are requiring the applicant to specify the depth limit for sediment testing, in order to prevent incidents associated with potential shallow geological hazards.

§ 148.505: At MARAD's request we revised this section to require exemption applications to be sent to MARAD as well as the Coast Guard.

§ 148.605: One commenter noted the temporary interim rule's deletion of a specific reference to the lower liability cap approved in 1995 for the Louisiana Offshore Oil Port (LOOP; see 60 FR 39849, Aug. 4, 1995), and sought verification that this deletion was not intended to alter LOOP's liability cap. That is correct. The 1995 liability cap for LOOP remains in place. We have merely determined that specific caps for individual ports need not be included in the Code of Federal Regulations in order for them to be valid.

§ 148.700: One commenter implied that this section should provide more

detail about an applicant's interaction with specific agencies. Regulatory action is not needed because this section provides only general information. Specific detail is communicated to each applicant in the normal course of the application process. See, for example, § 148.110, which provides for any person's right to confer with the Coast Guard about application requirements, and § 148.108, which provides for requesting the collection of additional information from an applicant.

§ 148.707: One commenter suggested making this section more explicit about the actual criteria the Coast Guard applies in its environmental analyses, and about the broad scope that an environmental analysis may cover. Regulatory action is not needed because this section provides only general information. Specific detail is communicated to each applicant and to the public in the course of an environmental analysis that meets all applicable statutory and regulatory requirements.

§ 148.710(a)(2): We clarified that the marine environment is the focus of this provision.

§ 148.710(b): We revised this paragraph in response to a commenter who pointed out that 33 U.S.C. 1504(i)(3) does not apply to natural gas deepwater ports.

§ 148.710(c): We are adding this paragraph in order to qualify the reference to "a single, detailed environmental impact statement or environmental assessment" in paragraph (b). Applicable regulations at 40 CFR 1502.9 permit the filing of supplemental environmental analyses in appropriate circumstances.

§ 148.715: At a commenter's suggestion, we revised this section by replacing "prevent or minimize" with language based on the discussion of mitigation in 40 CFR 1508.20.

§§ 148.720, 148.725: One commenter asked us to provide more information about other agencies' siting, design, construction, or operational criteria. Regulatory action is not needed because this section provides general information about Coast Guard implementation of applicable statutes. We partner with other agencies in processing each application, and they provide input based on the criteria under which they operate.

§ 148.730(a): One commenter said it was not clear that this paragraph applies to State agencies only in designated adjacent States. It does, and we have revised the paragraph accordingly.

§ 148.737: We made minor revisions at the suggestion of one commenter, and

emphasized that the list is informational and not all-inclusive. Also, we deleted paragraph designations and former paragraph (b), which is redundant of § 148.710.

*Part 149 (§§ 149.1–149.700):* One commenter suggested an overall methodology for deepwater port design. Regulatory action is not needed because the current provisions of part 149 provide suitable flexibility and regulatory oversight.

*§ 149.15:* One commenter asked us to provide more detail with respect to alterations and modifications that could require another agency's approval. Regulatory action is not needed because license conditions and interagency agreements can provide adequately for the circumstances outlined by the commenter.

*§ 149.110:* One commenter asked us to specify emergency shut down and redundant protection measures under certain conditions. These measures can be addressed as part of the detailed, post-licensing design and engineering review and, once approved, described in the operations manual.

*§ 149.305:* We amended this section to better align it with § 149.304(a)(2), in response to one commenter who noted a possible conflict.

*§ 149.403:* We amended this section for clarification.

*§ 149.415:* We amended this section to clarify that the fire main systems must be constructed in accordance with 33 CFR 127.067 or comply with a national consensus standard.

*§§ 149.416, 149.417 and 149.418:* We removed these sections because they are redundant; the material discussed is adequately addressed in § 149.419.

*§§ 149.419, 149.420, 149.421, 149.422, 149.423 and 149.424:* We have been sequentially renumbered to align with the revised text.

*§ 149.416 (formerly § 149.419):* One commenter suggested that this section's requirement for compliance with 33 CFR 127.609 is incompatible with 33 CFR 149.418(a) and 46 CFR 108.425. Regulatory action is not needed because there is no conflict. 33 CFR 149.418(a) has been removed, and the industry standard referenced by the commenter applies to hoses for water systems, not dry chemical hoses.

*§ 149.420 (formerly § 149.423):* We added text to better define material construction of escape routes to provide adequate protection in the event of a fire.

*§ 149.615:* We updated this section to indicate that if the licensee uses a Coast Guard accepted Certifying Entity (CE), that the CE as well as the Coast Guard must be provided with all plans.

*§ 149.620:* One commenter asked us to require applicants to submit drawings to other agencies in appropriate circumstances. Regulatory action is not needed because the Coast Guard already makes drawings available to other agencies, when appropriate. A second commenter suggested that we should review and permit classification society guidelines. A similar suggestion was made with respect to § 149.625, and we believe the action we took in that section addresses the concern raised with respect to § 149.620.

*§ 149.625:* One commenter said this section should require deepwater port structures to conform to MMS regulations for OCS platforms. An amendment is not needed because the current regulations appropriately provide for design innovation while retaining the need for compliance with all applicable law. In response to another commenter's observation, we redesignated paragraph (b) to paragraph (c) and added a new paragraph (b) to indicate that the licensee must submit to Commandant (G–P) a design basis for approval of the proposed standards that will be used in the fabrication and construction of all systems and components. This process is covered in greater detail in NVIC 03–05.

*§ 149.641(b):* We revised this section for clarification.

*§ 149.650:* In response to a commenter's suggestion, we revised this section to remove the reference to the American Bureau of Shipping. The substance of the section is not affected.

*§ 149.660:* We revised this section for clarification.

*§ 149.675:* At a commenter's request, we revised this section to apply only to deepwater ports whose design warrants the use of such a system. This revision takes into account the innovative design of some deepwater ports, for which public address systems are unnecessary.

*§ 149.691:* At a commenter's suggestion, we revised this section to clarify that ports must either comply with 46 CFR 108.151, or follow an equivalent national consensus standard.

*§ 149.697(c):* One commenter asked if the decibel level determination referenced in this paragraph can be made instantaneously. It cannot. We revised the paragraph to make it clear that the determination must be made using the method described in paragraph (b).

*§ 150.10:* One commenter said that the port operations manual should include sections that deal with emergencies on ports that are co-located with MMS-regulated facilities. Necessary contingency measures will be addressed

in the operations manual, but need not be detailed in regulatory text.

*§ 150.15(l):* One commenter recommended that we add requirements for normal pressure settings during transfer, as well as all relief valve settings and sensors. An amendment is not necessary because these specifics would be better addressed in the operations manual.

*§ 150.15(n):* We revised this paragraph by adding facility support services, and by clarifying that the listed equipment is only illustrative. The operations manual must include any key equipment that will need regular service or maintenance.

*§ 150.15(o):* We added this requirement for a waste management plan in response to a commenter's request.

*§ 150.15(q)(formerly (p)):* We added a requirement for procedures to notify nearby OCS facilities, at a commenter's suggestion.

*§ 150.15(u):* At a commenter's request, we added this requirement for emergency evacuation procedures comparable to 33 CFR 146.140(d).

*§ 150.15(x)(formerly (v)):* We revised this paragraph concerning security plans, for clarity.

*§ 150.15(y):* At a commenter's suggestion, we added language concerning special operations plans for contingency response in the event of an incident that might affect nearby OCS facilities. However, we emphasize that, like many lists in this subchapter, the list of special operations in this paragraph is merely illustrative. Depending on a proposed port's specific circumstances, other special operations plans could be required by this paragraph.

*§ 150.15(aa)(formerly (y)):* We revised this paragraph for clarity, and added a risk management plan option. Also, we responded to a commenter's statement that "periodic re-examination" should take place every five years in environmentally sensitive areas. National Oceanic and Atmospheric Administration (NOAA) Fisheries has previously applied the five-year standard in approving a deepwater port license application, and we are including it in this paragraph for all deepwater ports.

*§ 150.20:* We revised this section for clarity, and to address a commenter's request that additional copies be provided to other agencies as needed.

*§ 150.50:* One commenter asked us to require applicants to provide an oil spill response plan to the MMS in appropriate circumstances. Such plans must be included in the operations manual pursuant to § 150.15(y)(6) and



will be distributed to other agencies pursuant to § 150.20.

§ 150.100: We revised the last sentence of this section for clarity. One commenter said that this section should describe another agency's authority to inspect a deepwater port under certain circumstances. An amendment is not needed because each operations manual must account for the circumstances under which specific agencies can inspect the deepwater port.

Part 150.105: We revised this part for clarification to indicate that, prior to implementing a self-inspection plan for a deepwater port, the operator must obtain Coast Guard acceptance to ensure quality assurance of the process.

Part 150, subpart D (§§ 150.300–150.385): One commenter asked us to provide more detail about safety zones, anchorage areas, and areas to be avoided. An amendment is not needed, because these sections merely require compliance with zones and areas that are established and described pursuant to other laws and regulations.

§ 150.380: We revised the table to further clarify vessel and OCS (OCS) facility operating conditions and restrictions, and to remove a reference to an obsolete section.

§ 150.435: One commenter asked us to add that under certain circumstances, deepwater port operations can be halted in order to ensure safety. An amendment is not needed because those circumstances would be evaluated as part of the deepwater port's risk assessment, and spelled out in its operations manual.

§ 150.440(d): An applicant inquired if the implementation of a suspension would be delayed while under appeal. It would not be, and we revised this paragraph to make that clear.

§ 150.445: We revised this section to clarify that a suspension order is in effect while an operator is preparing and submitting a petition to have the suspension lifted. The withdrawal of a suspension will not take effect until the District Commander has rendered a final decision.

§ 150.505(b): At the suggestion of one commenter, we revised this paragraph to eliminate a reference to an inspection certification, which is not required, and replace it with a reference to the self-inspection required by § 150.105. This commenter also suggested that the boat-release gear be examined every 30 months, but we think it is appropriate to retain the more flexible current regulatory language, which provides for inspections in accordance with manufacturer's recommendations.

§ 150.611: We corrected the reference to OSHA head-protection regulations.

§ 150.613(b): We removed an obsolete alternative deadline for completing the initial noise survey.

§ 150.625(c): We added the proviso that a material safety data sheet (MSDS) may be used for training personnel in the use of hazardous materials provided the employee acknowledges and demonstrates appropriate safety measures.

§ 150.812: We added this section at one commenter's suggestion that we provide more information on how the Coast Guard will follow up on a casualty report.

§ 150.815: One commenter pointed out that, in appropriate circumstances, casualty reports must also be submitted to other agencies. We revised this section accordingly. We also added a clarification that the testing required under paragraph (b) will be conducted in accordance with 33 CFR part 140.

§ 150.820: We added paragraph (d) in response to a commenter's suggestion.

§ 150.905: At a commenter's suggestion, we revised this section to provide more information.

§ 150.910: We revised this section for clarity and to indicate that mandatory prohibitions apply only in safety zones, not in areas to be avoided (ATBAs), which are recommendatory. One commenter noted that this section does not describe the circumstances under which existing legal agreements might call for installations, structures, or activities in the vicinity of the deepwater port, other than those directly associated with the deepwater port. An amendment is not needed because these circumstances would be evaluated as part of the deepwater port's risk assessment, and mitigating measures would be spelled out in the port's operations manual.

§ 150.915: We revised this informational section for clarity, and in response to a commenter's suggestions. The commenter asked us not to establish a safety zone without prior public notice and comment. We decline to make such a commitment because, under certain circumstances, the public health or safety needs may require emergency regulatory action. However, we deem it appropriate to elaborate here on the process for establishing safety zones, no anchorage areas (NAAs) and (ATBAs). The Coast Guard works with the Departments of Commerce, Defense, the Interior, and State to make sure their interests are taken into account in the creation of these zones. Further, before the U.S. Government proposes a NAA or ATBA to the International Maritime Organization (IMO) for approval, the Shipping Coordinating Committee of the Department of State is used to develop

the U.S. Government position on the nature and scope of such measures. Because the Shipping Coordinating Committee is a Federal Advisory Committee Act (FACA) committee, its meetings are open to the public; a notice is put in the **Federal Register**, so all interested members of the public, all stakeholders, including environmental organizations, and any existing or prospective OCS leaseholders in the area have notice and an opportunity to present their views.

§ 150.940: We added this section in 2005, in response to a comment on the TIR, and will update it as new deepwater ports become operational. General definitions for various vessel routing measures have been added in § 148.5. More specific provisions will be included in each deepwater port's license and operations manual.

### Regulatory Evaluation

This final 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. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard received no comments on the regulatory evaluation, which included the impact on small entities and the collection of information statement, and was published in the interim rule.

In this final rule, the Coast Guard is permanently adopting, with revisions, the regulations contained in the temporary interim rule we published at the beginning of 2004. The temporary interim rule updated the original 1975 regulations that applied only to deepwater ports that handle petroleum. It modernized and streamlined the regulations in accordance with the Deepwater Port Modernization Act of 1996, and also extended those regulations to apply to deepwater ports that handle natural gas, in accordance with the Maritime Transportation Security Act of 2002. The temporary interim rule expires on October 1, 2006, and must be replaced by a final rule on or before that date in order to continue the regulatory program introduced in 2004. The final rule also incorporates lessons learned from processing several deepwater port applications, and addresses public comments received in response to the temporary interim rule.

For the final rule, we updated the regulatory evaluation to include

information on the additional deepwater port that has begun to operate.

We expect the costs of this final rule to have a nominal effect on the owners and operators of deepwater ports. Currently, there are two licensed and operating deepwater ports, the Louisiana Offshore Oil Port (LOOP) and the Excelerate Energy's Gulf Gateway deepwater port that receives LNG. LOOP represents industry standards for manned deepwater ports. Gulf Gateway is a small, unmanned submerged turret loading (STL) buoy that is in full compliance with this final rule.

In a report to the Secretary of Energy, the National Petroleum Council estimated that fewer than ten new LNG import terminals (onshore and deepwater) will be licensed and operating in 2025. We expect that the new deepwater ports will follow existing industry standards and, therefore, will incur, at most, the same costs as the existing compliant deepwater ports. We assume that no manned deepwater ports will be larger or more extensive than LOOP. We assume that unmanned deepwater ports will be roughly similar to Gulf Gateway. We also assume that the design and construction of new deepwater ports (manned or unmanned) will follow the industry standards.

The final rule is consistent with the industry's request to have its regulations aligned with the current industry standards and future OCS regulations. The benefits are the result of updating and removing unnecessary and obsolete regulations. The final rule incorporates current industry practices. As such, the industry will benefit, as this certainty eliminates the risk that industry will be liable for unexpected investments made necessary to comply with federal regulations. To the extent that revised regulations facilitate the development of new deepwater ports, the final rule also benefits the nation's overall economy, by making development of an adequate energy infrastructure more likely.

We do not expect that new collection of information burdens will be placed on the affected entities, because the industry is already compliant with safety, environmental, and training report activities. The reporting requirements established by current industry practice will aid its ability to enforce regulations, thereby promoting safety and security of life and property. Furthermore, by recording training, personnel and safety information, deepwater ports will increase their own safety and security level by improving accident readiness, noise level awareness, lifesaving equipment preparation and situational awareness.

### Small Entities

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

There are two entities that operate an existing deepwater port. LOOP is owned by a consortium of three multinational energy corporations and, therefore, LOOP does not qualify as a small entity. Gulf Gateway is wholly owned by Excelerate Energy, a private company. Excelerate Energy also does not qualify as a small entity. Given that investment in deepwater ports requires several hundred million dollars, we do not expect any licensee or operator of future deepwater ports to qualify as a small entity. No not-for-profit organizations are expected to be involved with deepwater ports. Finally, deepwater ports are by definition beyond the range of small government jurisdictions.

Therefore the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of 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 rule under that Order and have determined that it does not have implications for federalism. This rule applies to deepwater ports only in waters beyond the territorial limits of the United States (33 U.S.C. 1501(a)(1)). As regulation of these deepwater ports is beyond State seaward boundaries, this rule will not preempt State law.

### 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

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

### Civil Justice Reform

This final 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 final 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this 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 rule requires compliance with numerous technical standards that have been set in regulations adopted by the Coast Guard and other Federal agencies. In all cases, those regulations either (1) specify the use of a voluntary consensus standard; (2) specify performance levels that may be met through the use of a voluntary consensus standard; (3) permit the use of equivalents, which may be derived from voluntary consensus standards; or (4) are subject to the exemption or adjustment provisions of Part 148, Subpart F, "Exemption from or Adjustments to Requirements in this Subchapter."

## Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), (c), and (i) of the Instruction, and under section 6(b) of the "Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy," (67 FR 48244, July 23, 2002) from further environmental documentation. The environmental impact associated with requiring additional equipment, training, safety inspections and recordkeeping under this rule will have an insignificant impact on the environment and will benefit the environment by requiring safe operations of deepwater ports. The environmental impact of each deepwater port applicant is assessed under the licensing process. A

"Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

## List of Subjects

### 33 CFR Part 148

Administrative practice and procedure, Environmental protection, Harbors, Petroleum.

### 33 CFR Part 149

Fire prevention, Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution.

### 33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Coast Guard revises 33 CFR Chapter I, Subchapter NN, as follows:

## SUBCHAPTER NN—DEEPWATER PORTS

### PART 148—DEEPWATER PORTS: GENERAL

#### Subpart A—General

Sec.

- 148.1 What is the purpose of this subchapter?
- 148.2 Who is responsible for implementing this subchapter?
- 148.3 What Federal agencies are responsible for implementing the Deepwater Port Act?
- 148.5 How are terms used in this subchapter defined?
- 148.8 How are certifying entities designated and used for purposes of this subchapter?

#### Subpart B—Application for a License

- 148.100 What is the purpose of this subpart?
- 148.105 What must I include in my application?
- 148.107 What additional information may be required?
- 148.108 What if a Federal or State agency or other interested party requests additional information?
- 148.110 How do I prepare my application?
- 148.115 How many copies of the application must I send and where must I send them?
- 148.125 What are the application fees?

#### Subpart C—Processing Applications

##### General

- 148.200 What is the purpose of this subpart?
- 148.205 How are documents related to the application maintained?

- 148.207 How and where may I view docketed documents?
- 148.209 How is the application processed?
- 148.211 What must I do if I need to change my application?
- 148.213 How do I withdraw my application?
- 148.215 What if a port has plans for a deep draft channel and harbor?
- 148.217 How can a State be designated as an adjacent coastal State?
- 148.221 How do I claim, or object to a claim, that required information is privileged?

#### Public Hearings or Meetings

- 148.222 When must public hearings or meetings be held?
- 148.227 How is a public hearing or meeting reported?

#### Formal Hearings

- 148.228 What if a formal evidentiary hearing is necessary?
- 148.230 How is notice of a formal hearing given?
- 148.232 What are the rules for a formal hearing?
- 148.234 What are the limits of an Administrative Law Judge's jurisdiction?
- 148.236 What authority does an Administrative Law Judge have?
- 148.238 Who are the parties to a formal hearing?
- 148.240 How does a State or a person intervene in a formal hearing?
- 148.242 How does a person who is not a party to a formal hearing present evidence at the hearing?
- 148.244 Who must represent the parties at a formal hearing?
- 148.246 When is a document considered filed and where should I file it?
- 148.248 What happens when a document does not contain all necessary information?
- 148.250 Who must be served before a document is filed?
- 148.252 What is the procedure for serving a subpoena?
- 148.254 How is a hearing transcript prepared?
- 148.256 What happens at the conclusion of a formal hearing?

#### Approval or Denial of the Application

- 148.276 When must the application be approved or denied?
- 148.277 How may Federal agencies and States participate in the application process?
- 148.279 What are the criteria for approval or denial of an application?
- 148.281 What happens when more than one application is submitted for a deepwater port in the same application area?
- 148.283 When is the application process stopped, before the application is approved or denied?

#### Subpart D—Licenses

- 148.300 What does this subpart concern?
- 148.305 What is included in a deepwater port license?
- 148.307 Who may consult with the Commandant (G–P) and the Maritime

- Administrator on developing the proposed conditions of a license?
- 148.310 How long does a license last?
- 148.315 How is a license amended, transferred, or reinstated?
- 148.320 How is a license enforced, suspended, or revoked?
- 148.325 How soon after port decommissioning must the licensee initiate removal?

#### Subpart E—Site Evaluation and Pre-Construction Testing

- 148.400 What does this subpart do?
- 148.405 What are the procedures for notifying the Commandant (G-P) of proposed site evaluation and pre-construction testing?
- 148.410 What are the conditions for conducting site evaluation and pre-construction testing?
- 148.415 When conducting site evaluation and pre-construction testing, what must be reported?
- 148.420 When may the Commandant (G-P) suspend or prohibit site evaluation or pre-construction testing?

#### Subpart F—Exemption From or Adjustments to Requirements in This Subchapter

- 148.500 What does this subpart do?
- 148.505 How do I apply for an exemption?
- 148.510 What happens when a petition for exemption involves the interests of an adjacent coastal State?
- 148.515 When is an exemption allowed?
- 148.600 What is the limit of financial liability?
- 148.605 How is the limit of liability determined?

#### Subpart G—Environmental Review Criteria for Deepwater Ports

- 148.700 How does the Deepwater Port Act interact with other Federal and State laws?
- 148.702 How were the environmental review criteria developed?
- 148.705 What is determined by the environmental evaluation?
- 148.707 What type of criteria will be used in an environmental review, and how will they be applied?
- 148.708 Must the applicant's proposal reflect potential regulations?
- 148.709 How are these criteria reviewed and revised?
- 148.710 What environmental conditions must be satisfied?
- 148.715 How is an environmental review conducted?
- 148.720 What are the siting criteria?
- 148.722 Should the construction plan incorporate best available technology and recommended industry practices?
- 148.725 What are the design, construction and operational criteria?
- 148.730 What are the land use and coastal zone management criteria?
- 148.735 What are other critical criteria that must be evaluated?
- 148.737 What environmental statutes must an applicant follow?

**Authority:** 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

#### Subpart A—General

##### § 148.1 What is the purpose of this subchapter?

This subchapter prescribes regulations for the licensing, construction, design, equipment, and operation of deepwater ports under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524) (the Act).

##### § 148.2 Who is responsible for implementing this subchapter?

Unless otherwise specified, the owner of a deepwater port must ensure that the requirements of this subchapter are carried out at that port.

##### § 148.3 What Federal agencies are responsible for implementing the Deepwater Port Act?

(a) Under delegations from the Secretary of Homeland Security and the Secretary of Transportation, the Coast Guard and the Maritime Administration (MARAD) coordinate with each other in processing applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port.

(b) MARAD is responsible for issuing the Record of Decision to announce whether a license application is approved, approved with conditions, or denied, and for issuing, revoking, and reinstating deepwater port licenses. MARAD also has authority over the approval of fees charged by adjacent coastal States, and certain matters relating to international policy, civil actions, and suspension or termination of licenses.

(c) The Secretary of Transportation has delegated authority over pipeline matters to the Pipeline Hazardous Materials and Safety Administration.

(d) The Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, Minerals Management Service (MMS) in the Department of Interior, and other Federal agencies are designated as cooperating agencies and support the Coast Guard and MARAD in the review and evaluation of deepwater port license applications. You can view the interagency memorandum of understanding (MOU) outlining the relative roles and responsibilities of these and other Federal agencies at: [http://www.uscg.mil/hq/G-P/mso/docs/dwp\\_white\\_house\\_task\\_force\\_energy\\_streamlining.pdf](http://www.uscg.mil/hq/G-P/mso/docs/dwp_white_house_task_force_energy_streamlining.pdf).

##### § 148.5 How are terms used in this subchapter defined?

As used in this subchapter:  
*Act* means the Deepwater Port Act of 1974, 33 U.S.C. 1501 et seq., as amended.

*Adjacent coastal State* means any coastal State which:

- (1) Would be directly connected by pipeline to a deepwater port, as proposed in an application;
- (2) Would be located within 15 miles of any such proposed deepwater port; or
- (3) Is designated as an adjacent coastal State by the Administrator of the Maritime Administration under 33 U.S.C. 1508(a)(2).

*Affiliate* means a person:

- (1) That has a direct or indirect ownership interest of more than 3 percent in an applicant;
- (2) That offers to finance, manage, construct, or operate the applicant's deepwater port to any significant degree;
- (3) That owns or controls an applicant or an entity under paragraphs (1) or (2) of this definition; or
- (4) That is owned or controlled by, or under common ownership with, an applicant or an entity under paragraphs (1), (2), or (3) of this definition.

*Applicant* means a person that is the owner of a proposed deepwater port and is applying for a license under this part for that port.

*Application* means an application submitted under this part for a license to own, construct, and operate a deepwater port.

*Approval series* means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of 46 CFR chapter I, subchapter Q, the approval series corresponds to the number of the subpart. A list of approved equipment, including all of the approval series, is available at: <http://cgmix.uscg.mil/Equipment>.

*Approved* means approved by the Commandant (G-P).

*Area to be avoided* or *ATBA* means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and should be avoided by all ships or certain classes of vessels. An ATBA may be either recommended ("recommendatory") or mandatory. An ATBA is recommendatory when ships are advised to navigate with caution in light of specially hazardous conditions. An ATBA is mandatory when navigation is prohibited or subject to a competent authority's conditions. ATBAs for deepwater ports are recommendatory.

*Barrel* means 42 U.S. gallons (approximately 159 liters) at atmospheric pressure and 60 °F (approximately 15.56 °C).

*Captain of the Port* or *COTP* means a Coast Guard officer who commands a

Captain of the Port zone described in part 3 of this chapter and who is immediately responsible for enforcing port safety and security and marine environmental protection regulations within that area.

*Certified industrial hygienist* means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

*Certified marine chemist* means a marine chemist who is certified by the National Fire Protection Association.

*Certifying entity* or *CE* means any individual or organization, other than the operator, permitted by the Commandant (G-PSO) to act on behalf of the Coast Guard pursuant to section 148.8 of this subpart. The activities may include reviewing plans and calculations for construction of deepwater ports, conducting inspections, witnessing tests, and certifying systems and/or components associated with deepwater ports as safe and suitable for their intended purpose.

*Citizen of the United States* means:

(1) Any person who is a United States citizen by law, birth, or naturalization;

(2) Any State, State agency, or group of States; or

(3) Any corporation, partnership, or other association:

(i) That is organized under the laws of any State;

(ii) Whose president, chairman of the board of directors, and general partners or their equivalents, are persons described in paragraph (1) of this definition; and

(iii) That has no more of its directors who are not persons described in paragraph (1) of this definition than constitute a minority of the number required for a quorum to conduct the business of the board of directors.

*Coastal environment* means the coastal waters including the lands in and under those waters, internal waters, and the adjacent shorelines including waters in and under those shorelines.

The term includes, but is not limited to:

(1) Transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches;

(2) Fish, wildlife, and other living resources of those waters and lands; and

(3) The recreational and scenic values of those lands, waters, and resources.

*Coastal State* means a State of the United States in or bordering the Atlantic, Pacific, or Arctic Oceans or the Gulf of Mexico.

*Commandant (G-P)* means the Assistant Commandant for Prevention, or that individual's authorized representative, at Commandant (G-P), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001.

*Confined space* means a space that may contain a dangerous atmosphere, including a space that:

(1) Has poor natural ventilation, such as a space with limited openings, for example a cofferdam or double bottom tank; or

(2) Is not designed for continuous occupancy by personnel.

*Construction* means supervising, inspecting, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components. The term includes, but is not limited to, fabrication, laying of pipe, pile driving, bulk heading, alterations, modifications, and additions to the deepwater port.

*Control* means the direct or indirect power to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise.

*Crude oil* means a mixture of hydrocarbons that exists in the liquid phase in natural underground reservoirs, and remains liquid at atmospheric pressure after passing through surface separating facilities, and includes:

(1) Liquids technically defined as crude oil;

(2) Small amounts of hydrocarbons that exist in the gaseous phase in natural underground reservoirs but are liquid at atmospheric pressure after being recovered from oil well (casing head) gas in lease separators; and

(3) Small amounts of non-hydrocarbons produced with the oil.

*Dangerous atmosphere* means an atmosphere that:

(1) May expose personnel to the risk of death, incapacitation, injury, or acute illness; or

(2) May impair ability to escape from the atmosphere unaided.

*Deepwater port:*

(1) Means any fixed or floating manmade structures other than a vessel, or any group of structures, located beyond State seaward boundaries that are used or are intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in the Deepwater Port Act of 1974, as amended, and for other uses not inconsistent with the purposes of the Deepwater Ports Act, including transportation of oil or natural gas from the United States' OCS;

(2) Includes all components and equipment, including pipelines,

pumping stations, service platforms, buoys, mooring lines, and similar facilities, to the extent that they are located seaward of the high water mark;

(3) Includes, in the case of natural gas, all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities which are proposed and/or approved for construction and operation as part of the deepwater port, to the extent that they are located seaward of the high water mark and do not include interconnecting facilities; and

(4) Shall be considered a "new source" for purposes of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended, and the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, as amended.

*District commander* means an officer who commands a Coast Guard district described in part 3 of this chapter, or that individual's authorized representative.

*Emergency medical technician* means a person trained and certified to appraise and initiate the administration of emergency care for victims of trauma or acute illness before or during transportation of the victims to a health care facility via ambulance, aircraft or vessel.

*Engineering hydrographic survey* means a detailed geological analysis of seabed soil samples performed to determine the physical composition, for example the mineral content, and structural integrity for the installation of offshore components and structures.

*Governor* means the governor of a State or the person designated by State law to exercise the powers granted to the governor under the Act.

*Gross under keel clearance* means the distance between the keel of a tanker and the ocean bottom when the tanker is moored or anchored in calm water free of wind, current, or tide conditions that would cause the tanker to move.

*Hose string* means the part of a single point mooring connection for oil or natural gas transfer made out of flexible hose of the floating or float/sink type that connects the tanker's manifold to the single point mooring.

*Hot work* means work that produces heat or fire, such as riveting, welding, burning, or other fire- or spark-producing operations.

*Lease block* means an area established either by the Secretary of the Interior under section 5 of the OCS Lands Act, 43 U.S.C. 1334, or by a State under section 3 of the Submerged Lands Act, 43 U.S.C. 1311.

*License* means a license issued under this part to own, construct, and operate a deepwater port.

*Licensee* means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed under this subchapter.

*Marine environment* includes:

- (1) The coastal environment, waters of the contiguous zone, the Exclusive Economic Zone, and the high seas;
- (2) Fish, wildlife, and other living resources of those waters; and
- (3) The recreational and scenic values of those waters and resources.

*Marine site* means the area in which the deepwater port is located, including the safety zone and all areas seaward of the high water mark in which associated components and equipment of the deepwater port are located.

*Maritime Administration or MARAD* means the Administrator of the Maritime Administration or that person's designees, and includes the Associate Administrator, Port, Intermodal and Environmental Activities, Maritime Administration, or that individual's authorized representative, at 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-4721.

*Metering platform* means a manned or unmanned platform consisting of either a fixed or floating structure that serves as an interchange site for measuring the rate of transfer of natural gas from vessel to pipeline.

*Natural gas* means either natural gas, unmixed, or any mixture of natural or artificial gas, including compressed or liquefied natural gas.

*Natural gas liquids* means liquid hydrocarbons associated with or extracted from natural gas, for example ethane, propane and butane extracted from natural gas.

*Net under keel clearance* means the distance between the keel of a tanker and the ocean bottom when the tanker is underway, anchored, or moored, and subject to actual wind, waves, current, and tide motion.

*No anchoring area or NAA* means a routing measure comprising an area within defined limits where anchoring is hazardous or could result in unacceptable damage to the marine environment. Anchoring in a no anchoring area should be avoided by all vessels or certain classes of vessels, except in case of immediate danger to the vessel or the person on board.

*Officer in Charge of Marine Inspection or OCMI* means an individual who commands a marine inspection zone described in part 3 of this chapter, and who is immediately responsible for the performance of duties with respect to inspections, enforcement, and

administration of regulations governing a deepwater port.

*Offshore competent person* means an individual trained and designated by his or her employer in matters relating to confined space pre-entry testing and certification at a deepwater port, prior to entry. An offshore competent person should demonstrate proficiency in the following criteria:

- (1) Hazard description and recognition;
- (2) Hazard evaluation and measurement;
- (3) Hazard prevention;
- (4) Control and elimination; and
- (5) Practical application simulation.

*Oil* means petroleum, crude oil, and any substance refined from petroleum or crude oil.

*Operator* means the person who is licensed under 33 U.S.C. 1503 to own, construct, and operate a deepwater port, or that person's designee.

*Person* means an individual, a public or private corporation, a partnership or other association, or a government entity.

*Person in Charge (PIC)* means an individual designated as a person in charge of transfer operations under § 154.710 for oil facilities or § 127.301 for liquefied natural gas (LNG) facilities. Within this subchapter, other references to person in charge, without the use of the acronym PIC, will mean a person in charge of an operation other than transfer operations.

*Personnel* means individuals who are employed by licensees, operators, contractors, or subcontractors, and who are on a deepwater port because of their employment.

*Pipeline end manifold* means the pipeline end manifold at a single point mooring.

*Platform* means a fixed or floating structure that rests on or is embedded in the seabed or moored in place and that has floors or decks where an activity or specific function may be carried out.

*Pumping platform complex* means a platform or a series of interconnected platforms, exclusive of a deepwater port, consisting of one or more single point moorings or submerged turret loading buoys that can pump oil or natural gas and that has one or more of the following features or capabilities:

- (1) Can handle the mooring and loading of small vessels;
- (2) Has berthing and messing facilities; and
- (3) Has a landing area for helicopters.

*Reconnaissance hydrographic survey* means a scientific study of fresh and saltwater bodies, currents and water content, cultural resources, seabed soils and subsea conditions, for example

existing pipelines or subsea wells. A visual representation of the survey findings is normally depicted on a chart of the examined area.

*Routing systems* means any system of one or more vessel routes or routing measures aimed at reducing the risk of casualties. It includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas and deepwater routes.

*Safety zone* means a safety zone established around a deepwater port under part 150, subpart J, of this chapter. The safety zone may extend to a maximum distance of 500 meters (approximately 1,640 feet) around the facility, measured from each point on its outer edge or from its construction site, except as authorized by generally accepted international standards or as recommended by the International Maritime Organization. However, the zone may not interfere with the use of recognized sea lanes.

*Single point mooring or SPM* means an offshore berth that links an undersea pipeline to a moored tanker and allows for the transfer of oil or natural gas between the tanker and the pipeline.

*Single point mooring oil transfer system or SPM-OTS* means the part of the oil transfer system from the pipeline end manifold to the end of the hose string that connects to the tanker's manifold.

*Single (or multiple) point mooring natural gas transfer system or SPM-NGTS (or MPM-NGTS)* means the part of the natural gas transfer system from the pipeline end manifold to the end of the hose string that connects to the tanker's manifold.

*State* includes each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

*Support vessel* means a vessel working for a licensee at a deepwater port or cleared by a licensee to service a tanker calling at a deepwater port, and includes a:

- (1) Tug;
- (2) Line-handling boat;
- (3) Crew boat;
- (4) Supply vessel;
- (5) Bunkering vessel;
- (6) Barge; or
- (7) Other similar vessel.

*Survival craft* means a craft described in § 149.303 of this subchapter.

*Tanker* means a vessel that calls at a deepwater port to unload oil or natural gas.

*Vessel* means every description of watercraft, including non-displacement

craft e.g., wing-in-ground (WIG) craft, seaplanes) capable of being used, as a means of transportation on or through the water.

**§ 148.8 How are certifying entities designated and used for purposes of this subchapter?**

(a) Applicants and licensees may nominate a certifying entity (CE) for the performance of tasks for which the Coast Guard is responsible under this subchapter.

(b) Nominations may be made at any time after the Maritime Administration issues a record of decision approving the application, and must include the following information for each nominee:

(1) The specific functions or tasks to be performed by the nominee;

(2) Name and address;

(3) Size and type of organization or corporation;

(4) Previous experience as a CE, certified verification agent, or similar third-party representative;

(5) Experience in design, fabrication, or installation of fixed offshore oil and gas platforms, similar fixed, floating, or gravity-based structures and project-related structures, systems, and equipment;

(6) Technical capabilities, including professional certifications and organizational memberships of the nominee or the primary staff to be associated with its duties for the specific project;

(7) In-house availability of, or access to, appropriate technology such as computer modeling programs and hardware or testing materials and equipment;

(8) Ability to perform and effectively manage the duties for which it is nominated considering current resource availability;

(9) Previous experience with regulatory requirements and procedures;

(10) A statement signed by the nominee's chief officer or that person's designee that the nominee:

(i) Is not owned or controlled by the designer, manufacturer, or supplier of any equipment, material, system, or subsystem that would be the subject of the nominee's duties, or by any manufacturer of similar equipment or material; and that

(ii) The nominee will allow access to an official representative of the Coast Guard, upon request, to facilities or records that relate to its duties; and

(11) A list of documents and certifications to be furnished to the Coast Guard by the nominee.

(c) The Commandant (G-P) may accept or reject the nomination of a CE and will provide guidance and oversight

to each CE. The Commandant (G-P) may terminate the acceptance of a CE at any time.

**Subpart B—Application for a License**

**§ 148.100 What is the purpose of this subpart?**

This subpart describes how to apply for a license to own, construct, and operate a deepwater port.

**§ 148.105 What must I include in my application?**

Your application must include the information required by this section.

(a) *General.* For each applicant, affiliate, and consultant:

(1) The name, address, telephone number, citizenship, and principal business activity of the applicant and its affiliates;

(2) The name, address, and principal business activity of each subsidiary, division of the applicant, or its affiliates that participated in the decision to apply for a license to build a deepwater port;

(3) A description of how each affiliate is associated with the applicant, and of the ownership interest each affiliate has in the applicant;

(4) A list of the applicant's corporate officers and directors, and each affiliate that participated in the decision to apply for a license;

(5) A statement for each applicant or affiliate, providing complete and detailed information on any civil or criminal legal proceeding during the preceding 5 years that relates to, or that could materially affect, information in the license application; and,

(6) A declaration by the applicant that neither the applicant nor its affiliate has engaged in any lobbying activities that are prohibited by 31 U.S.C. 1352 or any other applicable Federal anti-lobbying statute.

(b) *Experience in matters relating to deepwater ports.*

(1) A description of the applicant's, affiliate's, and consultant's experience in offshore operations, particularly operations involving the transfer and storage of liquid cargo, and the loading and unloading of vessels.

(2) For each affiliate that has a significant contract with the applicant for construction of the deepwater port, a description of that affiliate's experience in construction of marine terminal facilities, offshore structures, underwater pipelines, and seabed foundations; in addition to a description of other experiences that would bear on the affiliate's qualification to participate in the construction of a deepwater port.

(c) *Engineering firms.* For each engineering firm, if known, that will

design the deepwater port or a portion of the port, the application must include the firm's:

(1) Name;

(2) Address;

(3) Citizenship;

(4) Telephone number; and

(5) Qualifications.

(d) *Citizenship and operating authority.* For each applicant or group of applicants, provide:

(1) An affidavit that the applicant is a citizen of the United States;

(2) For State agency applicants, the law authorizing the applicant to undertake the operations detailed in the application;

(3) For private corporation applicants, the current charter or certificate of incorporation and current by-laws; and affidavits of U.S. or foreign citizenship from the president, chairman of the board, and each director or their equivalents; for limited liability companies, the equivalent organizational documents, and affidavits from the members of the Board of Managers, and members; and

(4) For partnerships, including limited liability partnerships, or associations not formed or owned solely by individual citizens of the United States, the certificate of formation; the partnership agreement or articles of association; the current by-laws; the minutes of the first board meeting; and affidavits of U.S. or foreign citizenship from the president and each director, or their equivalents.

(e) *Address for service of documents.* The name and address of one individual who may be served with documents if a formal hearing is held concerning the application, and the name and address of one individual who may receive other documents.

(f) *Location and use.* The proposed location and capacity of the deepwater port, a general description of the anticipated use of the port, and whether access will be open or closed.

(g) *Financial information.*

(1) For the applicant, each affiliate with an ownership interest in the applicant of greater than 3 percent, and affiliates which have a direct contractual relationship with the deepwater port:

(i) Annual financial statements, audited by an independent certified public accountant, for the previous 3 years, including, but not limited to, an income statement, balance sheet, and cash flow statement with footnote disclosures prepared according to U.S. Generally Accepted Accounting Principles; provided, however, that the Commandant (G-P), in concurrence

with MARAD, may waive this requirement upon finding:

(A) That the affiliate does not, in the normal course of business, produce audited statements; and

(B) That the affiliate is part of a larger corporate group whose audited statement provides sufficient information to support an adequate assessment of the affiliate's relationship with and impact on the applicant; and

(ii) Interim income statements and balance sheets for each quarter that ends at least 30 days before submission of the application, unless it is included in the most recent annual financial statement.

(2) An estimate of construction costs, including:

(i) A phase-by-phase breakdown of costs;

(ii) The estimated completion dates for each phase; and

(iii) A preliminary estimate of the cost of removing all of the deepwater port marine components, including pipelines that lie beneath the seabed. The operator of a deepwater port is responsible for the costs associated with removal of all port components. Should a license be granted, MARAD will require a bond, guarantee, or other financial instrument to cover the complete cost of decommissioning as a condition of the license.

(3) Annualized projections or estimates, along with the underlying assumptions, for the next 5 years and at reasonable intervals throughout the life of the deepwater port, of each of the following:

(i) Total oil or natural gas throughput, and subtotals showing throughput owned by the applicant and its affiliates and throughput owned by others;

(ii) Projected financial statements, including a balance sheet and income statement; and

(iii) Annual operating expenses, showing separately any payment made to an affiliate for any management duties carried out in connection with the operation of the deepwater port.

(4) A copy of all proposals or agreements concerning the management and financing of the deepwater port, including agreements relating to throughputs, capital contributions, loans, guarantees, commitments, charters, and leases.

(5) The throughput reports for the calendar year preceding the date of the application, for the applicant and each of the applicant's affiliates engaged in producing, refining, or marketing oil or natural gas and natural gas liquids, along with a copy of each existing or proposed throughput agreement. Each throughput report must list the throughput of the following products:

(i) Crude oil; and if crude oil is the only product the port is designed to transport, the throughput report may be limited to reporting crude oil;

(ii) Gasoline;

(iii) Jet aviation fuel;

(iv) Distillate fuel oils;

(v) Other refinery products;

(vi) Natural gas; and

(vii) Natural gas liquids.

(h) *Construction contracts and construction-related studies.*

(1) A copy of each contract that the applicant made for the construction of any component of the deepwater port or for the operation of the port.

(2) A listing and abstract of:

(i) All completed or ongoing studies on deepwater ports conducted by or for the applicant; and

(ii) All other construction-related studies used by the applicant.

(3) The identity of each contractor, if known, that will construct or install the deepwater port or a portion of the port, including each firm's:

(i) Name;

(ii) Address;

(iii) Citizenship;

(iv) Telephone number; and

(v) Qualifications.

(i) *Compliance with Federal water pollution requirements.*

(1) Evidence, to the extent available, that the requirements of section 401(a)(1) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a)(1), will be satisfied. If complete information is not available by the time MARAD must either approve or deny the application under 33 U.S.C. 1504(i)(1), the license for the deepwater port is conditioned upon the applicant demonstrating that the requirements of section 401(a)(1) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1341(a)(1), will be satisfied.

(2) In cases where certification under 33 U.S.C. 1341(a)(1) must be obtained from the Environmental Protection Agency Administrator, the request for certification, and pertinent information, such as plume modeling, related to the certification.

(j) *Coastal zone management.* A request for each certification required by section 307 of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456, as amended.

(k) *Identification of lease block.*

(1) Identification of each lease block where any part of the proposed deepwater port or its approaches is located. This identification must be made on official OCS leasing maps or protraction diagrams, where available. Each map and diagram must be certified by a professional surveyor. For each lease block, provide the following:

(i) A description of each pipeline, or other right-of-way crossing, in enough detail to allow plotting of the rights-of-way to the nearest one-tenth of a second in latitude and longitude; and

(ii) The identity of the lessee or grantee of each pipeline or other right-of-way.

(2) Detailed information concerning any interest that anyone, including the applicant, has in each block.

(3) Detailed information concerning the present and planned use of each block.

(l) *Overall site plan.* Single-line drawings showing the location and type of each component of the proposed deepwater port and its necessary facilities, including:

(1) Floating structures;

(2) Fixed structures;

(3) Aids to navigation;

(4) Manifold systems; and

(5) Onshore storage areas, pipelines, and refineries.

(m) *Site plan for marine components.* A site plan consisting of the following:

(1) The proposed size and location of all:

(i) Fixed and floating structures and associated components seaward of the high water mark, only if the proposal does not involve a connected action, for example, installation of new pipeline extending inshore of the state boundary line;

(ii) Recommended ships' routing measures and proposed vessel traffic patterns in the port area, including aids to navigation;

(iii) Recommended anchorage areas and, for support vessels, mooring areas; and

(2) A reconnaissance hydrographic survey of the proposed marine site. This survey should provide data on the water depth, prevailing currents, cultural resources, and a general characterization of the sea bottom. A requirement to submit an engineering hydrographic survey of the final marine site will be imposed as a condition in the license. The latter survey will require more extensive analysis of the soil, and detailed study to determine its physical composition, such as minerals, and if the sea bottom can support fixed components comprising a deepwater port. The applicant may submit existing data, gathered within the previous 5 years, but it must be supplemented by field data for the specific locations in which a high degree of variability exists.

(n) *Soil data.* An analysis of the general character and condition of the ocean bottom, sub-bottom, and upland soils throughout the marine site. The applicant may use existing data, so long as it was collected within the last 5



years and continues to provide accurate information about conditions throughout the site. If not, a new survey must be completed to provide supplemental data. The analysis must include an opinion by a registered professional engineer specializing in soil mechanics concerning:

(1) The suitability of the soil to accommodate the anticipated design load of each marine component that will be fixed to or supported on the ocean floor; and

(2) The stability of the seabed when exposed to environmental forces resulting from severe storms or lesser forces that occur over time, including any history of accretion or erosion of the coastline near the marine site.

(o) *Archeological information.* An analysis of the information from the reconnaissance hydrographic survey by a qualified underwater archeologist to determine the historical or other significance of the area where the site evaluation and pre-construction testing activities were conducted. The analysis must meet standards established by the Minerals Management Service for activities on the OCS, or an alternative standard that has been submitted to and approved by the Coast Guard. The survey must include the areas potentially affected by the deepwater port, or any other associated platforms, and its pipeline route(s).

(p) *Vessel information.*

(1) The nation of registry for, and the nationality or citizenship of, officers and crew serving on board vessels transporting natural gas that are reasonably anticipated to be servicing the deepwater port; and

(2) Description of the information that will be provided in the operations manual pertaining to vessel operations, vessel characteristics, and weather forecasting.

(q) *Information on floating components.*

(1) A description and preliminary design drawing of each floating component, including the hoses, anchoring or securing structure, and navigation lights if the component is a mooring buoy.

(2) The criteria, developed under part 149 of this chapter, to which each floating component will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice that will be applied.

(5) A description of safety, firefighting, and pollution prevention equipment to be used on each floating component.

(6) A description of the lighting that will be used on floating hoses, for night detection.

(r) *Information on dedicated fixed offshore components.*

(1) A description and preliminary design drawing for each dedicated fixed offshore component.

(2) The design criteria, developed under part 149 of this chapter, to which each fixed offshore component will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of the following equipment that will be installed:

(i) Navigational lighting;  
 (ii) Safety equipment;  
 (iii) Lifesaving equipment;  
 (iv) Firefighting equipment;  
 (v) Pollution prevention equipment, excluding response equipment which must be outlined in the facility response plan; and

(vi) Waste treatment equipment.

(6) A description and preliminary design drawing of the following:

(i) The cargo pumping equipment;  
 (ii) The cargo piping system;  
 (iii) The control and instrumentation system; and  
 (iv) Any associated equipment, including equipment for oil or natural gas throughput measuring, leak detection, emergency shutdown, and the alarm system.

(7) The personnel capacity of each deepwater port pumping platform complex.

(s) *Refurbished OCS facilities and co-located fixed offshore components.*

(1) A description and preliminary design drawing for each such facility or component.

(2) The design criteria, developed under part 149 of this chapter, to which each facility or component will be designed and built or modified;

(3) The design standards and codes to be used;

(4) The title of each recommended engineering practice to be followed;

(5) A description of the following equipment to be installed or refurbished:

(i) Navigational lighting;  
 (ii) Safety equipment;  
 (iii) Lifesaving equipment;  
 (iv) Firefighting equipment;  
 (v) Pollution prevention equipment, excluding response equipment which must be outlined in the facility response plan;

(vi) Waste treatment equipment; and  
 (vii) Cathodic protection.

(6) A description and preliminary design drawing of the following:

(i) The cargo pumping equipment;  
 (ii) The cargo piping system;  
 (iii) The control and instrumentation system; and

(iv) Any associated equipment, including equipment for oil or natural gas throughput measuring, leak detection, emergency shutdown, and the alarm system.

(7) The personnel capacity of each deepwater port pumping platform complex.

(t) *Information on offshore pipelines.*

(1) A description and preliminary design drawing of the marine pipeline, including:

(i) Size;  
 (ii) Throughput capacity;  
 (iii) Length;  
 (iv) Depth of cover; and  
 (v) Protective devices.

(2) The design criteria to which the marine pipeline will be designed and built.

(3) The design standards and codes to be used.

(4) The title of each recommended engineering practice to be followed.

(5) A description of the metering system that will measure flow rate.

(6) Information concerning all submerged or buried pipelines that will be crossed by the offshore pipeline, and how each crossing will be made.

(7) Information on the pipeline that will connect to the port, including a detailed analysis that shows throughput and capacity rates of all pipelines involved in the transport of product to shore.

(u) *Information about onshore components.* To the extent known by the applicant:

(1) A description of the location, capacity, and ownership of all planned and existing onshore pipelines, storage facilities, refineries, petrochemical facilities, and transshipment facilities that will be served by the deepwater port. Crude oil or natural gas gathering lines and lines wholly within a deepwater port must be included in data about onshore components only if specifically required. Entry points and major connections between lines and with bulk purchasers must be included.

(2) A chart showing the location of all planned and existing facilities that will be served by the port, including:

(i) Onshore pipelines;  
 (ii) Storage facilities;  
 (iii) Refineries;  
 (iv) Petrochemical facilities; and  
 (v) Transshipment facilities.

(3) A copy of all proposals or agreements with existing and proposed refineries that will receive oil transported through the deepwater port, the location and capacity of each such

refinery, and the anticipated volume of such oil to be refined by each such refinery.

(v) *Information on miscellaneous components.*

(1) A description of each radio station or other communications facility to be used during construction and operation of the deepwater port and its proposed concept of operation.

(2) A description of the radar navigation system to be used in operation of the deepwater port outlined in the operations manual.

(3) A description of the method that will be used for bunkering vessels using the deepwater port.

(4) A brief description of the type, size, and number of vessels that will be used in bunkering, mooring, and servicing the vessels using the deepwater port.

(5) A description and location of the shore-based support facilities, if any, that will be provided for vessels that will be used in bunkering, mooring, and servicing the vessels using the deepwater port; or that serve as offices or facilities in support of the deepwater port operations.

(6) A copy of the actual radio station license, or, if not available, a copy of the application sent to the Federal Communications Commission, if available.

(w) *Construction procedures.* A description of the method and procedures to be used in constructing each component of the deepwater port, for example shoreside fabrication, assembly and support, including anticipated dates of completion for each specific component during each phase of construction.

(x) *Operations manual.* A draft of the operations manual for the proposed port, containing the information under § 150.15 of this chapter, must demonstrate the applicant's ability to operate the port safely and effectively. To the extent that circumstances are similar, this demonstration can be in the form of evidence appended to the draft operations manual of the applicant's participation in the safe and effective management or operation of other offshore facilities, for example, evidence of compliance with Mineral Management Service requirements for those facilities. If the information required for the manual is not available, state why it is not and when it will be available.

(y) *Risk and consequence assessment.* Data to support an independent, site-specific analysis to assess the risks and consequences of accidental and intentional events that compromise cargo containment. At minimum,

potential events that result in liquefied natural gas or oil spill, vapor dispersion and/or fire will be analyzed. The Coast Guard will utilize validated models, for example computational fluid dynamics or an equivalent model. The applicant may consult with Commandant (G-P) to ensure that appropriate assessment procedures are used.

(z) *Environmental evaluation.* An analysis, sufficient to meet the requirements of the National Environmental Policy Act, and as outlined in subpart G of this part, of the potential impacts on the natural and human environments, including sufficient information that complies with all applicable Federal, tribal, and State requirements for the protection of the environment.

(aa) *Aids to navigation.*

(1) For each proposed aid to navigation, the proposed position of the aid, described by latitude and longitude coordinates to the nearest second or tenth of a second, as determined from the largest scale chart of the area in which the aid is to be located. Specify latitude and longitude to a level obtained by visual interpolation between the finest graduation of the latitude and longitude scales on the chart.

(2) For each proposed obstruction light and rotating lit beacon:

- (i) Color;
- (ii) Characteristic;
- (iii) Effective intensity;
- (iv) Height above water; and
- (v) General description of the illumination apparatus.

(3) For each proposed sound signal on a structure, a general description of the apparatus.

(4) For each proposed buoy:

- (i) Shape;
- (ii) Color;
- (iii) Number or letter;
- (iv) Depth of water in which located; and

(v) General description of any light and/or sound signal apparatus on the buoy.

(5) For the proposed radar beacon, or RACON, height above water and a general description of the apparatus.

(bb) *National Pollutant Discharge Elimination System (NPDES).* A copy of the NPDES Application for Permit to Discharge Short Form D, for applying for a discharge permit from the Environmental Protection Agency (EPA) and any accompanying studies and analyses. If complete information is not available by the time MARAD must either approve or deny the application for a designated application area under 33 U.S.C. 1504(i)(1), the license for the deepwater port is conditioned upon the

applicant receiving the required discharge permit from the EPA before the start of any discharge requiring such a permit. The issuance of the permit demonstrates that all potential water discharges have been satisfactorily analyzed and water quality control measures implemented to mitigate discharges to meet NPDES.

(cc) *Structures' placement and the discharge of dredged or fill material.* The information required to obtain a Department of the Army permit for placement of structures and the discharge of dredged or fill material.

(dd) *Additional Federal authorizations.* All other applications for Federal authorizations not listed elsewhere in this subpart that are required for ownership, construction, and operation of a deepwater port.

(ee) *Sworn statement.* A statement that the information in the application is true must be placed at the end of the application, sworn to before a notary public, and signed by a responsible applicant official.

**§ 148.107 What additional information may be required?**

(a) The Commandant (G-P), in coordination with MARAD, may require the applicant or the applicant's affiliates to file, as a supplement to the application, any analysis, explanation, or other information he or she deems necessary.

(b) The Commandant (G-P) may require the applicant or the applicant's affiliates to make available for Coast Guard examination, under oath or for interview, persons having, or believed to have, necessary information.

(c) The Commandant (G-P) may set a deadline for receiving the information.

(1) If the applicant states that the required information is not yet available but will be at a later date, the Commandant (G-P) may specify a later deadline.

(2) If a requirement is not met by a deadline fixed under this paragraph, the Commandant (G-P), in coordination with MARAD, may determine whether compliance with the requirement is important to processing the application within the time prescribed by the Act.

(3) If the requirement is important to processing the application within the time limit set by the Act, the Commandant (G-P) may recommend to the Maritime Administrator that he or she either not approve the application or suspend it indefinitely. The deadline for the Administrator's review under the Act is extended for a period of time equal to the time of the suspension.

**§ 148.108 What if a Federal or State agency or other interested party requests additional information?**

(a) Any Federal or State agency or other interested person may recommend that the applicant provide information that is not specified by this subchapter.

(b) Recommendations must state briefly why the information is needed.

(c) The Commandant (G–P) must receive the request prior to the closing dates for the comment periods for scoping, and the draft or final environmental impact statement or environmental assessment. MARAD will consider the request before making a final decision on whether or not to approve the license application.

(d) The Commandant (G–P) will consider whether:

(1) The information requested is essential for processing the license application; and

(2) The time and effort required by the applicant in gathering the information will result in an undue delay in the application process.

(e) The Commandant (G–P) may discuss the recommendation with the recommending person and the applicant prior to issuing a determination.

**§ 148.110 How do I prepare my application?**

(a) Any person may confer with the Commandant (G–P) concerning requirements contained in this rule for the preparation of an application or the requirements of this subchapter.

(b) The applicant may incorporate, by clear and specific reference in the application:

(1) Standard reference material that the applicant relied on that is readily available to Federal and State agencies;

(2) Current information contained in previous applications or reports that the applicant has submitted to the application staff; or

(3) Current information contained in a tariff, report, or other document previously filed for public record with the Surface Transportation Board or the Securities and Exchange Commission, if:

(i) A certified true and complete copy of the document is attached to each copy of the application as required by § 148.115(a);

(ii) The date of filing and the document number are on the cover of the document; and

(iii) Any verification or certification required for the original filing, other than from auditors or other independent persons, is dated no earlier than 30 days before the date of the application.

**§ 148.115 How many copies of the application must I send and where must I send them?**

Send the following copies of the application:

(a) Two printed copies and three electronic versions to the Commandant (G–PSO), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

(b) Two printed copies and two electronic versions to the MARAD Administrator, 400 7th Street SW., Washington, DC 20590.

(c) One copy to the U.S. Army Corps of Engineers District Office having jurisdiction over the proposed port. For the address, see <http://www.usace.army.mil/>.

(d) Additional printed and electronic copies for distribution to Federal, tribal, and State regulatory agencies involved in reviewing the application in accordance with the needs of each agency.

**§ 148.125 What are the application fees?**

(a) The applicant must submit a nonrefundable application fee of \$350,000 with each application for a license. If additional information is necessary to make an application complete, no additional application fee is required.

(b) The costs incurred by the Federal Government in processing an application will be charged to the application fee until it is exhausted. If the fee is exhausted and the Federal Government incurs further processing costs, the applicant will be charged for the additional costs. The Commandant (G–P) will periodically advise the applicant of the status of expenses incurred during the application process.

(c) Additional costs attributable to processing a deepwater port license application and post-license activities, for example the engineering plan review or development of the final operations manual, are due when they are assessed, and must be paid by the applicant prior to commencing operation of the deepwater port.

(d) Application fees and additional costs assessed under this section must be made payable to the United States Treasury, and submitted to the Commandant (G–P).

**Subpart C—Processing Applications****General****§ 148.200 What is the purpose of this subpart?**

This subpart prescribes the requirements for processing an application for a deepwater port license. It includes the procedures for:

- (a) Maintaining the docket;
- (b) Designating adjacent coastal states;
- (c) Holding informal and formal public hearings; and
- (d) Approving or denying an application.

**§ 148.205 How are documents related to the application maintained?**

(a) The Commandant (G–P) maintains the docket for each application.

(1) The docket contains a copy of all documents filed or issued as part of the application process.

(2) Recommendations submitted by Federal departments and agencies under 33 U.S.C. 1504(e)(2) are docketed when they are received.

(3) Copies of applicable National Environmental Policy Act documents prepared under 33 U.S.C. 1504(f) are docketed when they are sent to the Environmental Protection Agency.

(b) For a document designated as protected from disclosure under 33 U.S.C. 1513(b), the Commandant (G–P):

(1) Prevents the information in the document from being disclosed, unless the Commandant (G–P) states that the disclosure is not inconsistent with 33 U.S.C. 1513(b); and

(2) Keeps a record of all individuals who have a copy of the document.

**§ 148.207 How and where may I view docketed documents?**

(a) All material in a docket under § 148.205 is available to the public for inspection and copying at Commandant (G–P) at the address under “Commandant (G–P)” in § 148.5, except for:

(1) Contracts under 33 U.S.C. 1504(c)(2)(B) for the construction or operation of a deepwater port; and

(2) Material designated under paragraph (b) of this section as a trade secret, or commercial or financial information that is claimed to be privileged or confidential.

(b) A person submitting material that contains either a trade secret or commercial or financial information under paragraph (a)(2) of this section must designate those portions of the material that are privileged or confidential. Section 148.221 contains procedures for objecting to these claims.

(c) Docketed material for each deepwater port project is also available to the public electronically at the Department of Transportation Docket Management System Web site at <http://www.dot.dms.gov>. The projects are also listed by name and the assigned docket number at the G–PSO–5 Web site: <http://www.uscg.mil/hq/g-m/mso/mso5.htm>.

**§ 148.209 How is the application processed?**

The Commandant (G–P), in cooperation with the Maritime Administrator, processes each application and the Maritime Administration publishes the notice of application under 33 U.S.C. 1504(c) in the **Federal Register**. Upon publication of a notice of application, the Commandant (G–P) ensures delivery of copies of the application to:

(a) Each Federal agency with jurisdiction over any aspect of ownership, construction, or operation of deepwater ports. A complete listing of the Federal agencies involved with deepwater port licensing is outlined in the Deepwater Port Interagency MOU available at the following hyperlink: [http://www.uscg.mil/hq/G-M/mso/docs/dwp\\_white\\_house\\_task\\_force\\_energy\\_streamlining.pdf](http://www.uscg.mil/hq/G-M/mso/docs/dwp_white_house_task_force_energy_streamlining.pdf).

(b) Each adjacent coastal State, including relevant State and tribal agencies in those States.

**§ 148.211 What must I do if I need to change my application?**

(a) If at any time before the Secretary approves or denies an application, the information in it changes or becomes incomplete, the applicant must promptly submit the changes or additional information in the manner set forth in § 148.115 of this part.

(b) The Coast Guard may determine that the change or required information is of such magnitude that it warrants submission of a complete revised application.

**§ 148.213 How do I withdraw my application?**

The applicant may withdraw an application at any time before the proceeding is terminated by delivering or mailing notice of withdrawal to the Commandant (G–P) for docketing.

**§ 148.215 What if a port has plans for a deep draft channel and harbor?**

(a) If a State port will be directly connected by pipeline to a proposed deepwater port, and has existing plans for a deep draft channel and harbor, a representative of the port may request a determination under 33 U.S.C. 1503(d).

(b) The request must be sent, in writing, to the Commandant (G–P) within 30 days after the date that the notice of application for the deepwater port is published in the **Federal Register**.

(c) The request must contain:

- (1) A signature of the highest official of the port submitting the request;
- (2) A copy of the existing plans for the construction of a deep draft channel and harbor;

(3) Certification that the port has an active study by the Secretary of the Army for the construction of a deep draft channel and harbor, or that the port has an application pending for a permit under 33 U.S.C. 403 for the construction;

(4) Any available documentation on:

- (i) Initial costs, by phases if development is staged, for the proposed onshore project, including dredging, ship terminal, and attendant facilities;
- (ii) Estimated annual operating expenses, by phases if development is staged, including labor, for 30 years for all elements of the project;
- (iii) Estimated completion time for all elements of the project;
- (iv) Estimated vessel traffic volume, and the volume and variety of the tonnage;
- (v) Potential traffic congestion conditions in the port, and the port's ability to control vessel traffic as a result of the proposed dredging project;
- (vi) Estimated economic benefits of the project, including:

(A) Economic contribution to the local and regional area;

(B) Induced industrial development;

(C) Increased employment; and

(D) Increases in tax revenues;

(vii) Environmental and social impacts of the project on the local and regional community; and

(viii) An estimate of the economic impact that the deepwater port license will have on the proposed project.

(d) A statement whether the port seeks a determination that the port best serves the national interest.

**§ 148.217 How can a State be designated as an adjacent coastal State?**

(a) Adjacent coastal States are named in the notice of application published in the **Federal Register**. However, a State not named as an adjacent coastal State in the notice may request to be designated as one if the environmental risks to it are equal to or greater than the risks posed to a State directly connected by pipeline to the proposed deepwater port.

(b) The request must:

(1) Be submitted in writing to the Commandant (G–P) within 14 days after the date of publication of the notice of application in the **Federal Register**;

(2) Be signed by the Governor of the State;

(3) List the facts and any available documentation or analyses concerning the risk of damage to the coastal environment of the State; and

(4) Explain why the State believes the risk of damage to its coastal environment is equal to or greater than the risk to a State connected by a

pipeline to the proposed deepwater port.

(c) Upon receipt of a request, the Commandant (G–P) will send a copy of the State's request to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and ask for the Administrator's recommendations within an amount of time that will allow the Commandant (G–P) and the MARAD Administrator 45 days from receipt of the request to determine the matter.

(d) If after receiving NOAA's recommendations the Commandant (G–P), in concurrence with MARAD Administrator, determines that the State should be considered an adjacent coastal State, the Commandant (G–P), in concurrence with the MARAD Administrator, will so designate it. If the Commandant (G–P), in concurrence with the MARAD Administrator, denies the request, he or she will notify the requesting State's Governor of the denial.

**§ 148.221 How do I claim, or object to a claim, that required information is privileged?**

(a) Any person may claim that specific information required pursuant to this part should be withheld because it is privileged, and any person can object to that claim.

(b) Requests or objections must be submitted to the Commandant (G–P) in writing, with sufficient specificity to identify the information at issue, and to show why it should or should not be considered privileged.

(c) The Commandant (G–P) determines whether to grant or deny a claim of privilege.

(d) Submission of a claim stays any deadline for providing the information at issue, unless the claim is made pursuant to the protection for confidential information that is provided by 33 U.S.C. 1513(b), in which case deadlines are not stayed. The Commandant (G–P) may also determine that the information at issue is so material that processing of the application must be suspended pending the determination of the claim.

**Public Hearings or Meetings****§ 148.222 When must public hearings or meetings be held?**

(a) Before a license is issued, at least one public license hearing under 33 U.S.C. 1504(g) must be held in each adjacent coastal State. Other Federal statutes and regulations may impose additional requirements for public hearings or meetings, and if not otherwise prohibited, a hearing under this paragraph may be consolidated

with any such additional hearing or meeting.

(b) The Commandant (G-P) or the MARAD Administrator will publish a notice of public hearings or meetings in the **Federal Register**, and will mail or deliver a copy of the notice to the applicant, to each adjacent coastal State, and to all who request a copy.

(c) Anyone may attend a public hearing or meeting and provide relevant oral or written information. The presiding officer may limit the time for providing oral information.

**§ 148.227 How is a public hearing or meeting reported?**

(a) After completion of a public hearing or meeting, the presiding officer forwards a report on the hearing or meeting to the Commandant (G-P) for docketing.

(b) The report must contain at least:

- (1) An overview of the factual issues addressed;
- (2) A transcript or recording of the hearing or meeting; and
- (3) A copy of all material submitted to the presiding officer.

(c) During the hearing or meeting, the presiding officer announces the information that the report must contain.

**Formal Hearings**

**§ 148.228 What if a formal evidentiary hearing is necessary?**

(a) After all public meetings under § 148.222 of this part are concluded, the Commandant (G-PSO), in coordination with the MARAD Administrator, will consider whether there are one or more specific and material factual issues that may be resolved by a formal evidentiary hearing.

(b) If the Commandant (G-PSO), in coordination with the MARAD Administrator, determines that one or more issues under paragraph (a) of this section exist, the Coast Guard will hold at least one formal evidentiary hearing under 5 U.S.C. 554 in the District of Columbia.

(c) The Commandant (G-PSO) files a request for assignment of an administrative law judge (ALJ) with the ALJ Docketing Center. The Chief ALJ designates an ALJ or other person to conduct the hearing.

(d) The recommended findings and the record developed in a hearing under paragraph (b) of this section are considered by the MARAD Administrator in deciding whether to approve or deny a license.

**§ 148.230 How is notice of a formal hearing given?**

(a) The Commandant (G-P) publishes a notice of the hearing in the **Federal**

**Register** and sends a notice of the hearing to the applicant, to each adjacent coastal State, and to each person who requests such a notice.

(b) The notice of the hearing includes the applicant's name, the name of the ALJ assigned to conduct the hearing, a list of the factual issues to be resolved, the address where documents are to be filed, and the address where a copy of the rules of practice, procedure, and evidence to be used at the hearing is available.

**§ 148.232 What are the rules for a formal hearing?**

(a) The Commandant (G-P) determines the rules for each formal hearing. Unless otherwise specified in this part, the Commandant (G-P) applies the rules of practice, procedure, and evidence in part 20 of this chapter.

(b) The Commandant (G-P) sends a written copy of the procedure to the applicant, each person intervening in the proceedings, and each person who requests a copy.

**§ 148.234 What are the limits of an Administrative Law Judge (ALJ)'s jurisdiction?**

(a) An ALJ's jurisdiction begins upon assignment to a proceeding.

(b) An ALJ's jurisdiction ends after the recommended findings are filed with the Commandant (G-P) or immediately after the ALJ issues a notice of withdrawal from the proceeding.

**§ 148.236 What authority does an Administrative Law Judge (ALJ) have?**

When assigned to a formal hearing, an ALJ may:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas;
- (c) Issue rules of procedure for written evidence;
- (d) Rule on offers of proof and receive evidence;
- (e) Examine witnesses;
- (f) Rule on motions of the parties;
- (g) Suspend or bar an attorney from representing a person in the proceeding for unsuitable conduct;
- (h) Exclude any person for disruptive behavior during the hearing;
- (i) Set the hearing schedule;
- (j) Certify questions to the Commandant (G-P);
- (k) Proceed with a scheduled session of the hearing in the absence of a party who failed to appear;
- (l) Extend or shorten a non-statutorily imposed deadline under this subpart within the 240-day time limit for the completion of public hearings in 33 U.S.C. 1504(g);
- (m) Set deadlines not specified in this subpart or the Deepwater Ports Act; and

(n) Take any other action authorized by or consistent with this subpart, the Deepwater Ports Act, or 5 U.S.C. 551-559.

**§ 148.238 Who are the parties to a formal hearing?**

The parties to a formal hearing are:

- (a) The applicant;
- (b) The Commandant (G-P); and
- (c) Any person intervening in the proceedings.

**§ 148.240 How does a State or a person intervene in a formal hearing?**

(a) Any person or adjacent coastal State may intervene in a formal hearing.

(b) A person must file a petition of intervention within 10 days of notice that the formal hearing is issued. The petition must:

- (1) Be addressed to the *Administrative Law Judge (ALJ) Docketing Center*;
- (2) Identify the issues and the petitioner's interest in those issues; and
- (3) Designate the name and address of a person who can be served if the petition is granted.

(c) An adjacent coastal State need only file a notice of intervention with the ALJ Docketing Center.

(d) The ALJ has the authority to limit the scope and period of intervention during the proceeding.

(e) If the ALJ denies a petition of intervention, the petitioner may file a notice of appeal with the ALJ Docketing Center within 7 days of the denial.

(1) A brief may be submitted with the notice of appeal.

(2) Parties who wish to file a brief in support of or against the notice of appeal may do so within 7 days of filing the notice.

(f) The Commandant (G-P) will rule on the appeal. The ALJ does not have to delay the proceedings for intervention appeals.

**§ 148.242 How does a person who is not a party to a formal hearing present evidence at the hearing?**

(a) A person who is not a party to a formal hearing may present evidence at the hearing if he or she sends a petition to present evidence to the ALJ Docketing Center before the beginning of the formal hearing. The petition must describe the evidence that the person will present and show its relevance to the issues listed in the notice of formal hearing.

(b) If a petition is granted, the ruling will specify which evidence is approved to be presented at the hearing.

**§ 148.244 Who must represent the parties at a formal hearing?**

(a) All organizations that are parties to the proceeding must be represented by

an attorney. Individuals may represent themselves.

(b) Any attorney representing a party to the proceeding must file a notice of appearance according to § 20.301(b) of this chapter.

(c) Each attorney must be in good standing and licensed to practice before a court of the United States or the highest court of any State, territory, or possession of the United States.

**§ 148.246 When is a document considered filed and where should I file it?**

(a) If a document to be filed is submitted by mail, it is considered filed on the date it is postmarked. If a document is submitted by hand delivery or electronically, it is considered filed on the date received by the clerk.

(b) File all documents and other materials related to an administrative proceeding at the U.S. Coast Guard Administrative Law Center, Attention: Hearing Docket Clerk, room 412, 40 South Gay Street, Baltimore, MD, 21201-4022.

**§ 148.248 What happens when a document does not contain all necessary information?**

Any document that does not satisfy the requirements in §§ 20.303 and 20.304 of this chapter will be returned to the person who submitted it with a statement of the reasons for denial.

**§ 148.250 Who must be served before a document is filed?**

Before a document may be filed by any party, it first must be served upon:

- (a) All other parties; and
- (b) The Commandant (G-P).

**§ 148.252 What is the procedure for serving a subpoena?**

(a) A party may submit a request for a subpoena to the Administrative Law Judge (ALJ). The request must show the relevance and scope of the evidence sought.

(b) Requests should be submitted sufficiently in advance of the hearing so that exhibits and witnesses can be included in the lists required by § 20.601 of this chapter, but may be submitted later and before the end of the hearing, if good cause is shown for the late submission.

(c) A request for a subpoena must be submitted to the ALJ.

(d) A proposed subpoena, such as the form in <http://cgweb.comdt.uscg.mil/gcj/subpoena.doc>, must be submitted with the request. If you do not use this form, the proposed subpoena must contain:

(1) The docket number of the proceedings;

(2) The captions "Department of Homeland Security," "Coast Guard,"

and "Licensing of deepwater port for coastal waters off (insert name of the coastal State closest to the proposed deepwater port and the docket number of the proceeding)";

(3) The name and the address of the office of the ALJ;

(4) For a subpoena giving testimony, a statement commanding the person to whom the subpoena is directed to attend the formal hearing and give testimony;

(5) For a subpoena producing documentary evidence, a statement commanding the person to produce designated documents, books, papers, or other tangible things at a designated time or place; and

(6) An explanation of the procedure in § 20.309(d) of this chapter and paragraph (h) of this section for quashing a subpoena.

(e) The procedure for serving a subpoena must follow Rule 45 of the Federal Rules of Civil Procedure, unless the ALJ authorizes another procedure.

(f) The witness fees for a subpoenaed witness are the same as the fees for witnesses subpoenaed in U.S. District Courts. The person requesting the subpoena must pay these fees.

(g) When serving a subpoena, a party must include witness fees in the form of a check to the individual or organization for one day plus mileage, or, in the case of a government-issued subpoena, a form SF-1157 so a witness may receive fees and mileage reimbursement.

(h) Any person served with a subpoena has 10 days from the time of service to move to quash the subpoena.

(i) If a person does not comply with a subpoena, the ALJ decides whether judicial enforcement of the subpoena is necessary. If the ALJ decides it is, the Commandant (G-P) reviews this decision.

**§ 148.254 How is a hearing transcript prepared?**

(a) Under the supervision of the Administrative Law Judge (ALJ), the reporter prepares a verbatim transcript of the hearing. Nothing may be deleted from the transcript, unless ordered by the ALJ and noted in the transcript.

(b) After a formal hearing is completed, the ALJ certifies and forwards the record, including the transcript, to the clerk to be placed into the docket.

(c) At any time within the 20 days after the record is docketed, the ALJ may make corrections to the certified transcript. When corrections are filed, they are attached as appendices.

(d) Any motion to correct the record must be submitted within 10 days after the record is docketed.

**§ 148.256 What happens at the conclusion of a formal hearing?**

After closing the record of a formal hearing, the Administrative Law Judge (ALJ) prepares a recommended finding on the issues that were the subject of the hearing. The ALJ submits that finding to the Commandant (G-P).

**Approval or Denial of the Application**

**§ 148.276 When must the application be approved or denied?**

(a) In 33 U.S.C. 1504, the Deepwater Port Act provides strict timelines for action on a license application, which, if closely observed, can lead to action in just under 1 year. The Coast Guard, in concurrence with MARAD, can suspend the process if an applicant fails to provide timely information or requests additional time to comply with a request.

(b) The Coast Guard must conduct public hearings in each adjacent Coastal State within 240 days of publishing the notice of receipt of a deepwater port license application.

(c) MARAD issues a record of decision (ROD) approving or denying a license application within 90 days after the final public hearing. Actual issuance of a license may not take place until certain conditions imposed by the ROD have been met. Those conditions may include how the applicant must address design, construction, installation, testing, operations, and decommissioning of the port, or meet the requirements of other agencies.

**§ 148.277 How may Federal agencies and States participate in the application process?**

(a) Under § 148.209, Federal agencies and adjacent coastal States are sent copies of the application. The agencies and States are encouraged to begin submitting their comments at that time.

(b) To be considered, comments from Federal agencies and adjacent coastal States must be received by the Commandant (G-P) within 45 days after the close of the public hearing period specified in § 148.276(b). Separate comment periods will apply to the review of documents created during the National Environmental Policy Act process. Both the Commandant (G-P) and MARAD review the comments received.

(c) Comments should identify problems, if any, and suggest possible solutions.

**§ 148.279 What are the criteria for approval or denial of an application?**

The criteria for approving or denying a license application appear in 33 U.S.C. 1503.

**§ 148.281 What happens when more than one application is submitted for a deepwater port in the same application area?**

(a) When more than one application is submitted for a deepwater port in the same application area under 33 U.S.C. 1504(d), only one application is approved. Except as provided in paragraph (b) of this section, applicants receive priority in the following order:

- (1) An adjacent coastal State or combination of States, political subdivision of the State, or an agency or instrumentality, including a wholly owned corporation of the State;
- (2) A person that is:
  - (i) Not engaged in producing, refining, or marketing oil;
  - (ii) Not an affiliate of a person engaged in producing, refining, or marketing oil; or
  - (iii) Not an affiliate of a person engaged in producing, refining, or marketing oil; and then
- (3) Any other applicant.

(b) MARAD may also approve one of the proposed deepwater ports if it determines that that port will best serve the national interest. In making this determination, MARAD considers:

- (1) The degree to which each deepwater port will affect the environment, as determined under the review criteria in subpart G to this part;
  - (2) The differences between the anticipated completion dates of the deepwater ports; and
  - (3) The differences in costs for construction and operation of the ports that would be passed on to consumers of oil.
- (c) This section does not apply to applications for natural gas deepwater ports.

**§ 148.283 When is the application process stopped before the application is approved or denied?**

The Commandant (G-P) recommends to MARAD that the application process be suspended before the application is approved or denied if:

- (a) All applications are withdrawn before MARAD approves one of them; or
- (b) There is only one application; it is incomplete, and the applicant does not respond to a request by the Commandant (G-P) for further information, as per § 148.107.

**Subpart D—Licenses**

**§ 148.300 What does this subpart concern?**

This subpart concerns the license for a deepwater port and the procedures for transferring, amending, suspending, reinstating, revoking, and enforcing a license.

**§ 148.305 What is included in a deepwater port license?**

A deepwater port license contains information about the licensee and the port, and any conditions of its own or of another agency that may be described by MARAD in the license. Licenses are issued in conformance with the Deepwater Ports Act of 1974, as amended, and with rules and policies of MARAD that implement that Act.

**§ 148.307 Who may consult with the Commandant (G-P) and the MARAD Administrator on developing the proposed conditions of a license?**

Federal agencies, the adjacent coastal States, and the owner of the deepwater port may consult with the Commandant (G-P) and the MARAD Administrator on the conditions of the license being developed under 33 U.S.C. 1503(e).

**§ 148.310 How long does a license last?**

Each license remains in effect indefinitely subject to the following:

- (a) If it is suspended or revoked by MARAD;
- (b) If it is surrendered by the owner; or
- (c) As otherwise provided by condition of the license.

**§ 148.315 How is a license amended, transferred, or reinstated?**

(a) MARAD may amend, transfer, or reinstate a license if it finds that the amendment, transfer, or reinstatement is consistent with the requirements of the Act and this subchapter.

(b) The owner must submit a request for an amendment, transfer, or reinstatement to the Commandant (G-P) or the MARAD Administrator.

**§ 148.320 How is a license enforced, suspended, or revoked?**

MARAD may enforce, suspend, or revoke a license under 33 U.S.C. 1507(c).

**§ 148.325 How soon after port decommissioning must the licensee initiate removal?**

Within 2 years of port decommissioning, the licensee must initiate removal procedures. The Commandant (G-P) will advise and coordinate with appropriate Federal agencies and the States concerning activities covered by this section.

**Subpart E—Site Evaluation and Pre-Construction Testing**

**§ 148.400 What does this subpart do?**

(a) This subpart prescribes requirements under 33 U.S.C. 1504(b) for the activities that are involved in site evaluation and pre-construction testing

at potential locations for deepwater ports and that may:

- (1) Adversely affect the environment;
- (2) Interfere with authorized uses of the OCS; or
- (3) Pose a threat to human health and welfare.

(b) For the purpose of this subpart, “site evaluation and pre-construction testing” means studies performed at potential deepwater port locations, including:

- (1) Preliminary studies to determine the feasibility of a site;
- (2) Detailed studies of the topographic and geologic structure of the ocean bottom to determine its ability to support offshore structures and other equipment; and
- (3) Studies done for the preparation of the environmental analysis required under § 148.105.

**§ 148.405 What are the procedures for notifying the Commandant (G-P) of proposed site evaluation and pre-construction testing?**

(a) Any person who wants to conduct site evaluation and pre-construction testing at a potential site for a deepwater port must submit a written notice to the Commandant (G-P) at least 30 days before the beginning of the evaluation or testing. The Commandant (G-P) advises and coordinates with appropriate Federal agencies and the States concerning activities covered by this subpart.

(b) The written notice must include the following:

- (1) The names of all parties participating in the site evaluation and pre-construction testing;
- (2) The type of activities and the way they will be conducted;
- (3) Charts showing where the activities will be conducted and the locations of all offshore structures, including pipelines and cables, in or near the proposed area;
- (4) The specific purpose for the activities;
- (5) The dates when the activities will begin and end;
- (6) The available data on the environmental consequences of the activities;

(7) A preliminary report, based on existing data, of the historical and archeological significance of the area where the proposed activities are to take place. The report must include contacts made with any appropriate State liaison officers for historic preservation; and

- (8) Additional information, if necessary, in individual cases.
- (c) For the following activities, the notice only needs the information required in paragraphs (b)(1), (b)(2), and

(b)(5) of this section, as well as a general indication of the proposed location and purpose of the activities, including:

- (1) Gravity and magneto-metric measurements;
  - (2) Bottom and sub-bottom acoustic profiling, within specified limits, without the use of explosives;
  - (3) Sediment sampling of a limited nature using either core or grab samplers, and the specified diameter and depth to which the sampling would penetrate if geological profiles indicate no discontinuities that may have archeological significance;
  - (4) Water and biotic sampling if the sampling does not adversely affect shellfish beds, marine mammals, or an endangered species, or if the sampling is permitted by another Federal agency;
  - (5) Meteorological measurements, including the setting of instruments;
  - (6) Hydrographic and oceanographic measurements, including the setting of instruments; and
  - (7) Small diameter core sampling to determine foundation conditions.
- (d) A separate written notice is required for each site.

**§ 148.410 What are the conditions for conducting site evaluation and pre-construction testing?**

- (a) No person may conduct site evaluation and pre-construction testing unless it complies with this subpart and other applicable laws.
- (b) Measures must be taken to prevent or minimize the effect of activities under § 148.400(a).

**§ 148.415 When conducting site evaluation and pre-construction testing, what must be reported?**

- (a) When conducting site evaluation or pre-construction testing, the following must be immediately reported by any means to the Commandant (G–P):
- (1) Any evidence of objects of cultural, historical, or archeological significance;
  - (2) Any adverse effect on the environment;
  - (3) Any interference with authorized uses of the OCS;
  - (4) Any threat to human health and welfare; and
  - (5) Any adverse effect on an object of cultural, historical, or archeological significance.
- (b) Within 120 days after the site evaluation or pre-construction testing, a final written report must be submitted to the Commandant (G–P) that contains:
- (1) A narrative description of the activities performed;
  - (2) A chart, map, or plat of the area where the activities occurred;

(3) The dates when the activities were performed;

- (4) Information on the adverse effects of items reported under paragraph (a) of this section;
- (5) Data on the historical or archeological significance of the area where the activities were conducted, including a report by an underwater archeologist; and
- (6) Any additional information required by the Commandant (G–P) on a case-by-case basis.

**§ 148.420 When may the Commandant (G–P) suspend or prohibit site evaluation or pre-construction testing?**

- (a) The Commandant (G–P) may order, either in writing or orally, with written confirmation, the prohibition or immediate suspension of any activity related to site evaluation or pre-construction testing when the activity threatens to harm:
- (1) Human life;
  - (2) Biota;
  - (3) Property;
  - (4) Cultural resources;
  - (5) Any valuable mineral deposits; or
  - (6) The environment.
- (b) The Commandant (G–P) will consult with the applicant on measures to remove the cause for suspension.
- (c) The Commandant (G–P) may lift a suspension after the applicant assures the Commandant (G–P) that the activity will no longer cause the threat on which the suspension was based.

**Subpart F—Exemption From or Adjustments to Requirements in This Subchapter**

**§ 148.500 What does this subpart do?**

This subpart provides procedures for requesting an exemption from a requirement in this subchapter. The Commandant (G–P) and MARAD coordinate in evaluating requests for exemption from the requirements in this subchapter.

**§ 148.505 How do I apply for an exemption?**

- (a) Any person required to comply with a requirement in this subchapter may submit a petition for exemption from that requirement.
- (b) The petition must be submitted in writing to the Commandant (G–P) and the MARAD Administrator.
- (c) The Commandant (G–P) may require the petition to provide an alternative to the requirement.

**§ 148.510 What happens when a petition for exemption involves the interests of an adjacent coastal State?**

If the petition for exemption concerns an adjacent coastal State, the

Commandant (G–P) forwards the petition to the Governor of the State for the Governor's recommendation.

**§ 148.515 When is an exemption allowed?**

The Commandant (G–P) may recommend that MARAD allow an exemption if he or she determines that:

- (a) Compliance with the requirement would be contrary to public interest;
- (b) Compliance with the requirement would not enhance safety or the health of the environment;
- (c) Compliance with the requirement is not practical because of local conditions or because the materials or personnel needed for compliance are unavailable;
- (d) National security or national economy justifies a departure from the rules; or
- (e) The alternative, if any, proposed in the petition would:
  - (1) Ensure comparable or greater safety, protection of the environment, and quality of deepwater port construction, maintenance, and operation; and
  - (2) Be consistent with recognized principles of international law.

**§ 148.600 What is the limit of financial liability?**

The financial limit for liability for deepwater ports is set in accordance with 33 U.S.C. 2704.

**§ 148.605 How is the limit of liability determined?**

- (a) The Coast Guard may lower the \$350,000,000 limit of liability for deepwater ports set by 33 U.S.C. 2704(a)(4), pursuant to paragraph (d) of that section, particularly for natural gas deepwater ports that will store or use oil in much smaller amounts than an oil deepwater port.
- (b) Requests to adjust the limit of liability for a deepwater port must be submitted to the Commandant (G–P). Adjustments are established by a rulemaking with public notice and comment that may take place concurrently with the processing of the deepwater port license application.

**Subpart G—Environmental Review Criteria for Deepwater Ports**

**§ 148.700 How does the Deepwater Port Act interact with other Federal and State laws?**

- (a) Nothing in this subpart supersedes any Federal, tribal, or State requirements for the protection of the environment.
- (b) The applicant must prepare and submit applications to each respective agency that requires a permit or license to operate the port.



(c) A list of Federal and State agencies that require certification includes, but is not limited to:

- (1) The Environmental Protection Agency, for Clean Air Act and Clean Water Act permits;
- (2) The Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety; and
- (3) The Mineral Management Service (MMS); or
- (4) Both the Office of Pipeline Safety and MMS for pipeline approvals, and the appropriate State environmental agency or permitting agency.

**§ 148.702 How were the environmental review criteria developed?**

Under 33 U.S.C. 1505, the Commandant (G–P) must establish environmental review criteria for use in evaluating a proposed deepwater port. In developing these criteria, the Coast Guard considers the requirements for compliance with Federal and State mandates for the protection of the environment contained in, but not limited to, such guidance as published by:

- (a) The Council on Environmental Quality in 40 CFR parts 1500–1508;
- (b) Department of Homeland Security Directive 5100.1, Environmental Planning Program; and
- (c) The Coast Guard in Commandant Instruction M16475.1D, National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts.

**§ 148.705 What is determined by the environmental evaluation?**

(a) The environmental criteria to be used in evaluating a license application are established by general consensus of expertise, scientific opinion, public interest, and institutional requirements, such as laws and regulations established for the protection of the environment. Criteria that may be established in future environmental regulations or other requirements to protect the environment will also be used.

(b) The environmental criteria to be used in evaluating a license application are applied to all relevant aspects of:

- (1) The fabrication, construction, operation, and decommissioning phases of a deepwater port;
- (2) The operations of the vessels that serve the port;
- (3) The port's servicing and support activities;
- (4) Shore-based construction and fabrication sites;
- (5) Shoreside supporting facilities, if appropriate, for the proposed location; and
- (6) The No Action alternative and other reasonable alternatives.

(c) The criteria are also applied in a manner that takes into account the cumulative effects of other reasonably foreseeable actions as outlined in § 148.707.

**§ 148.707 What type of criteria will be used in an environmental review and how will they be applied?**

(a) The license application will be reviewed for the deepwater port's effects on the environment and for the environment's effects on the port and any of its shoreside support facilities.

(b) The environmental evaluation will be applied to the phases of construction, operation, and decommissioning of the proposed location, and at least one alternative site. The evaluation will determine:

- (1) The effect on the environment, including but not limited to:
  - (i) Impacts on endangered species;
  - (ii) Essential fish habitat;
  - (iii) Marine sanctuaries;
  - (iv) Archaeological, cultural and historic sites;
  - (v) Water and air;
  - (vi) Coastal zone management;
  - (vii) Coastal barrier resources; and
  - (viii) Wetlands and flood plains.

(2) The effect on oceanographic currents and wave patterns;

(3) The potential risks to a deepwater port from waves, winds, weather, and geological conditions, and the steps that can be taken to protect against or minimize these dangers; and

(4) The effect on human health and welfare, including socioeconomic impacts, environmental justice and protection of children from environmental health and safety risks.

**§ 148.708 Must the applicant's proposal reflect potential regulations?**

Although a regulation is of no effect until it has been officially promulgated, to minimize the subsequent impact that potential regulations may have on a licensee, an applicant can and should reflect reasonably foreseeable environmental regulations in planning, operating, and decommissioning a deepwater port.

**§ 148.709 How are these criteria reviewed and revised?**

The Commandant (G–P) periodically reviews and may revise these criteria. Reviews and revisions are conducted in accordance with § 148.700 of this subpart. The criteria established are consistent with the National Environmental Policy Act.

**§ 148.710 What environmental conditions must be satisfied?**

(a) MARAD may issue a license to construct a deepwater port under the

Act, with or without conditions, if certain specified conditions are met. The relevant environmental considerations include, but are not limited to, the following:

(1) Construction and operation of the deepwater port that will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency, environmental quality, protection from the threat of terrorist attack and other subversive activity against persons and property on the port and the vessels and crews calling at the port; and

(2) Under the environmental review criteria in § 148.707 of this subpart, the applicant has demonstrated that the deepwater port will be fabricated, constructed, operated, and decommissioned using the best available technology to prevent or minimize adverse impacts on the marine environment (33 U.S.C. 1503(c)(3), 1504(f) and 1505(a)(1)).

(b) Under 33 U.S.C. 1504(f), these criteria must be considered in the preparation of a single detailed environmental impact statement or environmental assessment for all timely applications covering a single application area. Additionally, 33 U.S.C. 1504(i)(3) specifies that if more than one application is submitted for an "application area," as defined in 33 U.S.C. 1504(d)(2), the criteria must be used, among other factors, in determining whether any one proposed deepwater port for oil clearly best serves the national interest.

(c) In accordance with 40 CFR 1502.9, the Commandant (G–P) will prepare a supplement to a final environmental impact statement if there is significant new information or circumstances relevant to environmental concerns and bearing on the deepwater port and related activities affecting its location site, construction, operation or decommissioning.

**§ 148.715 How is an environmental review conducted?**

The environmental review of a proposed deepwater port and reasonable alternatives consists of Federal, tribal, State, and public review of the following two parts:

(a) An evaluation of the proposal's completeness of environmental information and quality of assessment, probable environmental impacts, and identification of procedures or technology that might mitigate probable adverse environmental impacts through avoiding, minimizing, rectifying, reducing, eliminating, or compensating for those impacts; and

(b) An evaluation of the effort made under the proposal to mitigate its probable environmental impacts. This evaluation will assess the applicant's consideration of the criteria in §§ 148.720 through 148.740 of this subpart.

**§ 148.720 What are the siting criteria?**

In accordance with § 148.715(b), the proposed and alternative sites for the deepwater port will be evaluated on the basis of how well each:

- (a) Optimizes location to prevent or minimize detrimental environmental effects;
- (b) Minimizes the space needed for safe and efficient operation;
- (c) Locates offshore components in areas with stable sea bottom characteristics;
- (d) Locates onshore components where stable foundations can be developed;
- (e) Minimizes the potential for interference with its safe operation from existing offshore structures and activities;
- (f) Minimizes the danger posed to safe navigation by surrounding water depths and currents;
- (g) Avoids extensive dredging or removal of natural obstacles such as reefs;
- (h) Minimizes the danger to the port, its components, and tankers calling at the port from storms, earthquakes, or other natural hazards;
- (i) Maximizes the permitted use of existing work areas, facilities, and access routes;
- (j) Minimizes the environmental impact of temporary work areas, facilities, and access routes;
- (k) Maximizes the distance between the port, its components, and critical habitats including commercial and sport fisheries, threatened or endangered species habitats, wetlands, flood plains, coastal resources, marine management areas, and essential fish habitats;
- (l) Minimizes the displacement of existing or potential mining, oil, or gas exploration and production or transportation uses;
- (m) Takes advantage of areas already allocated for similar use, without overusing such areas;
- (n) Avoids permanent interference with natural processes or features that are important to natural currents and wave patterns; and
- (o) Avoids dredging in areas where sediments contain high levels of heavy metals, biocides, oil or other pollutants or hazardous materials, and in areas designated wetlands or other protected coastal resources.

**§ 148.722 Should the construction plan incorporate best available technology and recommended industry practices?**

Each applicant must submit a proposed construction plan. It must incorporate best available technology and recommended industry practices as directed in § 148.730.

**§ 148.725 What are the design, construction and operational criteria?**

In accordance with § 148.720(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

- (a) Reflect the use of best available technology in design, construction procedures, operations, and decommissioning;
- (b) Include safeguards, backup systems, procedures, and response plans to minimize the possibility and consequences of pollution incidents such as spills and discharges, while permitting safe operation with appropriate safety margins under maximum operating loads and the most adverse operating conditions;
- (c) Provide for safe, legal, and environmentally sound waste disposal, resource recovery, affected area reclamation, and enhanced use of spoil and waste;
- (d) Avoid permanent interference with natural processes or features that are important to natural currents and wave patterns;
- (e) Avoid groundwater drawdown or saltwater intrusion, and minimizes mixing salt, fresh, and brackish waters;
- (f) Avoid disrupting natural sheet flow, water flow, and drainage patterns or systems;
- (g) Avoid interference with biotic populations, especially breeding habitats or migration routes;
- (h) Maximize use of existing facilities;
- (i) Provide personnel trained in oil spill prevention at critical locations identified in the accident analysis;
- (j) Provide personnel trained in oil spill mitigation; and
- (k) Plan for safe and effective removal of the deepwater port in the event of its decommissioning.

**§ 148.730 What are the land use and coastal zone management criteria?**

In accordance with § 148.715(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

- (a) Accord with existing and planned land use, including management of the coastal region, for which purpose the proposal must be accompanied by a consistency determination from appropriate State agencies for any designated adjacent coastal State;

(b) Adhere to proposed local and State master plans;

(c) Minimize the need for special exceptions, zoning variances, or non-conforming uses;

(d) Plan flood plain uses in ways that will minimize wetlands loss, flood damage, the need for federally-funded flood protection or flood relief, or any decrease in the public value of the flood plain as an environmental resource; and

(e) Avoid permanent alteration or harm to wetlands, and take positive steps to minimize adverse effects on wetlands.

**§ 148.735 What are other critical criteria that must be evaluated?**

In accordance with § 148.715(b), the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

- (a) Avoid detrimental effects on human health and safety;
- (b) Pose no compromise to national security;
- (c) Account for the historic, archeological, and cultural significance of the area, including any potential requirements for historical preservation;
- (d) Minimize harmful impacts to minorities and children; and
- (e) Plan for serious consideration of the proposal that offers the least potential for environmental harm to the region, or potential mitigation actions, when conflict exists between two or more proposed uses for a site.

**§ 148.737 What environmental statutes must an applicant follow?**

In constructing and operating a deepwater port, the port must comply with all applicable Federal, State, and tribal environmental statutes. For the purposes of information, a list of Federal environmental statutes and Executive Orders (E.O.s) that may apply includes but is not limited to: Abandoned Shipwreck Act (ASA), 43 U.S.C. 2102, *et. seq.*; American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996, *et. seq.*; Antiquities Act, 16 U.S.C. 433, *et. seq.*; Archeological and Historic Preservation Act (AHPA), 16 U.S.C. 469; Archeological Resources Protection Act (AHPA), 16 U.S.C. 470 aa–ll, *et. seq.*; Architectural Barriers Act, 42 U.S.C. 4151, *et. seq.*; Clean Air Act (CAA), Pub. L. 95–95, 42 U.S.C. 7401, *et. seq.*; Clean Water Act of 1977 (CWA), Pub. L. 95–217, 33 U.S.C. 1251, *et. seq.*; Coastal Barrier Resources Act (CBRA), Pub. L. 97–348, 16 U.S.C. 3510, *et. seq.*; Coastal Zone Management Act (CZMA), Pub. L. 92–583, 16 U.S.C. 1451, *et. seq.*; Community Environmental Response Facilitation Act (CERFA), 42 U.S.C. 9620, *et. seq.*; Comprehensive

Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also commonly referred to as Superfund, Pub. L. 96–510, 26 U.S.C. 4611, *et. seq.*; Consultation and Coordination With Indian Tribal Governments, E.O. 13175, 65 FR 67249; Coral Reef Protection, E.O. 13089, 63 FR 32701; Department of Transportation Act, Section 4(f), Pub. L. 89–670, 49 U.S.C. 303, Section 4(f), *et. seq.*; Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001–11050, *et. seq.*; Endangered Species Act of 1973 (ESA), Pub. L. 93–205, 16 U.S.C. 1531, *et. seq.*; Energy Efficiency and Water Conservation at Federal Facilities, E.O. 12902, 59 FR 11463; Environmental Effects Abroad of Major Federal Agencies, E.O. 12114, 44 FR 1957; Environmental Quality Improvement Act, Pub. L. 98–581, 42 U.S.C. 4371, *et. seq.*; Farmlands Protection Policy Act, Pub. L. 97–98, 7 U.S.C. 4201, *et. seq.*; Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, E.O. 12898, 59 FR 7629; Federal Compliance with Pollution Control Standards, E.O. 12088, 43 FR 47707; Federal Insecticide, Fungicide, and Rodenticide Act, Pub. L. 86–139, 7 U.S.C. 135, *et. seq.*; Federal Records Act (FRA), 44 U.S.C. 2101–3324, *et. seq.*; Federalism, E.O. 13083, Fish and Wildlife Act of 1956, Pub. L. 85–888, 16 U.S.C. 742, *et. seq.*; Fish and Wildlife Coordination Act, (Pub. L. 85–624, 16 U.S.C. 661, *et. seq.*; Fisheries Conservation and Recovery Act of 1976, Pub. L. 94–265, 16 U.S.C. 1801, *et. seq.*; Flood Disaster Protection Act, 42 U.S.C. 4001, *et. seq.*; Flood Plain Management and Protection, E.O. 11988, 42 FR 26951; Greening the Government Through Leadership in Environmental Management, E.O. 13148, 65 FR 24595; 63 FR 49643; Historic Sites Act, 16 U.S.C. 46, *et. seq.*; Indian Sacred Sites, E.O. 13007, 61 FR 26771; Intergovernmental Review of Federal Programs E.O. 12372, 47 FR 30959; Invasive Species, E.O. 13112, 64 FR 6183; Locating Federal Facilities on Historic Properties in our Nation's Central Cities, E.O. 13006, 61 FR 26071; Magnuson-Stevens Fishery Conservation and Management Act as amended through October 11, 1996, 16 U.S.C. 1801, *et. seq.*; Marine Mammal Protection Act of 1972 (MMPA), Pub. L. 92–522, 16 U.S.C. 1361; Marine Protected Areas, E.O. 13158, 65 FR 24909; Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92–532, 16 U.S.C. 1431, *et. seq.* and 33 U.S.C. 1401, *et. seq.*; Migratory Bird Treaty Act, 16 U.S.C. 703–712, *et. seq.*;

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, 42 U.S.C. 4321, *et. seq.*; National Historic Preservation Act of 1996 (NHPA), Pub. L. 89–665, 16 U.S.C. 470, *et. seq.*; Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001, *et. seq.*; Noise Control Act of 1972, Pub. L. 92–574, 42 U.S.C. 4901, *et. seq.*; Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13101–13109, *et. seq.*; Protection and Enhancement of Cultural Environmental Quality, E.O. 11593, 36 FR 8921; Protection and Enhancement of Environmental Quality, E.O. 11514, 35 FR 4247; Protection of Children from Environmental Health and Safety Risks, E.O. 13045, 62 FR 19885; Protection of Wetlands, E.O. 11990, 42 FR 26961; Recreational Fisheries, E.O. 12962, 60 FR 307695; Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94–580, 42 U.S.C. 6901, *et. seq.*; Responsibilities of Federal Agencies to Protect Migratory Birds, E.O. 13186, 66 FR 3853; Safe Drinking Water Act (SDWA), Pub. L. 93–523, 42, U.S.C. 201, *et. seq.*; Toxic Substances Control Act (TSCA), 7 U.S.C. 136, *et. seq.*; and Wild and Scenic Rivers Act, Pub. L. 90–542, 16 U.S.C. 1271, *et. seq.*

## **PART 149—DEEPWATER PORTS: DESIGN, CONSTRUCTION, AND EQUIPMENT**

### **Subpart A—General**

#### **Sec.**

- 149.1 What does this part do?  
 149.5 What definitions apply to this part?  
 149.10 Where can I obtain a list of Coast Guard-approved equipment?  
 149.15 What is the process for submitting alterations and modifications affecting the design and construction of a deepwater port?

### **Subpart B—Pollution Prevention Equipment**

- 149.100 What does this subpart do?  
 149.103 What are the requirements for discharge containment and removal material and equipment?  
 149.105 What are the requirements for the overflow and relief valves?  
 149.110 What are the requirements for pipeline end manifold shutoff valves?  
 149.115 What are the requirements for blank flange and shutoff valves?  
 149.120 What are the requirements for manually operated shutoff valves?  
 149.125 What are the requirements for the malfunction detection system?  
 149.130 What are the requirements for the cargo transfer system alarm?  
 149.135 What should be marked on the cargo transfer system alarm switch?  
 149.140 What communications equipment must be on a deepwater port?  
 149.145 What are the requirements for curbs, gutters, drains, and reservoirs?

### **Subpart C—Lifesaving Equipment**

- 149.300 What does this subpart do?

### **Manned Deepwater Port Requirements**

- 149.301 What are the requirements for lifesaving equipment?  
 149.302 What are the requirements when lifesaving equipment is repaired or replaced?  
 149.303 What survival craft and rescue boats may be used on a manned deepwater port?  
 149.304 What type and how many survival craft and rescue boats must a manned deepwater port have?  
 149.305 What are the survival craft requirements for temporary personnel?  
 149.306 What are the requirements for lifeboats?  
 149.307 What are the requirements for free-fall lifeboats?  
 149.308 What are the requirements for liferafts?  
 149.309 What are the requirements for marine evacuation systems?  
 149.310 What are muster and embarkation requirements for survival crafts?  
 149.311 What are the launching and recovery requirements for lifeboats?  
 149.312 What are the launching equipment requirements for inflatable liferafts?  
 149.313 How must survival craft be arranged?  
 149.314 What are the approval and stowage requirements for rescue boats?  
 149.315 What embarkation, launching, and recovery arrangements must rescue boats meet?  
 149.316 What are the requirements for lifejackets?  
 149.317 How and where must lifejackets be stowed?  
 149.318 Must every person on the port have a lifejacket?  
 149.319 What additional lifejackets must I have?  
 149.320 What are the requirements for ring life buoys?  
 149.321 How many ring life buoys must be on each deepwater port?  
 149.322 Where must ring life buoys be located and how must they be stowed?  
 149.323 What are the requirements for first aid kits?  
 149.324 What are the requirements for litters?  
 149.325 What emergency communications equipment must be on a manned deepwater port?  
 149.326 What are the immersion suit requirements?  
 149.327 What are the approval requirements for work vests and anti-exposure (deck) suits?  
 149.328 How must work vests and anti-exposure (deck) suits be stowed?  
 149.329 How must work vests and deck suits be marked?  
 149.330 When may a work vest or deck suit be substituted for a lifejacket?  
 149.331 What are the requirements for hybrid personal flotation devices?  
 149.332 What are the requirements for inflatable lifejackets?  
 149.333 What are the marking requirements for lifesaving equipment?

**Unmanned Deepwater Port Requirements**

- 149.334 Who must ensure compliance with the requirements for unmanned deepwater ports?
- 149.335 When are people prohibited from being on an unmanned deepwater port?
- 149.336 What are the requirements for lifejackets?
- 149.337 What are the requirements for ring life buoys?
- 149.338 What are the requirements for immersion suits?
- 149.339 What is the requirement for previously approved lifesaving equipment on a deepwater port?
- 149.340 What are the requirements for lifesaving equipment that is not required by this subchapter?

**Subpart D—Firefighting and Fire-Protection Equipment**

- 149.400 What does this subpart apply to?
- 149.401 What are the general requirements for firefighting and fire protection equipment?
- 149.402 What firefighting and fire protection equipment must be approved by the Coast Guard?
- 149.403 How may I request the use of alternate firefighting and fire prevention equipment or procedures?

**Firefighting Requirements**

- 149.404 Can I use firefighting equipment that has no Coast Guard standards?
- 149.405 How are fire extinguishers classified?
- 149.406 What are the approval requirements for a fire extinguisher?
- 149.407 Must fire extinguishers be on the deepwater port at all times?
- 149.408 What are the maintenance requirements for fire extinguishers?
- 149.409 How many fire extinguishers are needed?
- 149.410 Where must portable and semi-portable fire extinguishers be located?
- 149.411 What are the requirements for firemen's outfits?
- 149.412 How many fire axes are needed?
- 149.413 On a manned deepwater port, what spaces require a fixed fire extinguishing system?
- 149.414 What are the requirements for a fire detection and alarm system?
- 149.415 What are the requirements for a fire main system on a manned deepwater port?
- 149.416 What are the requirements for a dry chemical fire suppression system?
- 149.417 What firefighting equipment must a helicopter landing deck on a manned deepwater port have?
- 149.418 What fire-protection system must a helicopter fueling facility have?
- 149.419 Can the water supply for the helicopter deck fire protection system be part of a fire water system?
- 149.420 What are the fire protection requirements for escape routes?
- 149.421 What is the requirement for a previously approved fire detection and alarm system on a deepwater port?

**Subpart E—Aids to Navigation****General**

- 149.500 What does this subpart do?
- 149.505 What are the general requirements for aids to navigation?
- 149.510 How do I get permission to establish an aid to navigation?

**Lights**

- 149.520 What kind of lights are required?

**Lights on Platforms**

- 149.535 What are the requirements for rotating beacons on platforms?

**Lights on Single Point Moorings**

- 149.540 What are the requirements for obstruction lights on a single point mooring?

**Lights on Floating Hose Strings**

- 149.550 What are the requirements for lights on a floating hose string?

**Lights on Buoys Used to Define Traffic Lanes**

- 149.560 How must buoys used to define traffic lanes be marked and lighted?
- 149.565 What are the required characteristics and intensity of lights on buoys used to define traffic lanes?

**Miscellaneous**

- 149.570 How is a platform, single point mooring, or submerged turret loading identified?
- 149.575 How must objects protruding from the water, other than platforms and single point moorings, be marked?
- 149.580 What are the requirements for a radar beacon?
- 149.585 What are the requirements for sound signals?

**Subpart F—Design and Equipment****General**

- 149.600 What does this subpart do?
- 149.610 What must the District Commander be notified of and when?
- 149.615 What construction drawings and specifications are required?
- 149.620 What happens when the Commandant (G-P) reviews and evaluates the construction drawings and specifications?
- 149.625 What are the design standards?

**Structural Fire Protection**

- 149.640 What are the requirements for fire protection systems?
- 149.641 What are the structural fire protection requirements for accommodation spaces and modules?

**Single Point Moorings**

- 149.650 What are the requirements for single point moorings and their attached hoses?

**Helicopter Fueling Facilities**

- 149.655 What are the requirements for helicopter fueling facilities?

**Emergency Power**

- 149.660 What are the requirements for emergency power?

**General Alarm System**

- 149.665 What are the requirements for a general alarm system?
- 149.670 What are the requirements for marking a general alarm system?

**Public Address System**

- 149.675 What are the requirements for the public address system?

**Medical Treatment Rooms**

- 149.680 What are the requirements for medical treatment rooms?
- 149.685 May a medical treatment room be used for other purposes?

**Miscellaneous**

- 149.690 What are the requirements for means of escape, personnel landings, guardrails, similar devices, and for noise limits?

**Means of Escape**

- 149.691 What means of escape are required?
- 149.692 Where must they be located?

**Personnel Landings**

- 149.693 What are the requirements for personnel landings on manned deepwater ports?

**Guardrails and Similar Devices**

- 149.694 What are the requirements for catwalks, floors, and openings?
- 149.695 What are the requirements for stairways?
- 149.696 What are the requirements for a helicopter landing deck safety net?

**Noise Limits**

- 149.697 What are the requirements for a noise level survey?

**Portable Lights**

- 149.700 What kind of portable lights may be used on a deepwater port?

**Authority:** 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

**Subpart A—General****§ 149.1 What does this part do?**

This part provides requirements for the design and construction of deepwater ports. It also provides the requirements for equipment for deepwater ports.

**§ 149.5 What definitions apply to this part?**

Definitions applicable to this part appear in 33 CFR 148.5. In addition, the following terms are used in this part and have the indicated meanings:

*Accommodation module* means a module with one or more accommodation spaces that is individually contracted and may be used for one or more facilities.

*Major conversion* means a conversion, as determined by the Commandant (G-P), that substantially changes the dimensions of a facility, substantially

changes the water depth capability of a fixed facility, substantially changes the carrying capacity of a floating facility, substantially changes the processing equipment, changes the type of a facility, substantially prolongs the life of a facility, or otherwise so changes the facility that it is essentially a new facility.

*Service space* means a space used for a galley, a pantry containing cooking appliances, a storeroom, or a workshop other than those in industrial areas, and trunks to those spaces.

*Sleeping space* means a space provided with bunks for sleeping.

**§ 149.10 Where can I obtain a list of Coast Guard-approved equipment?**

Where equipment in this subchapter must be of an approved type, the equipment must be specifically approved by the Commandant (G-P) and the Marine Safety Center. A list of approved equipment, including all of the approval series, is available at: <http://cgmix.uscg.mil/Equipment>.

**§ 149.15 What is the process for submitting alterations and modifications affecting the design and construction of a deepwater port?**

(a) Alterations and modifications affecting the design and construction of a deepwater port must be submitted to the Commandant (G-P) for review and approval if:

- (1) A license has not yet been issued; or,
- (2) A license has been issued but the port has not commenced operations; or,
- (3) The alteration and modification are deemed a major conversion; or,
- (4) The alteration or modification substantially changes the manner in which the port operates or is not in accordance with a condition of the license.

(b) All other alterations and modifications to the deepwater port must be submitted to the Officer in Charge of Marine Inspection (OCMI) for review and approval.

(c) Approval for alterations and modifications proposed after a license has been issued will be contingent upon whether the proposed changes will affect the way the port operates, or any conditions imposed in the license.

(d) The licensee is not authorized to proceed with alterations prior to approval from the Commandant (G-P) for the conditions outlined in paragraph (a) and approval by the cognizant OCMI as required in paragraph (b) of this section.

(e) The Commandant (G-P), during the review and approval process of a proposed alteration or modification,

may consult with the Marine Safety Center and cooperating Federal agencies possessing relevant technical expertise.

**Subpart B—Pollution Prevention Equipment**

**§ 149.100 What does this subpart do?**

This subpart provides requirements for pollution equipment on deepwater ports.

**§ 149.103 What are the requirements for discharge containment and removal material and equipment?**

(a) Each deepwater port must have a facility response plan that meets the requirements outlined in subpart F, part 154, of this chapter, and be approved by the cognizant Captain of the Port.

(b) The facility response plan must identify adequate spill containment and removal equipment for port-specific spill scenarios.

(c) Response equipment and material must be pre-positioned for ready access and use on board the deepwater port.

**§ 149.105 What are the requirements for the overflow and relief valves?**

(a) Each oil and natural gas transfer system (OTS/NGTS) must include a relief valve that, when activated, prevents pressure on any component of the OTS/NGTS from exceeding its maximum rated pressure.

(b) The transfer system overflow or relief valve must not allow a discharge into the sea.

**§ 149.110 What are the requirements for pipeline end manifold shutoff valves?**

Each pipeline end manifold must have a shutoff valve capable of operating both manually and from the pumping platform complex.

**§ 149.115 What are the requirements for blank flange and shutoff valves?**

Each floating hose string must have a blank flange and a shutoff valve at the vessel's manifold end.

**§ 149.120 What are the requirements for manually operated shutoff valves?**

Each oil and natural gas transfer line passing through a single point mooring buoy system must have a manual shutoff valve.

**§ 149.125 What are the requirements for the malfunction detection system?**

(a) Each oil and natural gas system, between a pumping platform complex and the shore, must have a system that can detect and locate leaks and other malfunctions, particularly in high-risk areas.

(b) The marine transfer area on an oil deepwater port must be equipped with

a monitoring system in accordance with § 154.525 of this chapter.

(c) A natural gas deepwater port must be equipped with gas detection equipment adequate for the type of transfer system, including storage and regasification, used. The Commandant (G-P) will evaluate proposed leak-detection systems for natural gas on an individual basis.

**§ 149.130 What are the requirements for the cargo transfer system alarm?**

(a) Each cargo transfer system must have an alarm to signal a malfunction or failure in the system.

(b) The alarm must sound automatically in the control room and:

- (1) Be capable of being activated at the pumping platform complex;
- (2) Have a signal audible in all areas of the pumping platform complex, except in areas under paragraph (b)(3) of this section;

(3) Have a high intensity flashing light in areas of high ambient noise levels where hearing protection is required under § 150.615 of this chapter; and

(4) Be distinguishable from the general alarm.

(c) Tankers calling on unmanned deepwater ports must be equipped with a transfer system alarm described in this section.

**§ 149.135 What should be marked on the cargo transfer system alarm switch?**

Each switch for activating an alarm, and each audio or visual device for signaling an alarm, must be identified by the words "Oil Transfer Alarm" or "Natural Gas Transfer Alarm" in red letters at least 1 inch high on a yellow background.

**§ 149.140 What communications equipment must be on a deepwater port?**

(a) Each deepwater port must have the following communications equipment:

- (1) A system for continuous two-way voice communication among the deepwater port, the tankers, the support vessels, and other vessels operating at the port. The system must be usable and effective in all phases of a transfer and in all conditions of weather at the port;
- (2) A means to indicate the need to use the communication system required by this section, even if the means is the communication system itself; and

(3) Equipment that, for each portable means of communication used to meet the requirements of this section, is:

(i) Certified under 46 CFR 111.105–11 to be operated in Group D, Class 1, Division 1 Atmosphere; and,

(ii) Permanently marked with the certification required in paragraph (a)(3)(i) of this section. As an alternative to this marking requirement, a

document certifying that the portable radio devices in use are in compliance with this section may be kept at the deepwater port.

(b) The communication system of the tank ship mooring at an unmanned port will be deemed the primary means of communicating with support vessels, shore side, etc.

**§ 149.145 What are the requirements for curbs, gutters, drains, and reservoirs?**

Each pumping platform complex must have enough curbs, gutters, drains, and reservoirs to collect, in the reservoirs, all oil and contaminants not authorized for discharge into the ocean according to the port's National Pollution Discharge Elimination System permit.

**Subpart C—Lifesaving Equipment**

**§ 149.300 What does this subpart do?**

This subpart provides requirements for lifesaving equipment on deepwater ports.

**Manned Deepwater Port Requirements**

**§ 149.301 What are the requirements for lifesaving equipment?**

(a) Each deepwater port on which at least one person occupies an accommodation space for more than 30 consecutive days in any successive 12-month period must comply with the requirements for lifesaving equipment in this subpart.

(b) Each deepwater port, not under paragraph (a) of this section, must comply with the requirements for lifesaving equipment for unmanned deepwater ports in this subpart.

**§ 149.302 What are the requirements when lifesaving equipment is repaired or replaced?**

When lifesaving equipment is replaced, or when the deepwater port undergoes a repair, alteration, or modification that involves replacing or adding to the lifesaving equipment, the new lifesaving equipment must meet the requirements of this subpart.

**§ 149.303 What survival craft and rescue boats may be used on a manned deepwater port?**

(a) Each survival craft on a manned deepwater port must be one of the following:

(1) A lifeboat meeting the requirements of § 149.306 of this subpart; or

(2) A liferaft meeting the requirements of § 149.308 of this subpart.

(b) Each rescue boat on a manned deepwater port must be a rescue boat meeting the requirements of § 149.314 of this subpart.

**§ 149.304 What type and how many survival craft and rescue boats must a manned deepwater port have?**

(a) Except as specified under § 149.305 of this subpart, each manned deepwater port must have at least the type and number of survival craft and the number of rescue boats indicated for the deepwater port in paragraphs (a)(1) through (a)(5) of this section.

(1) For a deepwater port with 30 or fewer persons on board:

(i) One or more lifeboats with a total capacity of 100 percent of the personnel on board;

(ii) One or more liferafts with a total capacity of 100 percent of the personnel on board; and

(iii) One rescue boat, except that the rescue boat is not required for deepwater ports with eight or fewer persons on board.

(2) For a deepwater port with 31 or more persons on board:

(i) At least two lifeboats with a total capacity of 100 percent of the personnel on board;

(ii) One or more liferafts with a total capacity so that, if the survival craft at any one location are rendered unusable, there will be craft remaining with a total capacity of 100 percent of the personnel on board; and

(iii) One rescue boat.

(3) Lifeboats may be substituted for liferafts.

(4) Capacity refers to the total number of persons on the deepwater port at any one time, not including temporary personnel. Temporary personnel include: contract workers, official visitors, and any other persons who are not permanent employees. See § 149.305 of this subpart for additional survival craft requirements when temporary personnel are on board.

(5) The required lifeboats may be used as rescue boats if the lifeboats also meet the requirements for rescue boats in § 149.314 of this subpart.

(b) Deepwater ports consisting of novel structures or a combination of fixed and/or floating structures may require additional survival craft as deemed necessary by the Commandant (G–P). In these cases, the type and number of survival craft must be specified in the operations manual.

**§ 149.305 What are the survival craft requirements for temporary personnel?**

(a) When temporary personnel are on board a manned deepwater port and the complement exceeds the capacity of the survival craft required under § 149.304 of this subpart, the port must have additional liferafts to ensure that the total capacity of the survival craft is not less than 150 percent of the personnel on board at any time.

(b) The liferafts required in paragraph (a) of this section need not meet the launching requirements of paragraph (b) to § 149.308 of this subpart, but must comply with the stowage requirements of 46 CFR 108.530(c).

**§ 149.306 What are the requirements for lifeboats?**

(a) Lifeboats must be:

(1) Totally enclosed, fire-protected, and approved under approval series 160.135; and

(2) If the hull or canopy is of aluminum, it must be protected in its stowage position by a water spray system meeting the requirements of 46 CFR 34.25.

(b) Each lifeboat must have at least the provisions and survival equipment required by 46 CFR 108.575(b).

(c) Except for boathooks, the equipment under paragraph (b) of this section must be securely stowed in the lifeboat.

(d) Each lifeboat must have a list of the equipment it is required to carry under paragraph (c) of this section. The list must be posted in the lifeboat.

(e) The manufacturer's instructions for maintenance and repair of the lifeboat, required under § 150.502(a) of this chapter, must be in the lifeboat or on the deepwater port.

**§ 149.307 What are the requirements for free-fall lifeboats?**

All free-fall lifeboats must be approved under approval series 160.135.

**§ 149.308 What are the requirements for liferafts?**

(a) Each liferaft must be an inflatable liferaft approved under approval series 160.151, or a rigid liferaft approved under approval series 160.118.

(b) Except as under § 149.305(b) of this subpart, each inflatable or rigid liferaft, boarded from a deck that is more than 4.5 meters (14.75 feet) above the water, must be davit-launched or served by a marine evacuation system complying with § 149.309 to this subpart.

**§ 149.309 What are the requirements for marine evacuation systems?**

All marine evacuation systems must be approved under approval series 160.175 and comply with the launching arrangement requirements for mobile offshore drilling units in 46 CFR 108.545.

**§ 149.310 What are the muster and embarkation requirements for survival craft?**

Muster and embarkation arrangements for survival craft must comply with 46 CFR 108.540.

**§ 149.311 What are the launching and recovery requirements for lifeboats?**

(a) Each lifeboat launched by falls must have a launching and recovery system that complies with 46 CFR 108.555.

(b) Each free-fall lifeboat must have a launching and recovery system that complies with 46 CFR 108.557.

**§ 149.312 What are the launching equipment requirements for inflatable liferafts?**

(a) Each inflatable liferaft not intended for davit launching must be capable of rapid deployment.

(b) Each liferaft capable of being launched by a davit must have the following launching equipment at each launching station:

(1) A launching device approved under approval series 160.163; and

(2) A mechanical disengaging apparatus approved under approval series 160.170.

(c) The launching equipment must be operable, both from within the liferaft and from the deepwater port.

(d) Winch controls must be located so that the operator can observe the liferaft launching.

(e) The launching equipment must be arranged so that a loaded liferaft does not have to be lifted before it is lowered.

(f) Not more than two liferafts may be launched from the same set of launching equipment.

**§ 149.313 How must survival craft be arranged?**

The operator must arrange survival craft so that they meet the requirements of 46 CFR 108.525 (a) and § 108.530 and:

(a) Are readily accessible in an emergency;

(b) Are accessible for inspection, maintenance, and testing;

(c) Are in locations clear of overboard discharge piping or openings, and obstructions below; and

(d) Are located so that survival craft with an aggregate capacity to accommodate 100% of the total number of persons authorized to be berthed are readily accessible from the personnel berthing area.

**§ 149.314 What are the approval and stowage requirements for rescue boats?**

(a) Rescue boats must be approved under approval series 160.156. A lifeboat is acceptable as a rescue boat if it also meets the requirements for a rescue boat under approval series 160.156.

(b) The stowage of rescue boats must comply with 46 CFR 108.565.

**§ 149.315 What embarkation, launching, and recovery arrangements must rescue boats meet?**

(a) Each rescue boat must be capable of being launched in a current of up to 5 knots. A painter may be used to meet this requirement.

(b) Each rescue boat embarkation and launching arrangement must permit the rescue boat to be boarded and launched in the shortest possible time.

(c) If the rescue boat is one of the deepwater port's survival craft, then the rescue boat must comply with the muster and embarkation arrangement requirements of § 149.310.

(d) The rescue boat must comply with the embarkation arrangement requirements of 46 CFR 108.555.

(e) If the launching arrangement uses a single fall, the rescue boat may have an automatic disengaging apparatus, approved under approval series 160.170, instead of a lifeboat release mechanism.

(f) The rescue boat must be capable of being recovered rapidly when loaded with its full complement of persons and equipment. If a lifeboat is being used as a rescue boat, rapid recovery must be possible when loaded with its lifeboat equipment and a rescue boat's complement of at least six persons.

(g) Each rescue boat launching appliance must be fitted with a powered winch motor.

(h) Each rescue boat launching appliance must be capable of hoisting the rescue boat, when loaded with its full complement of persons and equipment, at a rate of not less than 59 feet per minute.

(i) The operator may use an onboard crane to launch a rescue boat if the crane's launching system meets the requirements of this section.

**§ 149.316 What are the requirements for lifejackets?**

(a) Each lifejacket must be approved under approval series 160.002, 160.005, 160.055, 160.077, or 160.176.

(b) Each lifejacket must have a light approved under approval series 161.012. Each light must be securely attached to the front shoulder area of the lifejacket.

(c) Each lifejacket must have a whistle permanently attached by a cord.

(d) Each lifejacket must be fitted with Type I retroreflective material, approved under approval series 164.018.

**§ 149.317 How and where must lifejackets be stowed?**

(a) The operator must ensure that lifejackets are stowed in readily accessible places in or adjacent to accommodation spaces.

(b) Lifejacket stowage containers and the spaces housing the containers must not be capable of being locked.

(c) The operator must mark each lifejacket container or lifejacket stowage location with the word "LIFEJACKETS" in block letters, and the quantity, identity, and size of the lifejackets stowed inside the container or at the location.

**§ 149.318 Must every person on the port have a lifejacket?**

The operator must provide a lifejacket that complies with § 149.316 of this subpart for each person on a manned deepwater port.

**§ 149.319 What additional lifejackets must I have?**

For each person on duty in a location where the lifejacket required by § 149.317 of this subpart is not readily accessible, an additional lifejacket must be stowed so as to be readily accessible to that location.

**§ 149.320 What are the requirements for ring life buoys?**

(a) Ring life buoys must be approved under approval series 160.050 or 160.150, for SOLAS-approved equipment.

(b) Each ring life buoy must have a floating electric water light approved under approval series 161.010. The operator must ensure that the light to the ring life buoy is attached by a lanyard of 12-thread manila, or a synthetic rope of equivalent strength, not less than 3 feet nor more than 6 feet in length. The light must be mounted on a bracket near the ring life buoy so that, when the ring life buoy is cast loose, the light will be pulled free of the bracket.

(c) To each ring life buoy, there must be attached a buoyant line of 100 feet in length, with a breaking strength of at least 5 kilonewtons force. The end of the line must not be secured to the deepwater port.

(d) Each ring life buoy must be marked with Type II retroreflective material, approved under approval series 164.018.

**§ 149.321 How many ring life buoys must be on each deepwater port?**

There must be at least four approved ring life buoys on each manned deepwater port.

**§ 149.322 Where must ring life buoys be located and how must they be stowed?**

(a) The operator must locate one ring life buoy on each side of the port and one near each external stairway leading to the water. One buoy per side may be used to satisfy both these requirements.

(b) Each ring life buoy must be stowed on or in a rack that is readily accessible

in an emergency. The ring life buoy must not be permanently secured in any way to the rack or the deepwater port.

**§ 149.323 What are the requirements for first aid kits?**

(a) Each manned deepwater port must have an industrial first aid kit, approved by an appropriate organization, such as the American Red Cross, for the maximum number of persons on the deepwater port.

(b) The first aid kit must be maintained in a space designated as a medical treatment room or, if there is no medical treatment room, under the custody of the person in charge.

(c) The operator must ensure that each first aid kit is accompanied by a copy of either the Department of Health and Human Services Publication No. (PHS) 84–2024, “The Ship’s Medicine Chest and Medical Aid at Sea,” available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or the “American Red Cross First Aid and Safety Handbook,” available from Little Brown and Company, 3 Center Plaza, Boston, MA 02018.

**§ 149.324 What are the requirements for litters?**

Each manned deepwater port must have at least one Stokes or other suitable litter, capable of safely hoisting an injured person. The litter must be readily accessible in an emergency.

**§ 149.325 What emergency communications equipment must be on a manned deepwater port?**

Each manned deepwater port must have a radio, telephone, or other means of emergency communication with the shore, vessels, and facilities in the vicinity in the event the primary communications system outlined in § 149.140 fails. This communication equipment must have an emergency power source.

**§ 149.326 What are the immersion suit requirements?**

Each manned deepwater port located north of 32 degrees North latitude must comply with the immersion suit requirements in 46 CFR 108.580.

**§ 149.327 What are the approval requirements for work vests and anti-exposure (deck) suits?**

All work vests and anti-exposure (deck) suits on a manned deepwater port must be of a buoyant type approved under:

(a) Approval series 160.053 as a work vest;

(b) Approval series 160.053 or 160.153 as an anti-exposure suit; or

(c) Approval series 160.077 as a commercial hybrid personal flotation device.

**§ 149.328 How must work vests and anti-exposure (deck) suits be stowed?**

All work vests and deck suits must be stowed separately from lifejackets and in a location that is not easily confused with a storage area for lifejackets.

**§ 149.329 How must work vests and deck suits be marked?**

All work vests and deck suits must be fitted with Type I retroreflective material, approved under approval series 164.018.

**§ 149.330 When may a work vest or deck suit be substituted for a lifejacket?**

(a) A work vest or deck suit meeting the requirements of § 149.326 of this subpart may be used instead of a lifejacket when personnel are working near or over water.

(b) Work vests or deck suits may not be substituted for any portion of the number of approved lifejackets required on the deepwater port or attending vessel for use during drills and emergencies.

**§ 149.331 What are the requirements for hybrid personal flotation devices?**

(a) The operator must ensure that the use and stowage of all commercial hybrid personal flotation devices (PFDs) used as work vests comply with the procedures required for them in 46 CFR 160.077–29, and all limitations, if any, marked on them.

(b) All commercial hybrid PFDs on the deepwater port must be of the same or similar design and must have the same method of operation.

**§ 149.332 What are the requirements for inflatable lifejackets?**

(a) Each inflatable lifejacket must be approved under approval series 160.176.

(b) All inflatable lifejackets on a deepwater port must:

(1) Be used and stowed according to the procedures contained in the manual required for them under 46 CFR 160.176–21;

(2) Be marked with all limitations, if any; and

(3) Be of the same or similar design and have the same method of operation.

**§ 149.333 What are the marking requirements for lifesaving equipment?**

(a) Each lifeboat, rigid liferaft, and survival capsule must be marked on two opposite outboard sides with the name, number, or other inscription identifying the deepwater port on which it is placed, and the number of persons

permitted on the craft. Each paddle or oar for these crafts must also be marked with an inscription identifying the deepwater port. The letters and numbers must be at least 100 millimeters (3.94 inches) high on a contrasting background.

(b) Each inflatable liferaft must be marked to meet 46 CFR 160.151–33, and, after each servicing, marked to meet 46 CFR 160.151–57(m).

(c) Each lifejacket and ring life buoy must be conspicuously marked with the name, number, or other inscription identifying the deepwater port on which it is placed. The letters and numbers must be at least 1.5 inches (38 mm) high on a contrasting background. Lifejackets and ring life buoys that accompany mobile crews to unmanned deepwater ports may be marked with the operator’s name and field designation.

**Unmanned Deepwater Port Requirements**

**§ 149.334 Who must ensure compliance with the requirements for unmanned deepwater ports?**

The owner or operator of an unmanned deepwater port must ensure that applicable requirements are complied with on that deepwater port.

**§ 149.335 When are people prohibited from being on an unmanned deepwater port?**

No person may be on an unmanned deepwater port unless all requirements of this part are met.

**§ 149.336 What are the requirements for lifejackets?**

(a) Except as under paragraph (b) of this section, each unmanned deepwater port must have at least one lifejacket complying with § 149.316 of this subpart for each person on the deepwater port. The lifejackets need to be available for use on the port only when persons are onboard.

(b) During helicopter visits, personnel who have aircraft type of lifejackets may use them as an alternative to the requirements of paragraph (a) of this section.

**§ 149.337 What are the requirements for ring life buoys?**

(a) Each unmanned deepwater port must have at least one ring life buoy complying with § 149.320 to this subpart.

(b) If there is no space on the deepwater port for the ring life buoys, they must be on a manned vessel located alongside of the deepwater port while the persons are on the port.



**§ 149.338 What are the requirements for immersion suits?**

(a) Each unmanned deepwater port located north of 32 degrees North latitude must comply with the immersion suit requirements applicable to mobile offshore drilling units under 46 CFR 108.580, and immersion suits must be approved under approval series 160.171. Except as under paragraph (b) of this section, the immersion suits need be on the deepwater port only when persons are on board.

(b) If an attending vessel is moored to the unmanned deepwater port, the suits may be stowed on the vessel, instead of on the deepwater port.

**§ 149.339 What is the requirement for previously approved lifesaving equipment on a deepwater port?**

Lifesaving equipment such as lifeboats, liferafts, and PFDs on a deepwater port on January 1, 2004, need not meet the requirements of this subpart until the equipment needs replacing, provided it is periodically tested and maintained and in good operational condition.

**§ 149.340 What are the requirements for lifesaving equipment that is not required by this subchapter?**

Each item of lifesaving equipment on a deepwater port that is not required by this subchapter must be approved by the Commandant (G-P).

**Subpart D—Firefighting and Fire Protection Equipment**

**§ 149.400 What does this subpart apply to?**

This subpart applies to all deepwater ports except unmanned ports consisting of a submerged turret loading or comparable configuration in which cargo transfer operations are conducted solely aboard the tank vessel by the vessel crew.

**§ 149.401 What are the general requirements for firefighting and fire protection equipment?**

Each deepwater port must comply with the requirements for firefighting

and fire protection equipment in this subpart.

**§ 149.402 What firefighting and fire protection equipment must be approved by the Coast Guard?**

Except as permitted under § 149.403, § 149.415(c) or (d), § 149.419(a)(1), or § 149.420, all required firefighting and fire protection equipment on a deepwater port must be approved by the Commandant (G-PSE). Firefighting and fire protection equipment that supplements required equipment must also be approved by the Commandant (G-PSE), unless approval by the Officer in Charge of Marine Inspection (OCMI) is requested and granted pursuant to § 149.403 of this subpart.

**§ 149.403 How may I request the use of alternate or supplemental firefighting and fire prevention equipment or procedures?**

(a) The operator may request the use of alternate or supplemental equipment or procedures than those required in this subchapter.

(b) Upon request, the OCMI may allow the use of alternate equipment or procedures if the alternatives will:

- (1) Accomplish the purposes for the requirement; and
- (2) Provide a degree of safety equivalent to or greater than that provided by the requirement.

(c) The OCMI may require that the requesting party:

- (1) Explain why applying the requirement would be unreasonable or impracticable; or
- (2) Submit engineering calculations, tests, or other data to demonstrate how the requested alternative would comply with paragraph (b) of this section.

(d) The OCMI may determine, on a case-by-case basis, that the Commandant (G-PSE) must approve the use of the alternate equipment or procedure.

**Firefighting Requirements**

**§ 149.404 Can I use firefighting equipment that has no Coast Guard standards?**

A deepwater port may use firefighting equipment for which there is no Coast

Guard standard as supplemental equipment, pursuant to § 149.403, if the equipment does not endanger the port or the persons aboard it in any way. This equipment must be listed and labeled by a nationally recognized testing laboratory, as that term is defined in 29 CFR 1910.7, and it must be maintained in good working condition.

**§ 149.405 How are fire extinguishers classified?**

(a) Portable and semi-portable extinguishers on a manned deepwater port must be classified using the Coast Guard's marine rating system of a combination letter-and-number symbol in which the letter indicates the type of fire that the extinguisher is designed to extinguish, and the number indicates the relative size of the extinguisher.

(b) The letter designations are as follows:

- (1) "A" for fires of ordinary combustible materials where the quenching and cooling effects of water, or solutions containing large percentages of water, are of primary importance;
- (2) "B" for fires of flammable liquids, greases, or other thick flammable substances where a blanketing effect is essential; and
- (3) "C" for fires in electrical equipment where the use of a non-conducting extinguishing agent is of primary importance.

(c) The number designations for size range from "I" for the smallest extinguisher to "V" for the largest. Sizes I and II are portable extinguishers. Sizes III, IV, and V are semi-portable extinguishers that must be fitted with suitable hose and nozzle, or other practicable means, so that all portions of the space concerned may be covered. Examples of size graduations for some of the typical portable and semi-portable extinguishers are set forth in table 149.405.

TABLE 149.405.—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS

Classification type-size	Foam liters (gallons)	Carbon dioxide kilograms (pounds)	Dry chemical kilograms (pounds)
A-II .....	9.5 (2.5)	.....	<sup>1</sup> 2.25 (5)
B-II .....	9.5 (2.5)	6.7 (15)	4.5 (10)
C-II .....	.....	6.7 (15)	4.5 (10)
B-IV .....	7.6 (20)	22.5 (50)	13.5 (30)
B-V .....	15.2 (40)	<sup>2</sup> 45 (100)	<sup>2</sup> 22.5 (50)

**Notes:**

<sup>1</sup> Must be specifically approved as a type "A," "B," or "C" extinguisher.

<sup>2</sup> For outside use, double the quantity of agent that must be carried.

**§ 149.406 What are the approval requirements for a fire extinguisher?**

All portable and semi-portable fire extinguishers must be of an approved type under 46 CFR part 162, subparts 162.028 and 162.039, respectively.

**§ 149.407 Must fire extinguishers be on the deepwater port at all times?**

(a) The fire extinguishers required by § 149.409 of this subpart must be on all manned deepwater ports at all times.

(b) The fire extinguishers required by § 149.409 of this part need be on unmanned deepwater ports only when personnel are working on the deepwater port during cargo transfer operations, or performing maintenance duties.

**§ 149.408 What are the maintenance requirements for fire extinguishers?**

All fire extinguishers must be maintained in good working order and

serviced annually in accordance with 46 CFR 107.235.

**§ 149.409 How many fire extinguishers are needed?**

Each particular location must have the number of fire extinguishers required by table 149.409.

TABLE 149.409.—PORTABLE AND SEMI-PORTABLE EXTINGUISHERS, MINIMUM QUANTITY AND LOCATION

Space	Classification	Minimum quantity and location
(a) Safety Areas:		
(1) Communicating corridors .....	A-II .....	One in each main corridor or stairway not more than 150 feet apart.
(2) Radio room .....	C-II .....	One outside or near each radio room exit.
(b) Accommodation Spaces:		
(1) Sleeping quarters .....	A-II .....	One in each sleeping space that fits more than four persons.
(c) Service Spaces:		
(1) Galleys .....	B-II or CII .....	One for each 2,500 square feet or fraction thereof, for hazards involved.
(2) Storerooms .....	A-II .....	One for each 2,500 square feet or fraction thereof, located near each exit, either inside or outside the space.
(3) Paint room .....	B-II .....	One outside each paint room exit.
(d) Machinery Spaces:		
(1) Gas-fired boilers .....	B-II OR C-II .....	Two.
(2) Gas-fired boilers .....	B-V .....	One. <sup>1</sup>
(3) Oil-fired boilers .....	B-II .....	Two.
(4) Oil-fired boilers .....	B-V .....	Two. <sup>1</sup>
(5) Internal combustion or gas turbine engines.	B-II .....	One for each engine. <sup>2</sup>
(6) Open electric motors and generators.	C-II .....	One for each of two motors or generators. <sup>3</sup>
(e) Helicopter Areas:		
(1) Helicopter landing decks .....	B-V .....	One at each access route.
(2) Helicopter fueling facility .....	B-V .....	One at each fuel transfer facility. <sup>4</sup>

<sup>1</sup> Not required if a fixed system is installed.

<sup>2</sup> If the engine is installed on a weather deck or is open to the atmosphere at all times, one B-II may be used for every three engines.

<sup>3</sup> Small electrical appliances, such as fans, are exempt.

<sup>4</sup> Not required if a fixed foam system is installed in accordance with 46 CFR 108.489.

**§ 149.410 Where must portable and semi-portable fire extinguishers be located?**

All portable and semi-portable fire extinguishers described in table 149.409 must be located in the open so as to be readily seen.

**§ 149.411 What are the requirements for firemen's outfits?**

(a) Each manned deepwater port with nine or more persons must have at least two firemen's outfits complying with 46 CFR 108.497.

(b) The person in charge of safety must ensure that:

(1) At least two people trained in the use of firemen's outfits are on the deepwater port at all times;

(2) Each fireman's outfit and its spare equipment are stowed together in a readily accessible container or locker. No more than one outfit shall be stowed in the same container or locker. The two containers or lockers must be located in separate areas to ensure that at least one is available at all times in the event of a fire; and

(3) Firemen's outfits are not used for any purpose other than firefighting.

**§ 149.412 How many fire axes are needed?**

Each manned deepwater port must have at least two fire axes as required by 46 CFR 108.499.

**§ 149.413 On a manned deepwater port, what spaces require a fixed fire extinguishing system?**

The manned deepwater port spaces or systems listed in paragraphs (a) through (c) of this section must be protected by an approved fixed gaseous or other approved fixed-type extinguishing system.

(a) Paint lockers with a carrying capacity of more than 200 cubic feet, and similar spaces containing flammable liquids.

(b) Galley ranges or deep fat fryers.

(c) Each enclosed space containing internal combustion or gas turbine machinery with an aggregate power of more than 1,000 B.H.P., and any

associated fuel oil units, purifiers, valves, or manifolds.

**§ 149.414 What are the requirements for a fire detection and alarm system?**

(a) All accommodation and service spaces on a manned deepwater port, and all spaces or systems on a manned or unmanned deepwater port for processing, storing, transferring, or regasifying liquefied natural gas, must have an automatic fire detection and alarm system that:

(1) Either complies with 46 CFR 108.405 or

(2) Is designed and installed in compliance with a national consensus standard, as that term is defined in 29 CFR 1910.2, for fire detection and fire alarm systems, and that complies with standards set by a nationally recognized testing laboratory, as that term is defined in 29 CFR 1910.7, for such systems or hardware.

(b) Sleeping quarters must be fitted with smoke detectors that have local

alarms and that may or may not be connected to the central alarm panel.

(c) Each fire detection and fire alarm system must have both a visual alarm and an audible alarm at a normally manned area.

(d) Each fire detection and fire alarm system must be divided into zones to limit the area covered by a particular alarm signal.

**§ 149.415 What are the requirements for a fire main system on a manned deepwater port?**

(a) Each pumping platform complex must have a fixed fire main system. The system must either:

(1) Comply with 46 CFR 108.415 through 108.429 and 33 CFR 127.607 if it is a natural gas deepwater port; or

(2) Comply with a national consensus standard, as that term is defined in 29 CFR 1910.2, for such systems and hardware, and comply with the standards set by a nationally recognized testing laboratory, as that term is defined in 29 CFR 1910.7, for such systems and hardware.

(b) If the fire main system meets the requirements outlined in paragraph (a)(2) of this section, it must provide, at a minimum, protection to:

- (1) Accommodation spaces;
- (2) Accommodation modules;
- (3) Control spaces; and
- (4) Other areas frequented by port personnel.

(c) The hose system must be capable of reaching all parts of these spaces without difficulty.

(d) Under paragraph (a)(2) of this section, the fire main system may be part of a fire water system in accordance with 30 CFR 250.803.

(e) A fire main system for a natural gas deepwater port must also comply with 33 CFR 127.607.

**§ 149.416 What are the requirements for a dry chemical fire suppression system?**

Each natural gas deepwater port must be equipped with a dry chemical system that meets the requirements of § 127.609 of this chapter.

**§ 149.417 What firefighting equipment must a helicopter landing deck on a manned deepwater port have?**

Each helicopter landing deck on a manned deepwater port must have the following:

(a) A fire hydrant and hose located near each stairway to the landing deck. If the landing deck has more than two stairways, only two stairways need to have a fire hydrant and hose. The fire hydrants must be part of the fire main system; and

(b) Portable fire extinguishers in the quantity and location as required in table 149.409.

**§ 149.418 What fire protection system must a helicopter fueling facility have?**

In addition to the portable fire extinguishers required under table 149.409, each helicopter fueling facility must have a fire protection system complying with 46 CFR 108.489.

**§ 149.419 Can the water supply for the helicopter deck fire protection system be part of a fire water system?**

(a) The water supply for the helicopter deck fire protection system required under § 149.420 or § 149.421 may be part of:

(1) The fire water system, installed in accordance with Mineral Management Service regulations under 30 CFR 250.803; or

(2) The fire main system under § 149.415.

(b) If the water supply for the helicopter deck fire protection system is part of an independent accommodation fire main system, the piping design and hardware must be compatible with the system and must comply with the requirements for fire mains in 46 CFR 108.415 through 108.429.

**§ 149.420 What are the fire protection requirements for escape routes?**

At least one escape route from an accommodation space or module to a survival craft or other means of evacuation must provide adequate protection. Separation of the escape route from the cargo area by steel construction, in accordance with 46 CFR 108.133, or equivalent protection is considered adequate protection for personnel escaping from fires and explosions. Additional requirements for escape routes are in subpart F of this part.

**§ 149.421 What is the requirement for a previously approved fire detection and alarm system on a deepwater port?**

An existing fire detection and alarm system on a deepwater port need not meet the requirements in this subpart until the system needs replacing, provided it is periodically tested and maintained in good operational condition.

**Subpart E—Aids to Navigation**

**General**

**§ 149.500 What does this subpart do?**

This subpart provides requirements for aids to navigation on deepwater ports.

**§ 149.505 What are the general requirements for aids to navigation?**

The following requirements apply to navigation aids under this subpart:

(a) Section 66.01–5 of this chapter, on application to establish, maintain, discontinue, change, or transfer ownership of an aid, except as under § 149.510;

(b) Section 66.01–25(a) and (c) of this chapter, on discontinuing or removing an aid. For the purposes of § 66.01–25(a) and (c) of this chapter, navigation aids at a deepwater port are considered Class I aids under § 66.01–15 of this chapter;

(c) Section 66.01–50 of this chapter, on protection of an aid from interference and obstruction; and

(d) Section 66.01–55 of this chapter, on transfer of ownership of an aid.

**§ 149.510 How do I get permission to establish an aid to navigation?**

(a) To establish a navigation aid on a deepwater port, the licensee must submit an application under § 66.01–5 of this chapter, except that the application must be sent to the Commandant (G–P).

(b) At least 180 days before the installation of any structure at the site of a deepwater port, the licensee must submit an application for obstruction lights and other private navigation aids for the particular construction site.

(c) At least 180 days before beginning cargo transfer operations or changing the mooring facilities at the deepwater port, the licensee must submit an application for private aids to navigation.

**Lights**

**§ 149.520 What kind of lights are required?**

All deepwater ports must meet the general requirements for obstruction lights in part 67 of this chapter.

**Lights on Platforms**

**§ 149.535 What are the requirements for rotating beacons on platforms?**

In addition to obstruction lights, the tallest platform of a deepwater port must have a lit rotating beacon that distinguishes the deepwater port from other surrounding offshore structures. The beacon must:

(a) Have an effective intensity of at least 15,000 candela;

(b) Flash at least once every 20 seconds;

(c) Provide a white light signal;

(d) Operate in wind speeds of up to 100 knots at a rotation rate that is within 6 percent of the operating speed displayed on the beacon;

(e) Have one or more leveling indicators permanently attached to the light, each with an accuracy of  $\pm 0.25^\circ$  or better; and

(f) Be located:

(1) At least 60 feet (about 18.3 meters) above mean high water;

(2) Where the structure of the platform, or equipment mounted on the platform, does not obstruct the light in any direction; and

(3) So that it is visible all around the horizon.

#### Lights on Single Point Moorings

##### § 149.540 What are the requirements for obstruction lights on a single point mooring?

(a) The lights for a single point mooring must meet the requirements for obstruction lights in part 67 of this chapter, except that the lights must be located at least 10 feet (3 meters) above mean high water.

(b) A submerged turret loading (STL) deepwater port is not required to meet the requirements for obstruction lights, provided it maintains at least a five-foot (1.5 meters) clearance beneath the net under keel clearance at the mean low water condition for all vessels transiting the area.

(c) An STL deepwater port that utilizes a marker buoy must be lighted in accordance with paragraph (a) of this section.

#### Lights on Floating Hose Strings

##### § 149.550 What are the requirements for lights on a floating hose string?

Hose strings that are floating or supported on trestles must display the following lights at night and during periods of restricted visibility:

(a) One row of yellow lights that must be:

- (1) Flashing 50 to 70 times per minute;
- (2) Visible all around the horizon;
- (3) Visible for at least 2 miles (3.7 km) on a clear, dark night;
- (4) Not less than 1 or more than 3.5 meters (3 to 11.5 feet) above the water;
- (5) Approximately equally spaced;
- (6) Not more than 10 meters (32.8 feet) apart where the hose string crosses a navigable channel; and

(7) Where the hose string does not cross a navigable channel, there must be a sufficient number to clearly show the hose string's length and course.

(b) Two red lights at each end of the hose string, including the ends in a channel where the hose string is separated to allow vessels to pass, whether open or closed. The lights must be:

- (1) Visible all around the horizon;
- (2) Visible for at least 2 miles (3.7 km) on a clear, dark night; and
- (3) One meter (3 feet) apart in a vertical line with the lower light at the same height above the water as the flashing yellow light.

#### Lights on Buoys Used To Define Traffic Lanes

##### § 149.560 How must buoys used to define traffic lanes be marked and lighted?

(a) Each buoy that is used to define the lateral boundaries of a traffic lane at a deepwater port must meet § 62.25 of this chapter.

(b) The buoy must have an omnidirectional light located at least 8 feet above the water.

(c) The buoy light must be located so that the structure of the buoy, or any other device mounted on the buoy, does not obstruct the light in any direction.

##### § 149.565 What are the required characteristics and intensity of lights on buoys used to define traffic lanes?

(a) The buoy's light color that defines the lateral boundaries of a traffic lane must comply with the buoy color schemes in § 62.25 of this chapter.

(b) The buoy light may be fixed or flashing. If it is flashing, it must flash at intervals of not more than 6 seconds.

(c) Buoy lights must have an effective intensity of at least 25 candela.

#### Miscellaneous

##### § 149.570 How is a platform, single point mooring, or submerged turret loading identified?

(a) Each platform, single point mooring, or submerged turret loading (STL) that protrudes above the water or is marked by a buoy must display the name of the deepwater port and the name or number identifying the structure, so that the information is visible:

- (1) From the water at all angles of approach to the structure; and
- (2) From aircraft on approach to the structure if the structure is equipped with a helicopter pad.

(b) The information required in paragraph (a) of this section must be displayed in numbers and letters that are:

- (1) At least 12 inches high;
- (2) In vertical block style; and
- (3) Displayed against a contrasting background.

(c) If an STL protrudes from the water, it must be properly illuminated in accordance with § 149.540.

##### § 149.575 How must objects protruding from the water, other than platforms and single point moorings, be marked?

(a) Each object protruding from the water that is within 100 yards of a platform or single point mooring (SPM) must be marked with white reflective tape.

(b) Each object protruding from the water that is more than 100 yards from a platform or SPM must meet the

obstruction lighting requirements in this subpart for a platform.

##### § 149.580 What are the requirements for a radar beacon?

(a) A radar beacon (RACON) must be located on the tallest platform of a pumping platform complex or other fixed structure of the deepwater port.

(b) The RACON must be an FCC-accepted RACON or a similar type.

(c) The RACON must transmit:

(1) In both 2900–3100 MHz and 9300–9500 MHz frequency bands; or

(2) If installed before July 8, 1991, in the 9320–9500 MHz frequency band; and

(3) Transmit a signal of at least 250 milliwatts radiated power that is omnidirectional and polarized in the horizontal plane;

(4) Transmit a two-element or more Morse code character, the length of which does not exceed 25 percent of the radar range expected to be used by vessels operating in the area;

(5) If of the frequency agile type, be programmed so that it will respond at least 40 percent of the time, but not more than 90 percent of the time, with a response-time duration of at least 24 seconds; and

(6) Be located at a minimum height of 15 feet above the highest deck of the platform and where the structure of the platform, or equipment mounted on the platform, does not obstruct the signal propagation in any direction.

##### § 149.585 What are the requirements for sound signals?

(a) Each pumping platform complex must have a sound signal, approved under subpart 67.10 of this chapter, that has a 2-mile (3-kilometer) range. A list of Coast Guard-approved sound signals is available from any District Commander.

(b) Each sound signal must be:

- (1) Located at least 10 feet, but not more than 150 feet, above mean high water; and
- (2) Located where the structure of the platform, or equipment mounted on it, does not obstruct the sound of the signal in any direction.

#### Subpart F—Design and Equipment

##### General

##### § 149.600 What does this subpart do?

This subpart provides general requirements for equipment and design on deepwater ports.

##### § 149.610 What must the District Commander be notified of and when?

The District Commander must be notified of the following:

When—	The District Commander must be notified—
(a) Construction of a pipeline, platform, or single point mooring (SPM) is planned.	At least 30 days before construction begins.
(b) Construction of a pipeline, platform, or SPM begins .....	Within 24 hours, from the date construction begins, that the lights and sound signals are in use at the construction site.
(c) A light or sound signal is changed during construction .....	Within 24 hours of the change.
(d) Lights or sound signals used during construction of a platform, buoy, or SPM are replaced by permanent fixtures to meet the requirements of this part.	Within 24 hours of replacement.
(e) The first cargo transfer operation begins .....	At least 60 days before the operation.

**§ 149.615 What construction drawings and specifications are required?**

(a) To show compliance with the Act and this subchapter, the licensee must submit to the Commandant (G–P) or accepted Certifying Entity (CE) at least three copies of:

(1) Each construction drawing and specification; and

(2) Each revision to a drawing and specification.

(b) Each drawing, specification, and revision under paragraph (a) of this section must bear the seal, or a facsimile imprint of the seal, of the registered professional engineer responsible for the accuracy and adequacy of the material.

(c) Each drawing must identify the baseline design standard used as the basis for design.

**§ 149.620 What happens when the Commandant (G–P) reviews and evaluates the construction drawings and specifications?**

(a) The Commandant (G–P) may concurrently review and evaluate construction drawings and specifications with the Marine Safety Center and other Federal agencies having technical expertise, such as the Pipeline and Hazardous Materials Safety Administration and the Federal Energy Regulatory Commission, in order to ensure compliance with the Act and this subchapter.

(b) Construction may not begin until the drawings and specifications are approved by the Commandant (G–P).

(c) Once construction begins, the Coast Guard periodically inspects the construction site to ensure that the construction complies with the drawings and specifications approved under paragraph (b) of this section.

(d) When construction is complete, the licensee must submit two complete sets of as-built drawings and specifications to the Commandant (G–P).

**§ 149.625 What are the design standards?**

(a) Each component, except for those specifically addressed elsewhere in this subpart (for example, single point moorings, hoses, and aids to navigation buoys), must be designed to withstand

at least the combined wind, wave, and current forces of the most severe storm that can be expected to occur at the deepwater port in any 100-year period. Component design must meet a recognized industry standard and be appropriate for the protection of human life from death or serious injury, both on the port and on vessels calling on or servicing the port, and for the protection of the environment.

(b) The applicant or licensee will be required to submit to the Commandant (G–P) a design basis for approval containing all proposed standards to be used in the fabrication and construction of port components.

(c) Heliports on floating deepwater ports must be designed in compliance with the regulations at 46 CFR part 108.

**Structural Fire Protection**

**§ 149.640 What are the requirements for fire protection systems?**

Manned deepwater ports built after January 1, 2004, and manned deepwater ports that undergo major conversions must comply with the requirements for structural fire protection outlined in this subpart.

**§ 149.641 What are the structural fire protection requirements for accommodation spaces and modules?**

(a) Accommodation spaces and modules must be designed, located, and constructed so as to minimize the effects of flame, excess heat, or blast effects caused by fires and explosions; and to provide safe refuge from fires and explosions for personnel for the minimum time needed to evacuate the space.

(b) This requirement may be met by complying with 46 CFR 108.131 through 108.147, provided that:

(1) The exterior boundaries of superstructures and deckhouses enclosing these spaces and modules, including any overhanging deck that supports these spaces and modules, are constructed to the A–60 standard defined in 46 CFR 108.131(b)(2) for any portion that faces and is within 100 feet of the hydrocarbon source (e.g., LNG flanges, send out line, etc.); and

(2) The ventilation system has both a means of shutting down the system and an alarm at a manned location that sounds when any hazardous or toxic substance enters the system.

(c) As an alternative to paragraph (b) of this section, the requirement imposed by this section may be met by complying with a national consensus standard, as that term is defined in 29 CFR 1910.2, for the structural fire protection of accommodation spaces and modules, and that complies with the standards set by a nationally recognized testing laboratory, as that term is defined by 29 CFR 1910.7, for such protection, provided that:

(1) All such spaces and modules on manned ports are provided with automatic fire detection and alarm systems. The alarm system must signal a normally manned area both visually and audibly, and be divided into zones to limit the area covered by a particular alarm signal;

(2) Sleeping quarters are fitted with smoke detectors that have local alarms that may or may not be connected with the central alarm panel; and

(3) Independent fire walls are constructed and installed so as to be of size and orientation sufficient to protect the exterior surfaces of the spaces or modules from extreme radiant heat flux levels, and provide the A–60 standard defined in 46 CFR 108.131(b)(2).

**Single Point Moorings**

**§ 149.650 What are the requirements for single point moorings and their attached hoses?**

Each single point mooring and its attached hose must be designed for the protection of the environment and for durability under combined wind, wave, and current forces of the most severe storm that can be expected to occur at the port in any 100-year period. The appropriateness of a design may be shown by its compliance with standards generally used within the offshore industry that are at least equivalent, in protecting the environment, to the standards in use on January 1, 2003, by any recognized classification society as defined in 46 CFR 8.100.

**Helicopter Fueling Facilities****§ 149.655 What are the requirements for helicopter fueling facilities?**

Helicopter fueling facilities must comply with 46 CFR 108.489 or an equivalent standard.

**Emergency Power****§ 149.660 What are the requirements for emergency power?**

(a) Each pumping platform complex must have emergency power equipment including power source, associated transforming equipment, and switchboard to provide power to simultaneously operate all of the following for a continuous period of 18 hours:

- (1) Emergency lighting circuits;
- (2) Aids to navigation equipment;
- (3) Communications equipment;
- (4) Radar equipment;
- (5) Alarm systems;
- (6) Electrically operated fire pumps; and
- (7) Other electrical equipment identified as emergency equipment in the operations manual for the deepwater port.

(b) The equipment required by paragraph (a) of this section must:

- (1) All be located in the same space; and
- (2) Contain only machinery and equipment for the supply of emergency power (in other words, no oil or natural gas transfer pumping equipment) in accordance with 46 CFR 112.05.

**General Alarm System****§ 149.665 What are the requirements for a general alarm system?**

Each pumping platform complex must have a general alarm system that:

- (a) Is capable of being manually activated by using alarm boxes;
- (b) Is audible in all parts of the pumping platform complex, except in areas of high ambient noise levels where hearing protection is required under § 150.613 of this chapter; and
- (c) Has a high intensity flashing light in areas where hearing protection is used.

**§ 149.670 What are the requirements for marking a general alarm system?**

Each of the following must be marked with the words "General Alarm" in yellow letters at least 1 inch high on a red background:

- (a) Each general alarm box; and
- (b) Each audio or visual device described under § 149.665 for signaling the general alarm.

**Public Address System****§ 149.675 What are the requirements for the public address system?**

(a) For a manned deepwater port, each pumping platform complex must have a public address system operable from two locations on the complex.

(b) For an unmanned deepwater port, the vessel master must provide a working public address system on a vessel while it is moored or otherwise connected to the port.

**Medical Treatment Rooms****§ 149.680 What are the requirements for medical treatment rooms?**

Each deepwater port with sleeping spaces for 12 or more persons, including persons in accommodation modules, must have a medical treatment room that has:

- (a) A sign at the entrance designating it as a medical treatment room;
- (b) An entrance that is wide enough and arranged to readily admit a person on a stretcher;
- (c) A single berth or examination table that is accessible from both sides; and
- (d) A washbasin located in the room.

**§ 149.685 May a medical treatment room be used for other purposes?**

A medical treatment room may be used as a sleeping space if the room meets the requirements of this subpart for both medical treatment rooms and sleeping spaces. It may also be used as an office. However, when used for medical purposes, the room may not be used as a sleeping space or office.

**Miscellaneous****§ 149.690 What are the requirements for means of escape, personnel landings, guardrails, similar devices, and for noise limits?**

Each deepwater port must comply with the requirements for means of escape, personnel landings, guardrails and similar devices, and noise limits as outlined in §§ 149.691 through 149.699.

**Means of Escape****§ 149.691 What means of escape are required?**

(a) Each deepwater port must have both primary and secondary means of escape. Each of these means must either:

- (1) Comply with 46 CFR 108.151; or
- (2) Be designed and installed in compliance with a national consensus standard, as that term is defined in 29 CFR 1910.2, for use in evacuating the port.

(b) A primary means of escape consists of a fixed stairway or a fixed ladder, constructed of steel.

(c) A secondary means of escape consists of either:

(1) A fixed stairway or a fixed ladder, constructed of steel; or

(2) A marine evacuation system, a portable flexible ladder, a knotted manrope, or a similar device determined by the Officer in Charge of Marine Inspection (OCMI) to provide an equivalent or better means of escape.

**§ 149.692 Where must they be located?**

(a) Each means of escape must be easily accessible to personnel for rapidly evacuating the deepwater port.

(b) When two or more means of escape are installed, at least two must be located as nearly diagonally opposite each other as practicable.

(c) When the floor area of any of the following spaces contains 300 square feet or more, the space must have at least two exits as widely separated from each other as possible:

- (1) Each accommodation space; and
- (2) Each space that is used on a regular basis, such as a control room, machinery room, storeroom, or other space where personnel could be trapped in an emergency.

(d) On a manned deepwater port, each structural appendage that is not occupied continuously, and that does not contain living quarters, workshops, offices, or other manned spaces must have at least one primary means of escape. The OCMI may also determine that one or more secondary means of escape is required.

(e) When personnel are on an unmanned deepwater port, the port must have, in addition to the one primary means of escape, either:

- (1) Another primary means of escape; or

(2) One or more secondary means of escape in any work space that may be temporarily occupied by 10 persons or more.

(f) Structural appendages to an unmanned deepwater port do not require a primary or a secondary means of escape, unless the OCMI determines that one or more are necessary.

(g) Each means of escape must extend from the deepwater port's uppermost working level to each successively lower working level, and so on to the water surface.

**Personnel Landings****§ 149.693 What are the requirements for personnel landings on manned deepwater ports?**

(a) On manned deepwater ports, sufficient personnel landings must be provided to assure safe access and egress.

(b) The personnel landings must be provided with satisfactory illumination. The minimum is 1 foot candle of

artificial illumination as measured at the landing floor and guards and rails.

### Guardrails and Similar Devices

#### § 149.694 What are the requirements for catwalks, floors, and openings?

(a) The configuration and installation of catwalks, floors, and openings must comply with § 143.110 of this chapter.

(b) This section does not apply to catwalks, floors, deck areas, or openings in areas not normally occupied by personnel or on helicopter landing decks.

#### § 149.695 What are the requirements for stairways?

Stairways must have at least two courses of rails. The top course must serve as a handrail and be at least 34 inches above the tread.

#### § 149.696 What are the requirements for a helicopter landing deck safety net?

A helicopter landing deck safety net must comply with 46 CFR 108.235.

### Noise Limits

#### § 149.697 What are the requirements for a noise level survey?

(a) A survey to determine the maximum noise level during normal operations must be conducted in each accommodation space, working space, or other space routinely used by personnel. The recognized methodology used to conduct the survey must be specified in the survey results. Survey results must be kept on the deepwater port or, for an unmanned deepwater port, in the owner's principal office.

(b) The noise level must be measured over 12 hours to derive a time weighted average (TWA) using a sound level meter and an A-weighted filter or equivalent device.

(c) If the noise level throughout a space is determined to exceed 85 db(A), based on the measurement criteria in paragraph (b) of this section, then signs must be posted with the legend: "Noise Hazard—Hearing Protectors Required." Signs must be posted at eye level at each entrance to the space.

(d) If the noise level exceeds 85 db(A) only in a portion of a space, then the sign described in paragraph (c) of this section must be posted within that portion where visible from each direction of access.

(e) Working spaces and other areas routinely used by personnel, other than accommodation spaces, must be designed to limit the noise level in those areas so that personnel wearing hearing protectors may hear warning and emergency alarms. If this is not practicable and warning and emergency alarms cannot be heard, visual alarms in

addition to the audible alarms must be installed.

### Portable Lights

#### § 149.700 What kind of portable lights may be used on a deepwater port?

Each portable light and its supply cord on a deepwater port must be designed for the environment where it is used.

## PART 150—DEEPWATER PORTS: OPERATIONS

### Subpart A—General

Sec.

150.1 What does this part do?

150.5 Definitions.

150.10 What are the general requirements for operations manuals?

150.15 What must the operations manual include?

150.20 How many copies of the operations manual must be given to the Coast Guard?

150.25 Amending the operations manual.

150.30 Proposing an amendment to the operations manual.

150.35 How may an adjacent coastal State request an amendment to the operations manual?

150.40 Deviating from the operations manual.

150.45 Emergency deviation from this subchapter or the operations manual.

150.50 What are the requirements for a facility spill response plan?

### Subpart B—Inspections

150.100 What are the requirements for inspecting deepwater ports?

150.105 What are the requirements for annual self-inspection?

150.110 What are the notification requirements upon receipt of classification society certifications?

### Subpart C—Personnel

150.200 Who must ensure that port personnel are qualified?

150.205 What are the language requirements for port personnel?

150.210 What are the restrictions on serving in more than one position?

150.225 What training and instruction are required?

### Subpart D—Vessel Navigation

150.300 What does this subpart do?

150.305 How does this subpart apply to unmanned deepwater ports?

150.310 When is radar surveillance required?

150.320 What advisories are given to tankers?

150.325 What is the first notice required before a tanker enters the safety zone or area to be avoided?

150.330 What is the second notice required before a tanker enters the safety zone or area to be avoided?

150.340 What are the rules of navigation for tankers in the safety zone or area to be avoided?

150.345 How are support vessels cleared to move within the safety zone or area to be avoided?

150.350 What are the rules of navigation for support vessels in the safety zone or area to be avoided?

150.355 How are other vessels cleared to move within the safety zone?

150.380 Under what circumstances may vessels operate within the safety zone or area to be avoided?

150.385 What is required in an emergency?

### Subpart E—Cargo Transfer Operations

150.400 What does this subpart do?

150.405 How must a Cargo Transfer System be tested and inspected?

150.420 What actions must be taken when cargo transfer equipment is defective?

150.425 What are the requirements for transferring cargo?

150.430 What are the requirements for a declaration of inspection?

150.435 When are cargo transfers not allowed?

150.440 How may the Captain of the Port order suspension of cargo transfers?

150.445 When is oil in a Single Point Mooring-Oil Transfer System displaced with water?

### Subpart F—Emergency and Specialty Equipment

150.500 What does this subpart do?

#### Maintenance and Repair

150.501 How must emergency equipment be maintained and repaired?

#### Lifesaving Equipment (General)

150.502 What are the maintenance and repair requirements for lifesaving equipment?

#### Launching Appliances

150.503 What are the time interval requirements for maintenance on survival craft falls?

150.504 When must the operator service and examine lifeboat and rescue boat launching appliances?

150.505 When must the operator service and examine lifeboat and rescue boat release gear?

#### Inflatable Lifesaving Appliances

150.506 When must the operator service inflatable lifesaving appliances and marine evacuation systems?

150.507 How must the operator service inflatable lifesaving appliances?

150.508 What are the maintenance and repair requirements for inflatable rescue boats?

#### Operational Tests and Inspections (General)

150.509 How must emergency equipment be tested and inspected?

150.510 How must tested emergency equipment be operated?

150.511 What are the operational testing requirements for lifeboat and rescue boat release gear?

#### Frequency of Tests and Inspections

150.512 What occurs during the weekly tests and inspections?  
 150.513 What occurs during the monthly tests and inspections?  
 150.514 What are the annual tests and inspections?

#### Weight Testing

150.515 What are the requirements for weight testing of newly installed or relocated craft?  
 150.516 What are the periodic requirements for weight testing?  
 150.517 How are weight tests supervised?

#### Personal Safety Gear

150.518 What are the inspection requirements for work vests and immersion suits?

#### Emergency Lighting and Power Systems

150.519 What are the requirements for emergency lighting and power systems?

#### Fire Extinguishing Equipment

150.520 When must fire extinguishing equipment be tested and inspected?  
 150.521 What records are required?

#### Miscellaneous Operations

150.530 What may the fire main system be used for?  
 150.531 How many fire pumps must be kept ready for use at all times?  
 150.532 What are the requirements for connection and stowage of fire hoses?  
 150.540 What are the restrictions on fueling aircraft?  
 150.550 What are the requirements for the muster list?  
 150.555 How must cranes be maintained?

#### Subpart G—Workplace Safety and Health

150.600 What does this subpart do?

#### Safety and Health (General)

150.601 What are the safety and health requirements for the workplace on a deepwater port?  
 150.602 What occupational awareness training is required?  
 150.603 What emergency response training is required?  
 150.604 Who controls access to medical monitoring and exposure records?  
 150.605 What are the procedures for reporting a possible workplace safety or health violation at a deepwater port?  
 150.606 After learning of a possible violation, what does the Officer in Charge of Marine Inspection do?

#### General Workplace Conditions

150.607 What are the general safe working requirements?

#### Personal Protective Equipment

150.608 Who is responsible for ensuring that the personnel use or wear protective equipment and are trained in its use?

#### Eyes and Face

150.609 When is eye and face protection required?  
 150.610 Where must eyewash equipment be located?

#### Head

150.611 What head protection is required?

#### Feet

150.612 What footwear is required?

#### Noise and Hearing Protection

150.613 What are the requirements for a noise monitoring and hearing protection survey?

#### Clothing

150.614 When is protective clothing required?

#### Electrical

150.615 What safe practices are required?

#### Lockout/Tagout

150.616 What are the requirements for lockout?  
 150.617 What are the requirements for tagout?

#### Respiratory Protection

150.618 What are the requirements for respiratory protection?

#### Fall Arrest

150.619 What are the fall arrest system requirements?

#### Machine Guards

150.620 What are the requirements for protecting personnel from machinery?

#### Slings

150.621 What are the requirements for slings?

#### Warning Signs

150.622 What are the warning sign requirements?

#### Confined Space Safety

150.623 What are the requirements for protecting personnel from hazards associated with confined spaces?

#### Blood-Borne Pathogens

150.624 What are the requirements for protecting personnel from blood-borne pathogens?

#### Hazard Communication Program

150.625 What must the hazard communication program contain?  
 150.626 What is the hazard communication program used for?  
 150.627 Must material safety data sheets be available to all personnel?

150.628 How must the operator label, tag, and mark a container of hazardous material?

#### Subpart H—Aids to Navigation

150.700 What does this subpart do?  
 150.705 What are the requirements for maintaining and inspecting aids to navigation?  
 150.710 What are the requirements for supplying power to aids to navigation?  
 150.715 What are the requirements for lights used as aids to navigation?  
 150.720 What are the requirements for sound signals?

#### Subpart I—Reports and Records

150.800 What does this subpart do?

#### Reports

150.805 What reports must be sent both to a classification society and to the Coast Guard?  
 150.810 Reporting a problem with an aid to navigation.  
 150.812 What is the purpose of reporting casualties on deepwater ports?  
 150.815 How must casualties be reported?  
 150.820 When must a written report of casualty be submitted, and what must it contain?  
 150.825 Reporting a diving-related casualty.  
 150.830 Reporting a pollution incident.  
 150.835 Reporting sabotage or subversive activity.

#### Records

150.840 What records must be kept?  
 150.845 Personnel records.  
 150.850 How long must a declaration of inspection form be kept?

#### Subpart J—Safety Zones, No Anchoring Areas, and Areas to Be Avoided

150.900 What does this subpart do?  
 150.905 Why are safety zones, no anchoring areas, and areas to be avoided established?  
 150.910 What installations, structures, or activities are prohibited in a safety zone?  
 150.915 How are safety zones, no anchoring areas, and areas to be avoided established and modified?  
 150.920 How can I find notice of new or proposed safety zones?  
 150.925 How long may a safety zone, no anchoring area, or area to be avoided remain in place?  
 150.930 What datum is used for the geographic coordinates in this subpart?  
 150.940 Safety zones for specific deepwater ports.

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), (m)(2); 33 U.S.C. 1509(a); E.O. 12777, sec. 2; E.O. 13286, sec. 34, 68 FR 10619; Department of Homeland Security Delegation No. 0170.1(70), (73), (75), (80).



**Subpart A—General****§ 150.1 What does this part do?**

This part provides requirements for the operation of deepwater ports.

**§ 150.5 Definitions.**

See § 148.5 of this chapter for the definition of certain terms used in this part.

**§ 150.10 What are the general requirements for operations manuals?**

(a) Each deepwater port must have an operations manual that addresses policies and procedures for normal and emergency operations conducted at the port. The operations manual must, at a minimum, include the requirements outlined in § 150.15.

(b) The operations manual is reviewed and approved by the Commandant (G–P), who may consult with the local Officer in Charge of Marine Inspection (OCMI), as meeting the requirements of the Act and this subchapter. The original manual is approved as part of the application process in part 148 of this chapter.

(c) The OCMI may approve subsequent changes to the operations manual, provided the Commandant (G–P) is notified and consulted regarding any significant modifications.

(d) The manual must be readily available on the deepwater port for use by personnel.

(e) The licensee must ensure that all personnel are trained and follow the procedures in the manual while at the deepwater port.

**§ 150.15 What must the operations manual include?**

The operations manual required by § 150.10 must identify the deepwater port and include the information required in this section.

(a) *General information.* A description of the geographic location of the deepwater port.

(b) A physical description of the port.

(c) Engineering and construction information, including all defined codes and standards used for the port structure and systems. The operator must include schematics of all applicable systems. Schematics must show the location of valves, gauges, system working pressure, relief settings, monitoring systems, and other pertinent information.

(d) *Communications system.* A description of a comprehensive communications plan, including:

(1) Dedicated frequencies;

(2) Communication alerts and notices between the deepwater port and arriving and departing vessels; and

(3) Mandatory time intervals or communication schedules for maintaining a live radio watch, and monitoring frequencies for communication with vessels and aircraft.

(e) *Facility plan.* A layout plan for the mooring areas, navigation aids, cargo transfer locations, and control stations.

(f) The hours of operation.

(g) The size, type, number, and simultaneous operations of tankers that the port can handle.

(h) Calculations, with supporting data or other documentation, to show that the charted water depth at each proposed mooring location is sufficient to provide at least a net under keel clearance of 5 feet, at the mean low water condition.

(i) *Tanker navigation procedures.* The procedures for tanker navigation, including the information required in paragraphs (i)(1) through (i)(9) of this section.

(1) The operating limits, maneuvering capability, draft, net under keel clearance, tonnage, length, and breadth of the tanker that will be accommodated at each designated mooring.

(2) The speed limits proposed for tankers in the safety zone and area to be avoided around the port.

(3) Any special navigation or communication equipment that may be required for operating in the safety zone and area to be avoided.

(4) The measures for routing vessels, including a description of the radar navigation system to be used in operation of the deepwater port:

(i) Type of radar;

(ii) Characteristics of the radar;

(iii) Antenna location;

(iv) Procedures for surveillance of vessels approaching, departing, navigating, and transiting the safety zone and area to be avoided;

(v) Advisories to each tanker underway in the safety zone regarding the vessel's position, port conditions, and status of adjacent vessel traffic;

(vi) Notices that must be made, as outlined in § 150.325, by the tanker master regarding the vessel's characteristics and status; and

(vii) Rules for navigating, mooring, and anchoring in a safety zone, area to be avoided, and anchorage area.

(5) Any mooring equipment needed to make up to the single point mooring (SPM).

(6) The procedures for clearing tankers, support vessels, and other vessels and aircraft during emergency and routine conditions.

(7) Weather limits for tankers, including a detailed description of how to forecast the wind, wave, and current conditions for:

(i) Shutdown of cargo transfer operations;

(ii) Departure of the tanker from the mooring;

(iii) Prohibition on mooring at the deep water port or SPM; and

(iv) Shutdown of all port operations and evacuation of the port.

(8) Any special illumination requirements for vessel arrival, discharge, and departure operations.

(9) Any special watchstanding requirements for vessel transiting, mooring, or anchoring.

(j) *Personnel.* The duties, title, qualifications, and training of all port personnel responsible for managing and carrying out the following port activities and functions:

(1) Vessel traffic management;

(2) Cargo transfer operations;

(3) Safety and fire protection;

(4) Maintenance and repair

operations;

(5) Emergency procedures; and

(6) Port security.

(k) The personnel assigned to supervisory positions must be designated, in writing, by the licensee and have the appropriate experience and training to satisfactorily perform their duties. The Commandant (G–P) will review and approve the qualifications for all proposed supervisory positions.

(l) *Cargo transfer procedures.* The procedures for cargo transfer must comply with the applicable requirements of parts 154 and 156 for oil, and subpart B (Operations) to part 127 for natural gas, respectively, of this chapter, including the requirements specified in paragraphs (l)(1) through (l)(10) of this section.

(1) The requirements for oil transfers in accordance with subpart A to part 156 of this chapter regarding:

(i) Pre-transfer conference;

(ii) Inspection of transfer site and equipment such as hoses, connectors, closure devices, monitoring devices, and containment;

(iii) Connecting and disconnecting transfer equipment, including a floating hose string for a single point mooring (SPM);

(iv) Preparation of the Declaration of Inspection; and

(v) Supervision by a person in charge.

(2) The requirements for natural gas transfers in accordance with subpart B to part 127 of this chapter regarding:

(i) Pre-transfer conference;

(ii) Inspection of transfer site and equipment such as hoses, connectors, closure devices, leak monitoring devices, and containment;

(iii) Connecting and disconnecting of transfer equipment, including to a floating hose string for a SPM;

(iv) Line purging to test for leaks and to prepare for cool-down or heat-up phases as appropriate;

(v) Preparation of the Declaration of Inspection; and

(vi) Supervision by a port person in charge.

(3) The shipping name of, and Material Safety Data Sheet on, any product transferred.

(4) The duties, title, qualifications, and training of personnel of the port designated as the person in charge and responsible for managing cargo transfers, including ballasting operations if applicable to the port, in accordance with subpart D of part 154 for oil, and subpart B (Operations) of part 127 for natural gas, respectively, of this chapter.

(5) Minimum requirements for watch personnel on board the vessel during transfer operations, such as personnel necessary for checking mooring gear, monitoring communications, and maintaining propulsion and steering on standby.

(6) The start up and completion of pumping.

(7) Emergency shutdown.

(8) The maximum relief valve settings, the maximum available working pressure, and hydraulic shock to the system without relief valves, or both.

(9) Equipment necessary to discharge cargo to the port complex without harm to the environment or to persons involved in the cargo transfer, including piping, adapters, bolted flanges, and quick-disconnect coupling.

(10) A description of the method used to water and de-water the single point mooring hoses when required.

(m) Unusual arrangements that may be applicable, including:

(1) A list and description of any extraordinary equipment or assistance available to vessels with inadequate pumping capacity, small cargoes, small diameter piping, or inadequate crane capacity; and

(2) A description of special storage or delivery arrangements for unusual cargoes; for example, cool-down requirements for transfer system components prior to transfer of liquefied natural gas.

(n) *Maintenance procedures.* A maintenance program to document service and repair of key equipment such as:

- (1) Cargo transfer equipment;
- (2) Firefighting and fire protection equipment;
- (3) Facility support services, such as generators, evaporators, etc.;
- (4) Safety equipment; and
- (5) Cranes.

(o) A waste management plan comparable to § 151.57.

(p) *Occupational health and safety training procedures.* Policy and procedures to address occupational health and safety requirements outlined in §§ 150.600 to 150.632 of this subpart, including:

- (1) Employee training in safety and hazard awareness, and proper use of personnel protective equipment;
- (2) Physical safety measures in the workplace, such as housekeeping and illumination of walking and working areas;
- (3) Fall arrest;
- (4) Personnel transfer nets;
- (5) Hazard communication (right-to-know);
- (6) Permissible exposure limits;
- (7) Machine guarding;
- (8) Electrical safety;
- (9) Lockout/tagout;
- (10) Crane safety;
- (11) Sling usage;
- (12) Hearing conservation;
- (13) Hot work;
- (14) Warning signs;
- (15) Confined space safety; and
- (16) Initial and periodic training and certification to be documented for each port employee and for visitors, where appropriate; for example, safety orientation training.

(q) *Emergency notification procedures.* Emergency internal and external notification procedures:

- (1) Names and numbers of key port personnel;
- (2) Names and numbers of law enforcement and response agencies;
- (3) Names and numbers of persons in charge of any OCS facility that, due to close proximity, could be affected by an incident at the deepwater port.
- (r) Quantity, type, location, and use of safety and fire protection equipment, including the fire plan.

(s) Aerial operations such as helicopter landing pad procedures.

- (t) Port response procedures for:
- (1) Fire;
  - (2) Reportable product spill;
  - (3) Personnel injury, including confined space rescue; and
  - (4) Terrorist activity, as described in the port security plan.

(u) Emergency evacuation procedures comparable to § 146.140(d) of this chapter.

(v) Designation of and assignment of port personnel to response teams for specific contingencies.

(w) Individual and team training for incident response, in accordance with 46 CFR 109.213, to cover:

- (1) Care and use of equipment;
- (2) Emergency drills and response, to include:
  - (i) Type;
  - (ii) Frequency, which must be at least annually; and

(iii) Documentation, including records, reports and dissemination of "lessons learned".

(3) Documentation of the following minimum training requirements for response team members:

- (i) Marine firefighting training;
  - (ii) First aid/CPR;
  - (iii) Water survival;
  - (iv) Spill response and clean up;
  - (v) Identification of at least one employee trained and certified at the basic level as an emergency medical technician; and
  - (vi) Identification of at least two employees trained and certified as offshore competent persons in prevention of inadvertent entry into hazardous confined spaces.
- (x) *Security procedures.* Deepwater port operators must develop a deepwater port security plan comparable to those required by 33 CFR part 106. The plan must address at least:
- (1) Access controls for goods and materials and access controls for personnel that require positive and verifiable identification;
  - (2) Monitoring and alerting of vessels that approach or enter the port's security zone;
  - (3) Risk identification and procedures for detecting and deterring terrorist or subversive activity, such as security lighting and remotely-alarmed restricted areas;

(4) Internal and external notification and response requirements in the event of a perceived threat or an attack on the port;

(5) Designation of the port security officer;

(6) Required security training and drills for all personnel; and

(7) The scalability of actions and procedures for the various levels of threat.

(y) *Special operations procedures.* Include procedures for any special operations, such as:

- (1) Evacuation and re-manning;
- (2) Refueling;
- (3) Diving;
- (4) Support vessel operations;
- (5) Providing logistical services; and
- (6) Contingency response for events that could affect nearby existing OCS oil and gas facilities, such as explosions, fires, or product spills.

(z) Recordkeeping of maintenance procedures, tests, and emergency drills outlined elsewhere in the operations manual.

(aa) *Environmental procedures.* A program for maintaining compliance with license conditions and applicable environmental laws, by periodic monitoring of the environmental effects of the port and its operations, including:

(1) Air and water monitoring in accordance with applicable Federal and State law;

(2) A routine re-examination, not less than once every five years, of the physical, chemical, and biological factors contained in the port's environmental impact analysis and baseline study submitted with the license application; and

(3) A risk management plan, addressing the potential for an uncontrolled release; or provision for more detailed studies following any uncontrolled release or other unusual event that adversely affects the environment.

**§ 150.20 How many copies of the operations manual must be given to the Coast Guard?**

The draft operations manual must be included with the application, and the number of copies is governed by § 148.115. At least five copies of the final operations manual, and of any subsequent amendment, must be submitted to the Commandant (G-P). Additional copies may be required to meet the needs of other agencies.

**§ 150.25 Amending the operations manual.**

(a) Whenever the cognizant Captain of the Port (COTP) finds that the operations manual does not meet the requirements of this part, the COTP notifies the licensee, in writing, of the inadequacies in the manual.

(b) Within 45 days after the notice under paragraph (a) of this section is sent, the licensee must submit written proposed amendments to eliminate the inadequacies.

(c) The cognizant COTP reviews the amendments and makes a determination as to the adequacy of the amendments and notifies the licensee of the determination.

(d) If the COTP decides that an amendment is necessary, the amendment goes into effect 60 days after the COTP notifies the licensee of the amendment.

(e) The licensee may petition the Commandant (G-P), via the appropriate district office, to review the decision of the COTP. In this case, the effective date of the amendment is delayed pending the Commandant's decision. Petitions must be made in writing and presented to the COTP to forward to the Commandant (G-P).

(f) If the COTP finds that a particular situation requires immediate action to prevent a spill or discharge, or to protect the safety of life and property, the COTP may issue an amendment effective on the date that the licensee receives it. The COTP must include a brief

statement of the reasons for the immediate amendment. The licensee may petition the District Commander for review, but the petition does not delay the effective date of the amendment.

**§ 150.30 Proposing an amendment to the operations manual.**

(a) The licensee may propose an amendment to the operations manual:

(1) By submitting, in writing, the amendment and reasons for the amendments to the Captain of the Port (COTP) not less than 30 days before the requested effective date of the amendment; or

(2) If the amendment is needed immediately, by submitting the amendment and reasons why the amendment is needed immediately, to the COTP in writing.

(b) The COTP must respond to a proposed amendment by notifying the licensee, in writing, before the requested date of the amendment whether the request is approved. If the request is disapproved, the COTP must include the reasons for disapproval in the notice. If the request is for an immediate amendment, the COTP must respond as soon as possible.

**§ 150.35 How may an adjacent coastal State request an amendment to the operations manual?**

(a) An adjacent coastal State connected by pipeline to the deepwater port may petition the cognizant Captain of the Port (COTP) to amend the operations manual. The petition must include sufficient information to allow the COTP to reach a decision concerning the proposed amendment.

(b) After the COTP receives a petition, the COTP requests comments from the licensee.

(c) After reviewing the petition and comments, and considering the costs and benefits involved, the COTP may approve the petition if the proposed amendment will provide equivalent or improved protection and safety. The adjacent coastal State may petition the Commandant (G-P) to review the decision of the COTP. Petitions must be made in writing and presented to the COTP for forwarding to the Commandant (G-P) via the District Commander.

**§ 150.40 Deviating from the operations manual.**

If, because of a particular situation, the licensee needs to deviate from the operations manual, the licensee must submit a written request to the Captain of the Port (COTP) explaining why the deviation is necessary and what alternative is proposed. If the COTP determines that the deviation would

ensure equivalent or greater protection and safety, the COTP authorizes the deviation and notifies the licensee in writing.

**§ 150.45 Emergency deviation from this subchapter or the operations manual.**

In an emergency, any person may deviate from any requirement in this subchapter, or any procedure in the operations manual, to ensure the safety of life, property, or the environment. Each deviation must be reported to the Captain of the Port at the earliest possible time.

**§ 150.50 What are the requirements for a facility spill response plan?**

(a) Each deepwater port which meets the applicability requirements of part 154 subpart F of this chapter must have a facility response plan that is approved by the Captain of the Port (COTP).

(b) Each natural gas deepwater port must have a natural gas facility emergency plan that meets part 127, subpart B of this chapter.

(c) The response plan must be submitted to the COTP, in writing, not less than 60 days before the deepwater port begins operation.

**Subpart B—Inspections**

**§ 150.100 What are the requirements for inspecting deepwater ports?**

Under the direction of the Officer in Charge of Marine Inspection (OCMI), marine inspectors may inspect deepwater ports to determine whether the requirements of this subchapter are met. A marine inspector may conduct an inspection, with or without advance notice, at any time the OCMI deems necessary.

**§ 150.105 What are the requirements for annual self-inspection?**

(a) The owner or operator of each manned deepwater port must ensure that the port is regularly inspected to determine whether the facility is in compliance with the requirements of this subchapter. The inspection must be at intervals of no more than 12 months. The inspection may be conducted up to 2 months after its due date, but will be valid for only the 12 months following that due date.

(b) The owner or operator must record and submit the results of the annual self-inspection to the Captain of the Port (COTP) within 30 days of completing the inspection. The report must include a description of any failure, and the scope of repairs made to components or equipment, in accordance with the requirements in subpart I of this part, other than primary lifesaving, firefighting, or transfer equipment,

which are inspected and repaired in accordance with subpart F.

(c) Prior to the initiation of a self-inspection plan, and before commencement of operations, the owner or operator must submit a proposal describing the self-inspection plan to the COTP for acceptance. The plan must address all applicable requirements outlined in parts 149 and 150 of this subchapter.

**§ 150.110 What are the notification requirements upon receipt of classification society certifications?**

The licensee must notify the Captain of the Port, in writing, upon receipt of a classification society certification, interim class certificate, or single point mooring classification certificate.

**Subpart C—Personnel**

**§ 150.200 Who must ensure that port personnel are qualified?**

The licensee must ensure that the individual filling a position meets the qualifications for that position as outlined in the operations manual.

**§ 150.205 What are the language requirements for port personnel?**

Only persons who read, write, and speak English may occupy the essential management positions outlined in the operations manual.

**§ 150.210 What are the restrictions on serving in more than one position?**

No person may serve in more than one of the essential management positions outlined in the operations manual at any one time.

**§ 150.225 What training and instruction are required?**

Personnel must receive training and instruction commensurate with the position they hold. Procedures for documenting employee training must be outlined in the operations manual.

**Subpart D—Vessel Navigation**

**§ 150.300 What does this subpart do?**

This subpart supplements the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) described in subchapter D of this chapter, and prescribes requirements that:

- (a) Apply to the navigation of all vessels at or near a deepwater port; and
- (b) Apply to all vessels while in a safety zone, area to be avoided, or no anchoring area.

**§ 150.305 How does this subpart apply to unmanned deepwater ports?**

The master of any tanker calling at an unmanned deepwater port is

responsible for the safe navigation of the vessel to and from the port, and for the required notifications in § 150.325.

Once the tanker is connected to the unmanned deepwater port, the master must maintain radar surveillance in compliance with the requirements of § 150.310.

**§ 150.310 When is radar surveillance required?**

A manned deepwater port's person in charge of vessel operations must maintain radar surveillance of the safety zone or area to be avoided when:

- (a) A tanker is proceeding to the safety zone after submitting the report required in § 150.325;
- (b) A tanker or support vessel is underway in the safety zone or area to be avoided;
- (c) A vessel other than a tanker or support vessel is about to enter or is underway in the safety zone or area to be avoided; or
- (d) As described in the port security plan.

**§ 150.320 What advisories are given to tankers?**

A manned deepwater port's person in charge of vessel operations must advise the master of each tanker underway in the safety zone or area to be avoided of the following:

- (a) At intervals not exceeding 10 minutes, the vessel's position by range and bearing from the pumping platform complex; and
- (b) The position and the estimated course and speed, if moving, of all other vessels that may interfere with the movement of the tanker within the safety zone or area to be avoided.

**§ 150.325 What is the first notice required before a tanker enters the safety zone or area to be avoided?**

(a) The owner, master, agent, or person in charge of a tanker bound for a manned deepwater port must comply with the notice of arrival requirements in subpart C of part 160 of this chapter.

(b) The owner, master, agent, or person in charge of a tanker bound for a manned deepwater port must report the pertinent information required in § 150.15(i)(4)(vi) for the vessel, including:

- (1) The name, gross tonnage, and draft of the tanker;
- (2) The type and amount of cargo in the tanker;
- (3) The location of the tanker at the time of the report;
- (4) Any conditions on the tanker that may impair its navigation, such as fire, or malfunctioning propulsion, steering, navigational, or radiotelephone equipment. The testing requirements in

§ 164.25 of this chapter are applicable to vessels arriving at a deepwater port;

(5) Any leaks, structural damage, or machinery malfunctions that may impair cargo transfer operations or cause a product discharge; and

(6) The operational condition of the equipment listed under § 164.35 of this chapter on the tanker.

(c) If the estimated time of arrival changes by more than 6 hours from the last reported time, the National Vessel Movement Center (NVMC) and the port's person in charge of vessel operations must be notified of the correction as soon as the change is known.

(d) If the information reported in paragraphs (b)(4) or (b)(5) of this section changes at any time before the tanker enters the safety zone or area to be avoided at the deepwater port, or while the tanker is in the safety zone or area to be avoided, the master of the tanker must report the changes to the NVMC and port's person in charge of vessel operations as soon as possible.

**§ 150.330 What is the second notice required before a tanker enters the safety zone or area to be avoided?**

When a tanker bound for a manned deepwater port is 20 miles from entering the port's safety zone or area to be avoided, the master of the tanker must notify the port's person in charge of vessel operations of the tanker's name and location.

**§ 150.340 What are the rules of navigation for tankers in the safety zone or area to be avoided?**

(a) A tanker must enter or depart the port's safety zone or area to be avoided in accordance with the navigation procedures in the port's approved operations manual as described in § 150.15(i).

(b) A tanker must not anchor in the safety zone or area to be avoided, except in a designated anchorage area.

(c) A tanker may not enter a safety zone or area to be avoided in which another tanker is present, unless it has been cleared by the person in charge of the port and no other tankers are underway.

(d) A tanker must not operate, anchor, or moor in any area of the safety zone or area to be avoided in which the net under keel clearance would be less than 5 feet.

**§ 150.345 How are support vessels cleared to move within the safety zone or area to be avoided?**

All movements of support vessels within a manned deepwater port's safety zone or area to be avoided must

be cleared in advance by the port's person in charge of vessel operations.

**§ 150.350 What are the rules of navigation for support vessels in the safety zone or area to be avoided?**

A support vessel must not anchor in the safety zone or area to be avoided, except:

- (a) In an anchorage area; or
- (b) For vessel maintenance, which, in the case of a manned deepwater port, must be cleared by the port's person in charge of vessel operations.

**§ 150.355 How are other vessels cleared to move within the safety zone?**

(a) Clearance by a manned deepwater port's person in charge of vessel operations is required before a vessel, other than a tanker or support vessel, enters the safety zone.

(b) The port's person in charge of vessel operations may clear a vessel under paragraph (a) of this section only if its entry into the safety zone would not:

- (1) Interfere with the purpose of the deepwater port;
- (2) Endanger the safety of life, property, or environment; or

(3) Be prohibited by regulation.

(c) At an unmanned deepwater port, such as a submerged turret landing (STL) system, paragraphs (a) and (b) of this section apply once a tanker connects to the STL buoy.

**§ 150.380 Under what circumstances may vessels operate within the safety zone or area to be avoided?**

(a) Table 150.380(a) of this section lists both the areas within a safety zone where a vessel may operate and the clearance needed for that location.

TABLE 150.380(a).—REGULATED ACTIVITIES OF VESSELS AT DEEPWATER PORTS

Regulated activities	Safety zone	Areas to be avoided around each deepwater port component <sup>1</sup>	Anchorage areas	Other areas within and adjacent to the safety zone (e.g., no anchoring area)
Tankers calling at port .....	C	C	C	C
Support vessel movements .....	C	C	C	C
Transit by vessels other than tankers or support vessels .....	F	D	P	P
Mooring to surface components (for example an SPM) by vessels other than tankers or support vessels.	N	N	N	N
Anchoring by vessels other than tankers or support vessels .....	N	F	C	F
Fishing, including bottom trawl (shrimping) .....	N	D	P	N
Mobile drilling operations or erection of structures. <sup>2</sup>	N	R	N	N
Lightering/transshipment .....	N	N	N	N

<sup>1</sup> Areas to be avoided are in subpart J of this part.

<sup>2</sup> Not part of Port Installation.

Key to regulated activities for Table 150.380(a):

C—Movement of the vessel is permitted when cleared by the person in charge of vessel operations.

D—Movement is not restricted, but recommended transit speed not to exceed 10 knots. Communication with the person in charge of vessel operations.

F—Only in an emergency. Anchoring will be avoided in a no anchoring area except in the case of immediate danger to the ship or persons on board.

N—Not permitted.

P—Transit is permitted when the vessel is not in the immediate area of a tanker, and when cleared by the vessel traffic supervisor.

R—Permitted only if determined that operation does not create unacceptable risk to personnel safety and security and operation. For transiting foreign-flag vessels, the requirement for clearance to enter the area to be avoided and no anchoring area is advisory in nature, but mandatory for an anchorage area established within 12 nautical miles.

(b) If the activity is not listed in table 150.380(a) of this section, nor otherwise provided for in this subpart, the Captain of the Port's permission is required before operating in the safety zone or regulated navigation area.

**§ 150.385 What is required in an emergency?**

In an emergency, for the protection of life or property, a vessel may deviate from a vessel movement requirement in this subpart without clearance from a manned deepwater port's person in charge of vessel operations if the master advises the port person in charge of the reasons for the deviation at the earliest possible moment.

**Subpart E—Cargo Transfer Operations**

**§ 150.400 What does this subpart do?**

This subpart prescribes rules that apply to the transfer of oil or natural gas at a deepwater port.

**§ 150.405 How must a cargo transfer system be tested and inspected?**

(a) No person may transfer oil or natural gas through a cargo transfer system (CTS) at a deepwater port unless it has been inspected and tested according to this section.

(b) The single point mooring (SPM)–CTS must be maintained as required by the design standards used to comply with § 149.650 of this chapter.

(c) If the manufacturer's maximum pressure rating for any cargo transfer hose in a SPM–CTS has been exceeded, unless it was exceeded for testing

required by this section, the hose must be:

- (1) Removed;
- (2) Hydrostatically tested to 1.5 times its maximum working pressure for oil, or 1.1 times its maximum working pressure for natural gas; and
- (3) Visually examined externally and internally for evidence of:
  - (i) Leakage;
  - (ii) Loose covers;
  - (iii) Kinks;
  - (iv) Bulges;
  - (v) Soft spots; and
  - (vi) Gouges, cuts, or slashes that penetrate the hose reinforcement.

(d) Each submarine hose used in cargo transfer operations in an SPM–CTS must have been removed from its coupling, surfaced, and examined as described in paragraphs (c)(2) and (c)(3) of this section, within the preceding 2

years for oil, or 15 months for natural gas; and

(e) Before resuming cargo transfer operations, each submarine hose in an SPM-CTS must be visually examined in place as described in paragraph (c)(3) of this section after cargo transfer operations are shut down due to sea conditions at the deepwater port.

**§ 150.420 What actions must be taken when cargo transfer equipment is defective?**

When any piece of equipment involved in oil or natural gas transfer equipment is defective:

(a) The piece of equipment must be replaced or repaired before making any further cargo transfers; and

(b) The repaired or replaced piece must meet or exceed its original specifications. Repairs must be conducted in accordance with the port's maintenance program outlined in the operations manual, and that program must provide for the repair of natural gas transfer hoses in accordance with § 127.405 of this chapter.

**§ 150.425 What are the requirements for transferring cargo?**

Cargo transfer procedures must be outlined in the port operations manual and must provide:

(a) Oil transfer procedures that accord with § 156.120 of this chapter; and

(b) Natural gas transfer procedures that accord with §§ 127.315, 127.317 and 127.319 of this chapter.

**§ 150.430 What are the requirements for a declaration of inspection?**

(a) No person may transfer cargo from a tanker to a manned deepwater port unless a declaration of inspection complying with § 156.150(c) for oil, or § 127.317 for natural gas, of this chapter has been filled out and signed by the vessel's officer in charge of cargo transfer and the person in charge (PIC) of cargo transfer for the deepwater port.

(b) Before signing a declaration of inspection, the vessel's officer in charge of cargo transfer must inspect the tanker, and the PIC of cargo transfer for the deepwater port must inspect the deepwater port. They must indicate, by initialing each item on the declaration of inspection form, that the tanker and deepwater port comply with § 156.150 for oil, or § 127.317 for natural gas, of this chapter.

**§ 150.435 When are cargo transfers not allowed?**

No person may transfer cargo at a deepwater port:

(a) When the person in charge (PIC) of cargo transfer is not on duty at the port;

(b) During an electrical storm in the port's vicinity;

(c) During a fire at the port, at the onshore receiving terminal, or aboard a vessel berthed at the port, unless the PIC of cargo transfer determines that a cargo transfer should be resumed as a safety measure;

(d) When a leak develops so that a sufficient quantity of product accumulates in the cargo containment underneath the manifold or piping;

(e) When there are not enough personnel nor equipment at the port dedicated to contain and remove the discharge or perform the emergency response functions as required in the port's response plan under part 154 for oil, or emergency plan under part 127 for natural gas, of this chapter;

(f) Whenever the emergency shutdown system should have activated but failed to;

(g) By lighterage, except in bunkering operations, unless otherwise authorized by the Captain of the Port;

(h) When the weather at the port does not meet the minimum operating conditions for cargo transfers as defined in the port's operations manual; or

(i) When prescribed by the port security plan under heightened security conditions at the port or its adjacent areas, or on vessels calling on or serving the port.

**§ 150.440 How may the Captain of the Port order suspension of cargo transfers?**

(a) In case of emergency, the COTP may order the suspension of cargo transfers at a port to prevent the discharge, or threat of discharge, of oil or natural gas, or to protect the safety of life and property.

(b) An order of suspension may be made effective immediately.

(c) The order of suspension must state the reasons for the suspension.

(d) The licensee may petition the District Commander to reconsider the order of suspension. The petition must be in writing, unless the order of suspension takes effect immediately, in which case the petition may be made by any means, but the petition does not delay the effective date of the suspension. The decision of the District Commander is considered a final agency action.

**§ 150.445 When is oil in a single point mooring-oil transfer system (SPM-OTS) displaced with water?**

(a) The oil in an SPM-OTS must be displaced with water, and the valve at the pipeline end manifold must be closed whenever:

(1) A storm warning forecasts weather conditions that will exceed the design operating criteria listed in the operations manual for the SPM-OTS;

(2) A vessel is about to depart the SPM because of storm conditions; or

(3) The SPM is not scheduled for use in an oil transfer operation within the next 7 days.

(b) The requirement in paragraph (a) of this section is waived if port officials can demonstrate to the Officer in Charge of Marine Inspection that a satisfactory alternative means of safely securing all cargo transfer hoses can be implemented in the event of severe weather conditions.

**Subpart F—Emergency and Specialty Equipment**

**§ 150.500 What does this subpart do?**

This subpart concerns requirements for maintenance, repair, and operational testing of emergency and specialty equipment at a deepwater port.

**Maintenance and Repair**

**§ 150.501 How must emergency equipment be maintained and repaired?**

All lifesaving, firefighting, and other emergency equipment at a deepwater port, including additional equipment not required to be on board the deepwater port, must be maintained in good working order and repaired according to the port's planned maintenance program and the requirements outlined in this subpart.

**Lifesaving Equipment (General)**

**§ 150.502 What are the maintenance and repair requirements for lifesaving equipment?**

(a) Each deepwater port must have on board, or in the operator's principal office in the case of an unmanned port, the manufacturer's instructions for performing onboard maintenance and repair of the port's lifesaving equipment. The instructions must include the following for each item of equipment, as applicable:

(1) Instructions for maintenance and repair;

(2) A checklist for use when carrying out the monthly inspections required under § 150.513;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of spare parts sources; and

(7) A log for records of inspections and maintenance.

(b) In lieu of the manufacturer's instructions required under paragraph (a) of this section, the deepwater port may have its own onboard planned maintenance program for maintenance and repair that is equivalent to the

procedures recommended by the equipment manufacturer.

(c) The deepwater port must designate a person in charge of ensuring that maintenance and repair is carried out in accordance with the instructions required in paragraph (a) of this section.

(d) If deficiencies in the maintenance or condition of lifesaving equipment are identified, the Officer in Charge of Marine Inspection (OCMI) may review the instructions under paragraph (a) of this section and require appropriate changes to the instructions or operations to provide for adequate maintenance and readiness of the equipment.

(e) When lifeboats, rescue boats, and liferafts are not fully operational because of ongoing maintenance or repairs, there must be a sufficient number of fully operational lifeboats and liferafts available for use to accommodate all persons on the deepwater port.

(f) Except in an emergency, repairs or alterations affecting the performance of lifesaving equipment must not be made without notifying the OCMI in advance. The person in charge must report emergency repairs or alterations to lifesaving equipment to the OCMI, as soon as practicable.

(g) The person in charge must ensure that spare parts and repair equipment are provided for each lifesaving appliance and component subject to excessive wear or consumption.

#### Launching Appliances

##### **§ 150.503 What are the time interval requirements for maintenance on survival craft falls?**

(a) Each fall used in a launching device for survival craft or rescue boats must be turned end-for-end at intervals of not more than 30 months.

(b) Each fall must be replaced by a new fall when deteriorated, or at intervals of not more than 5 years, whichever is earlier.

(c) A fall that cannot be turned end-for-end under paragraph (a) of this section must be carefully inspected between 24 and 30 months after its installation. If the inspection shows that the fall is faultless, the fall may be continued in service up to 4 years after its installation. It must be replaced by a new fall 4 years after installation.

##### **§ 150.504 When must the operator service and examine lifeboat and rescue boat launching appliances?**

(a) The operator must service launching appliances for lifeboats and rescue boats at intervals recommended in the manufacturer's instructions under § 150.502(a), or according to the

deepwater port's planned maintenance program under § 150.502(b).

(b) The operator must thoroughly examine launching appliances for lifeboats and rescue boats at intervals of not more than 5 years. Upon completion of the examination, the operator must subject the winch brakes of the launching appliance to a dynamic test.

##### **§ 150.505 When must the operator service and examine lifeboat and rescue boat release gear?**

(a) The operator must service lifeboat and rescue boat release gear at intervals recommended in the manufacturer's instructions under § 150.502(a), or according to the deepwater port's planned maintenance program under § 150.502(b).

(b) The operator must subject lifeboat and rescue boat release gear to a thorough examination at each annual self-certification inspection by personnel trained in examining the gear.

#### Inflatable Lifesaving Appliances

##### **§ 150.506 When must the operator service inflatable lifesaving appliances and marine evacuation systems?**

(a) The operator must service each inflatable lifejacket, hybrid inflatable lifejacket, and marine evacuation system at 1-year intervals after its initial packing. The operator may delay the servicing for up to 5 months to meet the next scheduled inspection of the deepwater port.

(b) The operator must service each inflatable liferaft no later than the month and year on its servicing sticker under 46 CFR 160.151–57(m)(3)(ii), except that the operator may delay servicing by up to 5 months to meet the next scheduled inspection of the deepwater port. The operator must also service each inflatable liferaft:

(1) Whenever the container of the raft is damaged; or

(2) Whenever the container straps or seals are broken.

##### **§ 150.507 How must the operator service inflatable lifesaving appliances?**

(a) The operator must service each inflatable liferaft according to 46 CFR subpart 160.151.

(b) The operator must service each inflatable lifejacket according to 46 CFR subpart 160.176.

(c) The operator must service each hybrid inflatable lifejacket according to the owner's manual and the procedures in 46 CFR subpart 160.077.

##### **§ 150.508 What are the maintenance and repair requirements for inflatable rescue boats?**

The operator must perform the maintenance and repair of inflatable

rescue boats according to the manufacturer's instructions.

#### Operational Tests and Inspections (General)

##### **§ 150.509 How must emergency equipment be tested and inspected?**

All lifesaving, firefighting, and other emergency equipment at a deepwater port must be tested and inspected under this subpart.

##### **§ 150.510 How must tested emergency equipment be operated?**

The equipment must be operated under the operating instructions of the equipment's manufacturer when tests or inspections include operational testing of emergency equipment.

##### **§ 150.511 What are the operational testing requirements for lifeboat and rescue boat release gear?**

(a) Lifeboat and rescue boat release gear must be operationally tested under a load of 1.1 times the total mass of the lifeboat or rescue boat when loaded with its full complement of persons and equipment.

(b) The test must be conducted whenever the lifeboat, rescue boat, or its release gear is overhauled, or at least once every 5 years.

(c) The Officer in Charge of Marine Inspection may consider alternate operational test procedures to those under paragraph (a) of this section.

#### Frequency of Tests and Inspections

##### **§ 150.512 What occurs during the weekly tests and inspections?**

The required weekly tests and inspections of lifesaving equipment are as follows:

(a) The operator must visually inspect each survival craft, rescue boat, and launching device to ensure its readiness for use;

(b) The operator must test the general alarm system; and

(c) The operator must test for readiness of the engine, starting device, and communications equipment of each lifeboat and rescue boat according to the manufacturer's instructions.

##### **§ 150.513 What occurs during the monthly tests and inspections?**

(a) The operator must inspect each item of lifesaving equipment under § 150.502(b) of this subpart monthly, to ensure that the equipment is complete and in good order. The operator must keep on the deepwater port, or in the operator's principal office in the case of an unmanned deepwater port, a report of the inspection that includes a statement as to the condition of the equipment, and make the report available for review by the Coast Guard.

(b) The operator must test, on a monthly basis, each emergency position indicating radio beacon (EPIRB) and each search and rescue transponder (SART), other than an EPIRB or SART in an inflatable liferaft. The operator must test the EPIRB using the integrated test circuit and output indicator to determine whether the EPIRB is operational.

**§ 150.514 What are the annual tests and inspections?**

At least annually, the operator must:

(a) Strip, clean, thoroughly inspect, and, if needed, repair each lifeboat, rescue boat, and liferaft. At that time, the operator must also empty, clean, and refill each fuel tank with fresh fuel;

(b) Thoroughly inspect and, if needed, repair each davit, winch, fall, and other launching device;

(c) Check all lifesaving equipment and replace any item that is marked with an expiration date that has passed;

(d) Check all lifesaving equipment batteries and replace any battery that is marked with an expiration date that has passed; and

(e) Replace any battery that is not marked with an expiration date if that battery is used in an item of lifesaving equipment, except for a storage battery used in a lifeboat or rescue boat.

(f) The requirements in this section do not relieve the person in charge of the requirement to keep the equipment ready for immediate use.

**Weight Testing**

**§ 150.515 What are the requirements for weight testing of newly installed or relocated craft?**

(a) The operator must perform installation weight testing, using the procedure outlined in 46 CFR 199.45(a)(1) on each new lifeboat, rescue boat, and davit-launched liferaft system.

(b) The operator must conduct installation weight tests, according to paragraph (a) of this section, when survival crafts are relocated to another deepwater port.

**§ 150.516 What are the periodic requirements for weight testing?**

The operator must weight test, using the procedure outlined in 46 CFR 199.45(a)(1), each lifeboat, davit-launched liferaft, and rescue boat every time a fall is replaced or turned end-for-end.

**§ 150.517 How are weight tests supervised?**

(a) The installation and periodic tests required by §§ 150.515 and 150.516 of this subpart must be supervised by a

person familiar with lifeboats, davit-launched liferafts, rescue boats, and with the test procedures under those sections.

(b) The person supervising the tests must attest, in writing, that the tests have been performed according to Coast Guard regulations. The operator must keep a copy of the supervisor's attesting statement on board the deepwater port, or in the operator's principal office in the case of an unmanned deepwater port, and make it available to the Officer in Charge of Marine Inspection.

**Personal Safety Gear**

**§ 150.518 What are the inspection requirements for work vests and immersion suits?**

(a) All work vests and immersion suits must be inspected by the owner or operator pursuant to § 150.105 of this part to determine whether they are in serviceable condition.

(b) If a work vest or immersion suit is inspected and is in serviceable condition, then it may remain in service. If not, then it must be removed from the deepwater port.

**Emergency Lighting and Power Systems**

**§ 150.519 What are the requirements for emergency lighting and power systems?**

(a) The operator must test and inspect the emergency lighting and power systems at least once a week to determine if they are in proper operating condition. If they are not in proper operating condition, then the operator must repair or replace their defective parts.

(b) The operator must test, under load, each emergency generator driven by an internal combustion engine that is used for an emergency lighting and power system at least once per month for a minimum of 2 hours.

(c) The operator must test each storage battery for the emergency lighting and power systems at least once every 6 months to demonstrate the ability of the batteries to supply the emergency loads for an 8-hour period. The operator must follow the manufacturer's instructions in performing the battery test to ensure the batteries are not damaged during testing.

**Fire Extinguishing Equipment**

**§ 150.520 When must fire extinguishing equipment be tested and inspected?**

The operations manual must specify how and when the operator will test and inspect each portable fire extinguisher, semi-portable fire extinguisher, and fixed fire extinguishing system. These specifications must accord with 46 CFR 31.10-18.

**§ 150.521 What records are required?**

(a) The operator must maintain a record of each test and inspection under § 150.520 on the deepwater port, or in the operator's principal office in the case of an unmanned deepwater port, for at least 2 years.

(b) The record must show:

(1) The date of each test and inspection;

(2) The number or other identification of each fire extinguisher or system tested or inspected; and

(3) The name of the person who conducted the test or inspection and the name of the company that person represents.

**Miscellaneous Operations**

**§ 150.530 What may the fire main system be used for?**

The fire main system may be used only for firefighting and deck washing, unless it is capable of being isolated and can provide the applicable minimum pressures required in § 149.416 of this chapter.

**§ 150.531 How many fire pumps must be kept ready for use at all times?**

At least one of the fire pumps required by this subchapter must be kept ready for use at all times.

**§ 150.532 What are the requirements for connection and stowage of fire hoses?**

(a) At least one length of fire hose, with a combination nozzle, must be connected to each fire hydrant at all times. If it is exposed to the weather, the fire hose may be removed from the hydrant during freezing weather.

(b) When not in use, a fire hose connected to a fire hydrant must be stowed on a hose rack.

(c) The hydrant nearest the edge of a deck must have enough fire hose length connected to it to allow 10 feet of hose, when pressurized, to curve over the edge.

**§ 150.540 What are the restrictions on fueling aircraft?**

If the deepwater port is not equipped with a permanent fueling facility, the Captain of the Port's approval is necessary before aircraft may be fueled at the port.

**§ 150.550 What are the requirements for the muster list?**

(a) A muster list must be posted on each pumping platform complex.

(b) The muster list must:

(1) List the name and title of each person, in order of succession, who is the person in charge of the pumping platform complex for purposes of supervision during an emergency;



(2) List the special duties and duty stations for each person on the pumping platform complex, in the event of an emergency that requires the use of equipment covered by part 149 of this chapter; and

(3) Identify the signals for calling persons to their emergency stations and for abandoning the pumping platform complex.

**§ 150.555 How must cranes be maintained?**

Cranes must be operated, maintained, and tested in accordance with 46 CFR part 109, subpart F.

**Subpart G—Workplace Safety and Health**

**§ 150.600 What does this subpart do?**

This subpart sets safety and health requirements for the workplace on a deepwater port.

**Safety and Health (General)**

**§ 150.601 What are the safety and health requirements for the workplace on a deepwater port?**

(a) Each operator of a deepwater port must ensure that the port complies with the requirements of this subpart, and must ensure that all places of employment within the port are:

(1) Maintained in compliance with workplace safety and health regulations of this subpart; and

(2) Free from recognized hazardous conditions.

(b) Persons responsible for actual operations, including owners, operators, contractors, and subcontractors must ensure that those operations subject to their control are:

(1) Conducted in compliance with workplace safety and health regulations of this subpart; and

(2) Free from recognized hazardous conditions.

(c) The term “recognized hazardous conditions,” as used in this subpart, means conditions that are:

(1) Generally known among persons in the affected industry as causing, or likely to cause, death or serious physical harm to persons exposed to those conditions; and

(2) Routinely controlled in the affected industry.

**§ 150.602 What occupational awareness training is required?**

(a) Each deepwater port operator must ensure that all port personnel are provided with information and training on recognized hazardous conditions in their workplace, including, but not limited to, electrical, mechanical, and chemical hazards. Specific required

training topics are outlined in § 150.15(w).

(b) As an alternative to compliance with the specific provisions of this subpart, an operator may provide, for workplace safety and health, the implementation of an approved, port-specific safety and environmental management program (SEMP). Operators should consult with the Commandant (G–P) in preparing an SEMP. Five copies of a proposed SEMP must be submitted to the Commandant for evaluation. The Commandant may consult with the local Officer in Charge of Marine Inspection, and will approve the SEMP if he or she finds that the SEMP provides at least as much protection of workplace safety and health as do the specific provisions of this subpart.

**§ 150.603 What emergency response training is required?**

The requirements for emergency response training must be outlined in the port operations manual.

**§ 150.604 Who controls access to medical monitoring and exposure records?**

If medical monitoring is performed or exposure records are maintained by an employer, the owner, operator, or person in charge must establish procedures for access to these records by personnel.

**§ 150.605 What are the procedures for reporting a possible workplace safety or health violation at a deepwater port?**

Any person may notify the Officer in Charge of Marine Inspection verbally or in writing of:

(a) A possible violation of a regulation in this part; or

(b) A hazardous or unsafe working condition on any deepwater port.

**§ 150.606 After learning of a possible violation, what does the Officer in Charge of Marine Inspection do?**

After reviewing the information received under § 150.605 of this part, and conducting any necessary investigation, the OCMI notifies the owner or operator of any deficiency or hazard and initiates enforcement measures as the circumstances warrant. The identity of any person making a report of a violation will remain confidential, except to the extent necessary for the performance of official duties or as agreed to by the person.

**General Workplace Conditions**

**§ 150.607 What are the general safe working requirements?**

(a) All equipment, including machinery, cranes, derricks, portable power tools, and, most importantly,

safety gear must be used in a safe manner and in accordance with the manufacturer’s recommended practice, unless otherwise stated in this subchapter.

(b) All machinery and equipment must be maintained in proper working order or removed.

**Personal Protective Equipment**

**§ 150.608 Who is responsible for ensuring that the personnel use or wear protective equipment and are trained in its use?**

(a) Each deepwater port operator must ensure that all personnel wear personal protective equipment when within designated work areas.

(b) Each deepwater port operator must ensure that:

(1) All personnel engaged in the operation are trained in the proper use, limitations, and maintenance of the personal protective equipment specified by this subpart;

(2) The equipment is maintained and used or worn as required by this subpart; and

(3) The equipment is made available and on hand for all personnel engaged in the operation.

**Eyes and Face**

**§ 150.609 When is eye and face protection required?**

The operator must provide eye and face protectors for the use of persons engaged in or observing activities where damage to the eye is possible, such as welding, grinding, machining, chipping, handling hazardous materials, or burning or cutting acetylene. These eye and face protectors must be:

(a) Properly marked and in compliance with the requirements of 29 CFR 1910.133; and

(b) Maintained in good condition or replaced when necessary.

**§ 150.610 Where must eyewash equipment be located?**

Portable or fixed eyewash equipment providing emergency relief must be immediately available near any area where there is a reasonable probability that eye injury may occur.

**Head**

**§ 150.611 What head protection is required?**

The deepwater port operator must ensure that where there is a reasonable probability of injury from falling objects or contact with electrical conductors, personnel working or visiting such an area wear head protectors designed to protect them against such injury and complying with 29 CFR 1910.135.

## Feet

### § 150.612 What footwear is required?

The deepwater port operator must ensure that while personnel are working in an area, or engaged in activities, where there is a reasonable probability for foot injury to occur, they wear footwear that complies with 29 CFR 1910.136, except for when environmental conditions exist that present a hazard greater than that against which the footwear is designed to protect.

## Noise and Hearing Protection

### § 150.613 What are the requirements for a noise monitoring and hearing protection survey?

(a) The deepwater port operator must measure noise and provide hearing protection in accordance with 29 CFR 1910.95.

(b) The initial noise survey for a deepwater port must be completed within one year of beginning operations.

## Clothing

### § 150.614 When is protective clothing required?

The deepwater port operator must ensure that personnel exposed to flying particles, radiant energy, heavy dust, or hazardous materials wear clothing and gloves that protect against the hazard involved.

## Electrical

### § 150.615 What safe practices are required?

(a) The deepwater port operator must ensure that before personnel begin work that might expose them to an electrical charge, they turn off the electricity, unless doing so is not feasible.

(b) The deepwater port operator must ensure that personnel turning off equipment pursuant to paragraph (a) of this section follow the lockout or tagging procedures specified in 29 CFR 1910.147, and in §§ 150.616 and 150.617.

(c) The deepwater port operator must ensure that, to prevent electrical shock, personnel receive training in electrical, safety-related work practices in the area of the work they perform, including the use of electrical personal protective equipment appropriate to protect against potential electrical hazards.

## Lockout/Tagout

### § 150.616 What are the requirements for lockout?

The deepwater port operator must ensure that, if electrical, hydraulic, mechanical, or pneumatic equipment does not need to be powered during the

work described in § 150.615(a), and has a lockout or other device to prevent the equipment from being turned on unintentionally, that the lockout or other device is activated.

### § 150.617 What are the requirements for tagout?

(a) The deepwater port operator must ensure that, before work takes place on equipment that is disconnected from the power source, a tag complying with this section is placed at the location where the power is disconnected. The operator must ensure that, if there is a control panel for the equipment in line between the equipment and the location where the power is disconnected, a tag complying with this section is also placed on the control panel.

(b) Each tag or sign must have words stating:

(1) That equipment is being worked on;

(2) That power must not be restored or the equipment activated; and

(3) The name of the person who placed the tag.

(c) Only the person who placed the tag, that person's immediate supervisor, or the relief person of either, is authorized to remove the tag.

## Respiratory Protection

### § 150.618 What are the requirements for respiratory protection?

(a) The deepwater port operator must ensure that respiratory protection measures are taken in compliance with 29 CFR 1910.134 including establishment of a formal respiratory protection program.

(b) The deepwater port operator must ensure that measures for protection from exposure to asbestos are taken in compliance with 29 CFR 1910.1001.

(c) The deepwater port operator must ensure that measures for protection from exposure to inorganic lead are taken in compliance with 29 CFR 1910.1025.

## Fall Arrest

### § 150.619 What are the fall arrest system requirements?

(a) The deepwater port operator must ensure that all personnel who are exposed to the risk of falling more than 6 feet, or who are at risk of falling any distance onto equipment with irregular surfaces, exposed moving components, electrically energized cables or connectors, or water, are protected against such a fall by guardrails or other measures that comply with 29 CFR 1910.23 or 1910.28, or by the use of suitable lifesaving equipment that complies with 46 CFR part 160.

(b) In addition, the operator must take measures to control the risk of falling,

tripping, or slipping in work areas and walkways due to the presence of loose material or wet conditions, including spills.

## Machine Guards

### § 150.620 What are the requirements for protecting personnel from machinery?

The deepwater port operator must ensure that all personnel are protected from the risks created by operating machinery through the use of guard devices or other measures that comply with 29 CFR 1910.212, or through the use of conspicuously posted warning signs that comply with § 150.626 of this part.

## Slings

### § 150.621 What are the requirements for slings?

The use of slings for handling material must comply with the requirements of 29 CFR 1910.184.

## Warning Signs

### § 150.622 What are the warning sign requirements?

The construction and use of warning signs must be in compliance with 29 CFR 1910.144 and 1910.145.

## Confined Space Safety

### § 150.623 What are the requirements for protecting personnel from hazards associated with confined spaces?

(a) All personnel must be protected by suitable measures from inadvertently entering a confined space containing a hazardous atmosphere that can cause death or serious injury.

(b) Each deepwater port operator shall evaluate the specific hazards associated with entering the port's confined spaces, and develop a confined space safe entry program that complies with:

(1) 29 CFR 1910.146 for permit-required confined spaces, where applicable; and

(2) A national consensus standard, as that term is defined in 29 CFR 1910.2, or that is set by a nationally recognized testing laboratory as defined in 29 CFR 1910.7 and that provides levels of personnel protection at least equivalent to those provided for shipyard personnel by 29 CFR part 1915, subpart B.

(c) To implement the confined space safe entry program, the deepwater port operator must determine the education, training, and experience needed by the designated competent persons to safely conduct their duties, including:

(1) Identification, testing, and certification of confined spaces; and

(2) Training of personnel regarding dangers.

(d) These measures must be specified in the port operations manual, along with a list of all confined spaces on the port, describing the specific hazards associated with each such space.

### Blood-Borne Pathogens

#### § 150.624 What are the requirements for protecting personnel from blood-borne pathogens?

Measures for protection from the dangers of blood-borne pathogens must be taken in compliance with 29 CFR 1910.1030.

### Hazard Communication Program

#### § 150.625 What must the hazard communication program contain?

(a) Each deepwater port must have a hazard communication program available for the training of, and review by, all personnel on the deepwater port.

(b) The program must be in writing and describe or include:

- (1) An inventory of each hazardous material on the deepwater port;
- (2) The potential hazards of the material;
- (3) The material's intended use on the deepwater port;
- (4) The methods for handling and storing the material;
- (5) The protective measures and equipment used to avoid hazardous exposure;
- (6) The labeling, marking, or tagging of the material;
- (7) The special precautions, such as lockout and tagout under §§ 150.616 and 150.617, that should be emphasized when working around the material;
- (8) Information and training required for personnel on board the deepwater port; and
- (9) A material safety data sheet for the material.

(c) The information on a material safety data sheet itself may be used by the employer as a tool for educating employees about the hazards posed by the material, provided the employees acknowledge and can demonstrate appropriate precautionary measures to minimize risk to health and safety.

(d) The program must be supplemented as necessary to address each hazardous material newly introduced on the deepwater port.

#### § 150.626 What is the hazard communication program used for?

(a) The hazard communication program must ensure that all deepwater port employees, when required by their duties, work safely and responsibly with hazardous materials.

(b) The person in charge for safety must ensure that, before a person is allowed to work at the deepwater port:

(1) A copy of the hazard communication program is made available to the person; and

(2) The person is trained in the information contained in the program.

(c) The training must be supplemented to address each hazardous material newly introduced on the deepwater port.

#### § 150.627 Must material safety data sheets be available to all personnel?

(a) The person in charge must ensure that a material safety data sheet (MSDS) for each hazardous material on the fixed or floating deepwater port is made available to all personnel on the port.

(b) Each MSDS must contain at least information on the use, proper storage, potential hazards, and appropriate protective and response measures to be taken when exposed to or handling the material.

#### § 150.628 How must the operator label, tag, and mark a container of hazardous material?

The operator must label, tag, or mark each container of hazardous material with the identity of the hazardous material and the appropriate physical, health, reactive and other special condition hazard warnings. The only exception is for portable containers that transfer hazardous material from a labeled container to the work site for immediate use by the person who performs the transfer.

### Subpart H—Aids to Navigation

#### § 150.700 What does this subpart do?

This subpart provides requirements for the operation of aids to navigation at a deepwater port.

#### § 150.705 What are the requirements for maintaining and inspecting aids to navigation?

(a) All aids to navigation must be maintained in proper operating condition at all times.

(b) The Coast Guard may inspect all aids to navigation at any time without notice.

#### § 150.710 What are the requirements for supplying power to aids to navigation?

The power of all navigation aids must be maintained, at all times, at or above the level recommended by the equipment's manufacturer.

#### § 150.715 What are the requirements for lights used as aids to navigation?

(a) Each light under part 149, subpart E of this chapter, used as a navigation aid on a deepwater port, must be lit continuously from sunset to sunrise.

(b) During construction, a platform or single point mooring, if positioned on

the surface or within the net under keel depth for tankers transiting within the safety zone, must be marked with at least one of the following:

(1) The obstruction lights required for the structure in part 149, subpart E of this chapter;

(2) The fixed lights of a vessel attending the structure; or

(3) The general illumination lights on the structure, if they meet or exceed the intensity required for obstruction lights required for the structure.

(c) The focal plane of each obstruction light and lit rotating beacon must always coincide with the horizontal plane that passes through the light source.

#### § 150.720 What are the requirements for sound signals?

The sound signal on each pumping platform complex must be operated whenever the visibility in any horizontal direction from the structure is less than 5 miles. If the platform is under construction, this requirement may be met by the use of a 2-second whistle blast, made every 20 seconds by a vessel moored at the platform.

### Subpart I—Reports and Records

#### § 150.800 What does this subpart do?

This subpart concerns reports and records that the licensee must keep and submit.

### Reports

#### § 150.805 What reports must be sent both to a classification society and to the Coast Guard?

The licensee must submit to the Officer in Charge of Marine Inspection a copy of each report submitted to an authorized classification society, as defined in 46 CFR 8.100, for maintenance of a single point mooring's class under the rules of that society.

#### § 150.810 Reporting a problem with an aid to navigation.

(a) Any problem affecting the operation or characteristics of a navigation aid at the deepwater port must be reported to the District Commander by the fastest means available. The report must identify:

- (1) The navigation aid affected;
- (2) The aid's location;
- (3) The nature of the problem; and
- (4) The estimated repair time.

(b) When the problem is corrected, the District Commander must be notified.

#### § 150.812 What is the purpose of reporting casualties on deepwater ports?

The Coast Guard, upon receipt of a reported marine casualty on a deepwater port, as outlined in

§ 150.815, will conduct an investigation to determine the cause of the incident and to take appropriate measures to promote safety of life and property. The Coast Guard investigator will follow the procedures outlined in 46 CFR subpart 4.07 in conducting the investigation.

**§ 150.815 How must casualties be reported?**

(a) Immediately after aiding the injured and stabilizing the situation, the owner, operator, or person in charge of a deepwater port must notify the nearest Sector, Marine Safety Unit, or other Coast Guard unit of each event on, or involving, the deepwater port that results in one or more of the following:

- (1) Loss of life;
- (2) An injury that requires professional medical treatment beyond first aid and, if the person is engaged or employed on the deepwater port, that renders the individual unfit to perform his or her routine duties;
- (3) Impairment of the port's operations or primary lifesaving or fire-fighting equipment; or
- (4) Property damage in excess of \$100,000, including damage resulting from a vessel or aircraft striking the port. This amount includes the cost of labor and material to restore all affected items, including, but not limited to, restoring the port and the vessel or aircraft to their condition before the damage. This amount does not include the cost of salvage, cleaning, gas freeing, dry-docking, or demurrage of the port, vessel, or aircraft.

(b) The notice under paragraph (a) of this section must identify the following:

- (1) The deepwater port involved;
- (2) The owner, operator, or person in charge of the port;
- (3) The nature and circumstances of the event; and
- (4) The nature and extent of the injury and damage resulting from the event.

(c) The operator will ensure that the report contains the information pertinent to OCS operations as outlined in part 140 of this chapter when the deepwater port is co-located on a facility regulated by the Minerals Management Service.

**§ 150.820 When must a written report of casualty be submitted, and what must it contain?**

(a) In addition to the notice of casualty under § 150.815, the owner, operator, or person in charge of a deepwater port must submit a written report of the event to the nearest Officer in Charge of Marine Inspection (OCMI) within 5 days of the casualty notice. The report may be on Form 2692, Report of Marine Accident, Injury, or Death, or in

narrative form if it contains all of the applicable information requested in Form 2692. Copies of Form 2692 are available from the OCMI.

(b) The written report must also include the information relating to alcohol and drug involvement specified by 46 CFR 4.05–12. The deepwater port operator will ensure compliance with the chemical testing procedures outlined in 46 CFR part 16.

(c) If filed immediately after the event, the written report required by paragraph (a) of this section serves as the notice required under § 150.815.

(d) The operator will ensure that the written report is provided to the nearest regional Minerals Management Service (MMS) office when the deepwater port is co-located with an MMS-regulated facility.

**§ 150.825 Reporting a diving-related casualty.**

Deaths and injuries related to diving within the safety zone of a deepwater port must be reported according to 46 CFR 197.484 and 197.486, rather than to §§ 150.815 and 150.820.

**§ 150.830 Reporting a pollution incident.**

Oil pollution incidents involving a deepwater port are reported according to §§ 135.305 and 135.307 of this chapter.

**§ 150.835 Reporting sabotage or subversive activity.**

The owner, operator, or person in charge of a deepwater port must immediately report to the Captain of the Port, by the fastest possible means, any evidence of sabotage or subversive activity against any vessel at the deepwater port or against the deepwater port itself.

**Records**

**§ 150.840 What records must be kept?**

(a) The licensee must keep copies at the deepwater port of the reports, records, test results, and operating data required by this part. In the case of unmanned deepwater ports, these copies must be kept at the operator's principal office rather than on the port.

(b) The copies must be readily available to Coast Guard inspectors.

(c) Except for personnel records under § 150.845, the copies must be kept for 3 years.

**§ 150.845 Personnel records.**

The licensee must keep documentation on the designation and qualification of the supervisory positions, outlined in the port operations manual, that are responsible for the management of the deepwater

port. These records must be kept for the life of the deepwater port.

**§ 150.850 How long must a declaration of inspection form be kept?**

The licensee must keep signed copies of the declaration of inspection forms required by § 150.430 for one month from the date of signature.

**Subpart J—Safety Zones, No Anchoring Areas, and Areas To Be Avoided**

**§ 150.900 What does this subpart do?**

(a) This subpart provides requirements for the establishment, restrictions, and location of safety zones, no anchoring areas (NAAs), and areas to be avoided (ATBAs) around deepwater ports.

(b) Subpart D of this part, concerning vessel navigation and activities permitted and prohibited at deepwater ports, applies to safety zones, NAAs, ATBAs, and their adjacent waters; and supplements the International Regulations for Preventing Collisions at Sea.

(c) Recommended shipping safety fairways associated with deepwater ports are described in part 166 of this chapter.

**§ 150.905 Why are safety zones, no anchoring areas, and areas to be avoided established?**

(a) Safety zones, no anchoring areas (NAAs) and areas to be avoided (ATBAs) under this subchapter are established to promote safety of life and property, marine environmental protection, and navigational safety at deepwater ports and adjacent waters.

(b) Safety zones are the only federally regulated navigation areas. They accomplish these objectives by preventing or controlling specific activities, limiting access by vessels or persons, and by protecting the living resources of the sea from harmful agents.

(c) The NAAs and ATBAs are established via the International Maritime Organization (IMO). An NAA, specifically established to protect vessels in transit and sub-surface deepwater port components, will be mandatory. An ATBA will be a recommendatory routing measure.

(d) The sizes of restricted areas will be the minimum size needed to ensure safety, while at the same time considering potential impacts on other activities, including recreational boating, fishing, and OCS activity.

**§ 150.910 What installations, structures, or activities are prohibited in a safety zone?**

No installations, structures, or activities that are incompatible with or that present an unacceptable risk to safety of the deepwater port's operations or activity are allowed in the safety zone of a deepwater port.

**§ 150.915 How are safety zones, no anchoring areas, and areas to be avoided established and modified?**

(a) Safety zones are developed and designated during the application process for a deepwater port license, and may be established or modified through rulemaking. Rulemakings will afford prior public notice and comment, except when there is good cause not to do so, for example due to an imminent threat to the safety of life and property.

(b) Before a safety zone, no anchoring area (NAA), or area to be avoided (ATBA) is established, all factors detrimental to safety are considered, including but not limited to:

- (1) The scope and degree of the risk or hazard involved;
- (2) Vessel traffic characteristics and trends, including traffic volume, the sizes and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, and other similar factors;
- (3) Port and waterway configurations and variations in local conditions of

geography, climate and other similar factors;

(4) The need for granting exemptions for the installation and use of equipment or devices for use with vessel traffic services for certain classes of small vessels, such as self-propelled fishing vessels and recreational vessels;

(5) The proximity of fishing grounds, oil and gas drilling and production operations, or other potential or actual conflicting activity;

(6) Environmental factors;

(7) Economic impact and effects;

(8) Existing vessel traffic services; and

(9) Local practices and customs,

including voluntary arrangements and agreements within the maritime community.

(c) The Executive Branch, acting through the Secretary of State and Commandant (G-P) proposes NAAs and ATBAs for deepwater ports to the International Maritime Organization (IMO) for approval. The ATBAs will be implemented after IMO approval is granted and announced in an IMO Circular, and after publication of a notice in the **Federal Register**.

**§ 150.920 How can I find notice of new or proposed safety zones?**

In addition to documents published in the **Federal Register** under § 150.915, the District Commander may provide public notice of new or proposed safety zones by Broadcast Notices to Mariners,

Notices to Mariners, Local Notices to Mariners, newspapers, broadcast stations, or other means.

**§ 150.925 How long may a safety zone, no anchoring area, or area to be avoided remain in place?**

A safety zone, no anchoring area, or area to be avoided may go into effect as early as initial delivery of construction equipment and materials to the deepwater port site, and may remain in place until the deepwater port is removed.

**§ 150.930 What datum is used for the geographic coordinates in this subpart?**

The geographic coordinates used in this subpart are not intended for plotting on charts or maps using coordinates based on the North American Datum of 1983 (NAD 83). If you use the geographic coordinates in this subpart to plot on a chart or map referencing NAD 83, you must make corrections as shown on the chart or map.

**§ 150.940 Safety zones for specific deepwater ports.**

(a) Louisiana Offshore Oil Port (LOOP):

(1) The location of the safety zone for LOOP is as described in Table 150.940(A):

TABLE 150.940(A).—SAFETY ZONE FOR LOOP, GULF OF MEXICO

<i>Latitude N</i>	<i>Longitude W</i>
(i) Starting at: 28°55'23" .....	90°00'37"
(ii) A rhumb line to: 28°53'50" .....	90°04'07"
(iii) Then an arc with a 4,465 meter (4,883 yard) radius centered at the port's pumping platform complex: 28°53'06" .....	90°01'30"
(iv) To a point: 28°51'07" .....	90°03'06"
(v) Then a rhumb line to: 28°50'09" .....	90°02'24"
(vi) Then a rhumb line to: 28°49'05" .....	89°55'54"
(vii) Then a rhumb line to: 28°48'36" .....	89°55'00"
(viii) Then a rhumb line to: 28°52'04" .....	89°52'42"
(ix) Then a rhumb line to: 28°53'10" .....	89°53'42"
(x) Then a rhumb line to: 28°54'52" .....	89°57'00"
(xi) Then a rhumb line to: 28°54'52" .....	89°59'36"
(xii) Then an arc with a 4,465 meter (4,883 yard) radius centered again at the port's pumping platform complex;	
(xiii) To the point of starting: 28°55'23" .....	90°00'37"

(2) The areas to be avoided within the safety zone are:

(i) The area encompassed within a circle having a 600 meter radius around

the port's pumping platform complex and centered at:

*Latitude N*                      *Longitude W*  
 28°53'06"                      90° – 1'30"  
 (ii) The six areas encompassed within a circle having a 500 meter radius around each single point mooring (SPM) at the port and centered at:

<i>Latitude N</i>	<i>Longitude W</i>
28°54'12"	90°00'37"
28°53'16"	89°59'59"
28°52'15"	90°00'19"
28°51'45"	90°01'25"
28°52'08"	90°02'33"
28°53'07"	90°03'02"

(3) The anchorage area within the safety zone is an area enclosed by the rhumb lines joining points at:

<i>Latitude N</i>	<i>Longitude W</i>
28°52'21"	89°57'47"
28°54'05"	89°56'38"
28°52'04"	89°52'42"
28°50'20"	89°53'51"

28°52'21"                      89°57'47"  
 (b) The Gulf Gateway Deepwater Port (GGDWP):

(1) Description. The GGDWP safety zone is centered at the following coordinates: 28°05'16" N, 093°03'07" W. This safety zone, encompassed within a circle having a 500 meter radius around the primary component of the Gulf Gateway Deepwater Port, the submerged loading turret (buoy) and the pipeline end manifold (STL/PLEM), is located approximately 116 miles off the Louisiana coast at West Cameron Area, South Addition Block 603 "A".

(i) A mandatory no anchoring area contained within a circle of radius 1,500 meters centered on the following geographical position is designated as a mandatory no anchoring area:

*Latitude N*                      *Longitude W*

28°05'27"                      93°03'12"  
 (ii) An area to be avoided within a circle of radius 2,000 meters centered on the following geographical position is designated as an area to be avoided:

*Latitude N*                      *Longitude W*  
 28°05'27"                      93°03'12"

(2) Regulations. Deepwater port support vessels desiring to enter the safety zone must contact and obtain permission from the LNG Regasification Vessel (LNGRV) stationed at the deepwater port. The LNGRV can be contacted on VHF-FM Channel 13.

Dated: September 21, 2006.

**C.E. Bone,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention.*

[FR Doc. 06-8274 Filed 9-25-06; 9:49 am]

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# Federal Register

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**Friday,  
September 29, 2006**

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**Part IV**

## **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

**50 CFR Part 600**

**Fishing Capacity Reduction Program for  
the Longline Catcher Processor Subsector  
of the Bering Sea and Aleutian Islands  
Non-pollock Groundfish Fishery; Final  
Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 600**

[Docket No. 060731207-6242-02; I.D. 051706F]

RIN 0648-AU42

**Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-pollock Groundfish Fishery**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule implementing the Bering Sea and Aleutian Islands (BSAI) Catcher Processor Capacity Reduction Program (Reduction Program) for the longline catcher processor subsector of the BSAI non-pollock groundfish fishery (Reduction Fishery), in compliance with the FY 2005 Appropriations Act. This program is voluntary and permit holders of the Reduction Fishery (Subsector Members) are eligible to participate. Subsector Members must sign and abide by the Capacity Reduction Agreement (Reduction Agreement) and, if their offers are selected, a Fishing Capacity Reduction Contract (Reduction Contract) with the U.S. Government. These key components of the Capacity Reduction Plan (Reduction Plan) were prepared by the Freezer Longline Conservation Cooperative (FLCC) and are implemented by the final regulations. The aggregate of all Reduction Agreements and those Reduction Contracts signed by Subsector Members whose offers were accepted by  $\frac{2}{3}$  votes of the Subsector Members, will together with the FLCC's supporting documents and rationale that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to the Secretary of Commerce for approval. Subsector Members participating in the Reduction Program will receive up to \$36 million in exchange for relinquishing valid non-interim Federal License Limitation Program BSAI groundfish licenses endorsed for catcher processor fishing activity, Catcher/Processor (C/P), Pacific cod, and hook and line gear, as well as any present or future claims of eligibility for any fishing privilege based on such permit

(the Groundfish Reduction Permit) and additionally, any future fishing privilege of the vessel named on the permit. Individual fishing quota (IFQ) quota shares would be excluded from relinquishment. Following submission of the Reduction Plan and approval by the Secretary, NMFS will conduct an industry referendum to determine the industry's willingness to repay a fishing capacity reduction loan to effect the Reduction Plan. A  $\frac{2}{3}$  majority vote in favor would bind all parties and complete the reduction process. NMFS will issue a 30-year loan to be repaid by those harvesters remaining in the Reduction Fishery. The intent of this final rule is to permanently reduce harvesting capacity in the Reduction Fishery. This should result in increased harvesting productivity for post-reduction Subsector Members and help with conservation and management of the Reduction Fishery.

**DATES:** This rule is effective October 30, 2006.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the mailing address listed here or by calling Michael A. Sturtevant (see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to Michael A. Sturtevant at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to *David\_Rosker@ob.eop.gov*, or fax to (202) 395-7825.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Sturtevant at 301-713-2390, fax 301-713-1306, or *michael.a.sturtevant@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** *Electronic Access.* This **Federal Register** document is also accessible via the Internet at <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

**Statutory and Regulatory Background**

NMFS published the proposed rule for this action in the **Federal Register** on August 11, 2006 (71 FR 46364) with a public comment period through September 11, 2006. NMFS received comments from three commenters and the comments and responses are discussed under the succeeding Comments and Responses section of this preamble.

The portions of the preamble to the proposed rule explaining the Reduction Program, Approval of the Reduction Plan, the Referenda, and the Contract are crucial to understanding this final regulatory action and are repeated here. For additional information on underlying authority in the Magnuson-Stevens Fishery Conservation and Management Act, management of BSAI fisheries, and NMFS' framework and specific fishing capacity reduction regulations, persons can consult the preamble to the proposed rule.

The measures contained in this final rule to establish the Reduction Program are authorized by Title II, Section 219 of the FY 2005 Appropriations Act (Act) (Public Law 108-447; 2004 enacted H.R. 4818, December 8, 2004), and in particular by Section 219(e) of the Act. Also, Public Law 108-199 provided the initial \$500,000 subsidy cost to fund a \$50 million loan and Public Law 108-447 provided an additional \$250,000 subsidy cost to fund \$25 million more (in addition to providing for the buyback program itself). While the Act authorizes the establishment of fishing capacity reduction programs for catcher processor subsectors within the Alaska groundfish fisheries (*i.e.*, the longline catcher processor subsector, the American Fisheries Act (AFA) trawl catcher processor subsector, the non-AFA trawl catcher processor subsector, and the pot catcher processor subsector) based on capacity reduction plans and contracts developed by industry and approved by NMFS, this final rule only addresses the longline catcher processor subsector of the Reduction Fishery. The remaining subsectors may later develop capacity reduction plans and contracts for the other three catcher processor subsectors.

The FLCC on behalf of the Reduction Fishery drafted the Reduction Agreement which NMFS seeks to incorporate into its existing fishing capacity reduction regulations by this final rule. The Reduction Agreement, the Reduction Contract, and application of certain other existing Federal law and regulations referred to above are the basis for the Reduction Plan. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback are ranked highest by the FLCC will constitute the Reduction Plan and will be submitted to NMFS for approval.

The Reduction Agreement and the Reduction Contract are the two key components of the Reduction Plan and this final rule. Substantive provisions of the Reduction Agreement would be codified at 50 CFR 600.1105 along with



a requirement for all members of the Reduction Fishery submitting offers to participate in the Reduction Program to execute the Reduction Contract (i.e., the requirement for an Offeror to execute a Reduction Contract will be codified and the Reduction Contract appended). Wherever the term Offeror is used in this preamble and regulation, it also includes any co-Offeror.

The Act authorized not more than \$36 million in loans (reduction loan) to fund the Reduction Program. NMFS' authority to make this loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) (MMA) (title XI).

### Reduction Program—Overview

Participation in the Reduction Program would be open to any member of the Longline Subsector. Each Subsector Member will receive a notice of the FLCC Reduction Agreement and Reduction Contract and enrollment documents by certified mail. The FLCC Reduction Program is essentially divided into four phases: (1) Enrollment; (2) offer selection; (3) plan submission; and (4) implementation, after approval by referendum. Only LLP licenses and other assets (including fishing history) voluntarily submitted for removal from the Reduction Fishery shall be subject to reduction. Because there exist what are commonly referred to as "latent licenses" within the Reduction Fishery which the FLCC membership desires to remove, latent LLP licenses need not be associated with a vessel for inclusion as assets to be reduced under the Reduction Program. Fees for repayment of the loan which funds the Reduction Program will be collected from the Subsector Members who continue operations in the Reduction Fishery after implementation of the Reduction Program set forth in § 600.1105.

### Reduction Program—The Capacity Reduction Agreement

#### Basic Agreement

On April 12, 2006, the FLCC submitted a Reduction Agreement, Reduction Contract, and Executive Summary for a Reduction Plan for the Reduction Fishery to NMFS. The Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery by removal of Groundfish Reduction Permits, Reduction Fishing Privileges, and the Reduction Fishing Interests that are specified in the Reduction Contract (which is appended to § 600.1105). The FLCC will implement the process of qualifying and enrolling Subsector

Members and selecting offers from Subsector Members to remove fishing capacity by means of this buyback. Once the FLCC has completed the selection process, the highest ranking offers, the rationale for acceptance, the Reduction Agreements, the Reduction Contracts (from Subsector Members whose offers were selected), and any other supporting documents will be submitted as the Reduction Plan, by the FLCC to NMFS for approval, on behalf of the Secretary of Commerce, in compliance with Section 219(e) of the Act.

Those Subsector Members submitting approved offers would give up all Federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit, as well as any present or future claims of eligibility for any fishery privilege based upon such permit. The Subsector Members would also have to relinquish Reduction Fishing History consisting of: (1) The Reduction Privilege Vessel's full and complete documented harvest of groundfish; (2) for any documented harvest of the Reduction Privilege Vessel, any right or privilege to make any claim related to any fishery privilege that might qualify for any future fishing license (see Section 8.b. of the Contract for additional details); (3) any documented harvest on any other vessel (Reduction Fishing Vessel) that gave rise to the Groundfish Reduction Permit; and (4) all fishing history associated with the latent LLP license identified on the Selected Offer and any fishing history associated with the fishing vessel that gave rise to the latent LLP license that remains in the Offeror's possession as of August 11, 2006 (i.e., date of publication of the proposed rule in the **Federal Register**).

Regarding the vessel named on the Groundfish Reduction Permit (the Reduction Privilege Vessel), the Offeror will accept the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Privilege Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Privilege Vessel's: fisheries trade endorsement under the Commercial Fishing Industry Vessel Anti-Reflagging Act (46 U.S.C. 12108); eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the Reduction Fishing Privilege).

The Reduction Fishing Interest that would be removed would not include any: Right, title and/or interest to harvest, process or otherwise utilize individual fishing quota ("IFQ") quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR parts 679 and 680.

#### Reduction Agreement Terms and Definitions

Capitalized terms used in the Reduction Agreement are defined in Schedule A to the Reduction Agreement; other terms are defined within the text of the Reduction Agreement. Those Reduction Agreement terms that are essential to understanding the regulatory provisions are set forth in § 600.1105(b) and include "Application Form", "Capacity Reduction Agreement or Reduction Agreement", "Closing Vote", "Current Offeror", "Fishing Capacity Reduction Contract or Reduction Contract", "FLCC Counsel", "LLP License", "Offer(s)", "Rejected Offer", and "Website". Other terms important to understanding these regulations and the Reduction Contract, including "Reduction Privilege Vessel", are also set forth in § 600.1105(b).

#### Reduction Agreement: Major Sections

There are three major sections of the Reduction Agreement: Qualification and Enrollment of Subsector Members; Selection of Offers to Remove Fishing Capacity by the Reduction Plan; and Submission of Reduction Plan. NMFS codifies these provisions as Federal regulations in 50 CFR 600.1105.

**Qualification and Enrollment.** Subsector Members may enroll in the Reduction Program at any time prior to closing the selection of offers to reduce capacity. Enrollment is accomplished by executing a Reduction Agreement and submitting specified supporting documents evidencing an applicant's status as a Subsector Member. Each of the supporting documents will be reviewed by Tagart Consulting who will serve as the Auditor for the Reduction Program. The Auditor will review all documents for strict compliance with the regulatory provisions of § 600.1105. Each Reduction Agreement becomes effective 10 days after written notice is sent by the Auditor to each holder of a LLP license endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, informing that more than 70 percent of Subsector Members have submitted complete applications certified by the Auditor as complying with § 600.1105. For more specific information on qualification and enrollment of Subsector Members, see § 600.1105(c) of this final rule.

*Selection of Offers to Remove Fishing Capacity by the Reduction Plan.* Once more than 70 percent of the Subsector Members have effective Reduction Agreements, the offer selection process begins. An offer is a binding offer to relinquish to the United States Government the assets identified in the offer in consideration of a dollar amount certain set by the Offeror, and may not be withdrawn once entered, unless it is rejected during the selection process.

Essentially, during the offer process, Subsector Members will alternate on a weekly basis between Submission Periods (see § 600.1105(d)(3)(ii)) and Ranking Periods (see § 600.1105(d)(5)(ii)). During any Submission Period, a Subsector Member may offer, for inclusion in the Reduction Program, its LLP license(s) and withdrawal of the vessel(s) designated on the LLP license(s) from all fisheries. During the Ranking Period, nonoffering Subsector Members may rank the offers submitted during the prior Submission Period. At the end of each Ranking Period, the Auditor will tabulate and post on a website the results of ranking the offers up to a total offer price of \$36 million. Those offers ranked within the \$36 million are Selected Offers and those that are not ranked within the \$36 million are Rejected Offers with the Rejected Offers being voided and no longer binding on the offering member(s).

Once the offer rankings are posted, a new Submission Period begins with the process repeated until at least  $\frac{2}{3}$  of the Nonoffering Subsector Members call for a closing vote. If  $\frac{2}{3}$  of the Nonoffering Members accept the Selected Offers proposed in the closing vote, the selection process to remove capacity by the Reduction Plan terminates. If not, the selection process resumes with a new Submission Period. For more specific information on ranking and selection of offers to remove capacity, see § 600.1105(d).

*Plan Submission, Including Repayment.* After the Selection Process is complete, the FLCC will develop the Reduction Plan in compliance with the Act, the MSA, and other applicable laws and regulations for submission to NMFS for approval on behalf of the Secretary of Commerce. The Reduction Plan will include the LLP licenses and other fishing interests selected by the offer process as the assets to be purchased in the Reduction Program, and provide for repayment over a 30-year term. The Reduction Plan must also include the FLCC's supporting documents and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity

reduction. Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. Further, the FLCC will give notice of the Reduction Plan to the North Pacific Fishery Management Council as required by the Act.

Repayment of the loan will begin by collection of annual fees collected from the Subsector Members operating in the Reduction Fishery after implementation of the Reduction Program. The amount of such fee will be calculated on an annual basis as: the principal and interest payment amount necessary to amortize the loan over a 30-year term, divided by the Reduction Fishery portion of the BSAI Pacific cod initial total allowable catch (ITAC) allocation in metric tons (converted to pounds), provided that the fees should not exceed 5 percent of the average ex-vessel production value of the Reduction Fishery. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole. For more specific information on submission of the Reduction Plan, including fees to repay the Reduction Loan, see § 600.1105(e).

#### **The Reduction Program—Other Matters Relating to the Reduction Agreement and Reduction Plan**

##### *Review/Disputes*

The Reduction Agreement (but not these final regulations) provides for an expedited process to review any decision by the Auditor and for settlement of disputes utilizing an expedited review process by pre-selected legal counsel and, if necessary, binding arbitration. Also, all Offerors must comply with FLCC bylaws. By motion unanimously accepted by the members of the FLCC on February 21, 2005, the members of the FLCC approved the FLCC's development of a capacity reduction program in compliance with the Act (the Motion).

##### *Decisions of the Auditor and the FLCC*

Under § 600.1105(f), the Offerors are subject to the terms and conditions set forth in the Reduction Agreement to settle any disputes regarding the decisions of the Auditor or the FLCC. That section also explains the scope of the Auditor's examination.

#### *Other Provisions of the Reduction Agreement*

Regulatory provisions mirroring the Reduction Agreement's provisions for Enforcement/Specific Performance, Miscellaneous, Amendment, and Warranties are specified at §§ 600.1105(g), (h), (i), and (j), respectively.

#### **Approval of the Reduction Plan**

The criteria for NMFS, on behalf of the Secretary, to approve any Reduction Plan are specified at § 600.1105(k). Among other things, the Assistant Administrator of NMFS must find that the Reduction Plan is consistent with the Act and the MSA, and that it will result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time.

The FLCC has not yet submitted the Reduction Plan to NMFS for approval and cannot do so until after this final rule is published. If the FLCC submitted the Reduction Plan before the publication of this final rule, it may be necessary for the FLCC to revise and re-submit the Reduction Plan to conform with the provisions of the final rule.

#### **The Referenda**

NMFS will conduct an industry referendum to determine the industry's willingness to repay a fishing capacity reduction loan to purchase the licenses, fishing rights, etc. identified in the Reduction Plan subsequent to the publication of this final rule. A successful referendum by  $\frac{2}{3}$  of the members of the Reduction Fishery would bind all parties and complete the reduction process.

The current Fishing Capacity Reduction Framework regulatory provisions of § 600.1010 stipulate procedural and other requirements for NMFS to conduct referenda on fishing capacity reduction programs. Section 600.1105(l) makes those framework referenda requirements applicable to the Reduction Program for the Longline Subsector. After approval of the Reduction Program via a referendum, the Reduction Program will be implemented.

#### **The Contract**

An appendix to this § 600.1105 sets forth the Contract component of the Reduction Program for the Longline Subsector. The appendix, or Contract, will also be codified along with the regulatory text of § 600.1105.

#### **Comments and Responses**

The public comment period on the subject proposed rule (71 FR 46364)

closed at midnight on September 11, 2006. A total of three commenters submitted comments (two via e-mail and one faxed comments to NMFS). Two comments were from individuals. One was a brief comment supporting the reduction of longlines and the rule. The other was a brief comment opposing the rule because it is voluntary and instead supports a mandatory reduction in fish catch. The third commenter was the legal counsel, Bauer Moynihan & Johnson LLP, who represents the Freezer Longline Conservation Cooperative (FLCC) in any review or arbitration under the Capacity Reduction Agreement. The comments by the FLCC's counsel raised three concerns: (1) The need to make clear that Reduction Contracts were not required to enroll in the Reduction Program and were only required of Selected Offerors; (2) that only fishing history connected to the license and/or vessels identified on a Selected Offer should be relinquished; and (3) that the description of the Reduction Plan was incomplete in the preamble's discussion of the Reduction Program. All comments are elaborated on below and NMFS responses are provided.

*Comment 1:* The commenter expressed support for reducing longline fishing stating their belief that the fewer longlines there are, the better it would be for the ocean and all marine life living in it.

*Response:* The rule is designed to reduce the number of permitted longline catcher processor vessels fishing in the BSAI non-pollock groundfish fishery, and will not necessarily reduce the number of longline sets. The commenter gave no specific rationale for their suggestion that the number of longlines be reduced. The purpose and need for this action is to reduce excess capacity in one of the major non-pollock groundfish sectors and help achieve the conservation and economic objectives of the fishery management plan. There is no known scientific basis for reducing the number of longlines as suggested by the commenter.

*Comment 2:* The commenter is opposed to the reduction program in this fishery being voluntary and instead encourages that the program be made mandatory. The commenter supports a mandatory program to reduce the catch in the BSAI area to preserve fish for future generations.

*Response:* The reduction program is required to be a voluntary program by statute (Title II, Section 219 of the FY 2005 Appropriations Act; Public Law 108-447). The rule is designed to reduce the number of licensed fishing vessels not the amount of catch. Each year the

North Pacific Fishery Management Council and NMFS consider the best scientific information for the BSAI groundfish fishery, including any new stock assessment information, fishing mortality, natural mortality, and other pertinent scientific information in setting harvest quotas for the coming fishing year. Currently, no stocks of fish in the BSAI groundfish fishery are overfished or subject to overfishing. NMFS is confident that sound management currently practiced on these stocks will adequately preserve these stocks.

*Comment 3:* The commenter pointed out that the Summary (at 71 FR 46364) and § 600.1105(c)(2) (at 71 FR 46369) of the proposed rule incorrectly indicates that each Subsector Member wanting to enroll with the FLCC to participate in the Reduction Program must execute and deliver a Reduction Contract as part of their application. The commenter states that the Reduction Agreement (designed by industry) is the mechanism whereby persons establish their eligibility to enroll and that only those Subsector Members whose offers are selected must execute a Reduction Contract. The commenter asks that the language regarding the requirements for enrollment as a Subsector Member be revised to delete the requirement that a Reduction Contract be executed as a condition to enrollment.

*Response:* NMFS agrees that to participate in the process by enrolling with the FLCC in the Reduction Program, Subsector Members only need to sign a Reduction Agreement. While all members of the BSAI groundfish longline subsector are Subsector Members and all may vote on offers to relinquish permits in the buyback, only Subsector Members who have enrolled with the FLCC in the Reduction Program may submit offers. NMFS also agrees with the commenter that only those Subsector Members whose offers are selected must execute a Reduction Contract. Any Selected Offer by a participating Subsector Member must be submitted with a signed Reduction Contract. NMFS has modified the Summary and § 600.1105(c)(2) of the rule to clarify that a Reduction Contract is only required for those Subsector Members submitting Selected Offers.

*Comment 4:* The commenter is opposed to the Contract's Section 8.c. (actually Section 8.d.) requirement in the Appendix to § 600.1105 (at 71 FR 46375) that all fishing history associated with any latent license that remains in the Offeror's possession as of August 11, 2006, must be relinquished by any Offeror. The commenter states that this requirement is inconsistent with the

Reduction Agreement and the intent of the FLCC, and that only fishing history connected to the license and/or vessels identified on a Selected Offer should be relinquished.

*Response:* NMFS agrees that only fishing history associated with any latent permit that is identified on the Selected Offer (and subsequently on the Reduction Contract) should be relinquished rather than all fishing history associated with any latent license that was in the Offeror's possession on August 11, 2006. In the proposed rule, NMFS was attempting to collect all fishing history associated with latent permits held by the Offeror; however, NMFS recognizes the inconsistency with the Reduction Agreement and supports the intent of the FLCC to provide flexibility to Subsector Members, who hold more than one LLP license, in relinquishing their licenses. NMFS has modified the Section 8.d. requirement in the Contract contained in the Appendix to § 600.1105 so that it is limited to relinquishing all fishing history associated with the latent LLP license identified on the Selected Offer, including any fishing history associated with the fishing vessel that gave rise to the latent LLP license that remained in the Offeror's possession as of August 11, 2006.

*Comment 5:* The commenter indicated that the description of the Reduction Plan was incomplete in the preamble's discussion of the Reduction Program at 71 FR 46365. The commenter stated that the Reduction Agreements and Reduction Contracts, while elements of the Reduction Plan, do not by themselves constitute the Reduction Plan and referred to § 600.1105(e) (at 71 FR 46372) of the proposed rule which identified other elements of the Reduction Plan.

*Response:* NMFS has modified the description of the Reduction Plan in the preamble's discussion of the Reduction Program to include mention of the FLCC's supporting documents and rationale that these offers represent the expenditure of the least money for the greatest capacity reduction, together with the Reduction Agreements and Reduction Contracts, as constituting the Reduction Plan. This is now consistent with the Summary and § 600.1105(e).

#### Classification

The Assistant Administrator for Fisheries, NMFS, determined that this final rule is consistent with Title II, Section 219 of the FY 2005 Appropriations Act, Public Law 108-447, and with the Magnuson-Stevens

Fishery Conservation and Management Act, codified at 16 U.S.C. 1801 *et seq.*

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for this final rule. The assessment discusses the impact of this final rule on the natural and human environment and integrates a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). NMFS will send the assessment, the review and analysis to anyone who requests a copy (see **ADDRESSES**).

NMFS prepared a FRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impacts this final rule would have on small entities. NMFS intends the analysis to aid us in considering regulatory alternatives that could minimize the economic impact on affected small entities. The final rule does not duplicate or conflict with other Federal regulations.

#### Summary of FRFA

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned or cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Small entities within the scope of this final rule include individual U.S. vessels and dealers. There are no disproportionate impacts between large and small entities.

#### Description of the Number of Small Entities

The FRFA uses the most recent year of data available to conduct the analysis (2003). The vessels that might be considered large entities were either affiliated under owners of multiple vessels or were catcher processors. However, little is known about the ownership structure of the vessels in the fleet, so it is possible that the FRFA overestimates the number of small entities. In the Reduction Fishery, 24 of the 39 vessels meet the threshold for small entities. The remaining 13 vessels are not considered small entities for purposes of the RFA. There are 5 additional fishermen with permits but no vessels in the Longline Subsector who would benefit if they later purchase vessels and participate in the post-Reduction Fishery because there will be less competition for the harvest. Also, they would benefit if they chose to be bought out; and there would be no

impact to them if they did not buy a vessel and were not selected for the buyback. Implementation of the buyback program would not change the overall reporting structure and record keeping requirements of the vessels in the BSAI Pacific cod fisheries. However, this program would impose collection of information requirements totaling 16 hours 10 minutes.

Most firms operating in the Reduction Fishery have annual gross revenues of less than \$4 million. The FRFA analysis estimates that 24 of the 39 active longline catcher processor vessels (i.e., 39 vessels constitute the Longline Subsector) that participated in 2003 are considered small entities. The ownership characteristics of vessels operating in the Reduction Fishery are not available and therefore it is not possible to determine with certainty, if they are independently owned and operated, or affiliated in one way or another with a larger parent company. Furthermore, because analysts cannot quantify the exact number of small entities that may be directly regulated by this action, a definitive finding of non-significance for this final action under the RFA is not possible. However, because the final rule will not result in changes to allocation percentages and participation is voluntary, net effects are expected to be minimal relative to the status quo.

The final rule's impact will be positive for both those whose offers NMFS accepts and for post-reduction catcher processors whose landing fees repay the reduction loan because the Offerors and catcher processors would have voluntarily assumed the impact:

1. Offerors would have volunteered to make offers at dollar amounts of their own choice. Presumably, no Offeror would volunteer to make an offer with an amount that is inconsistent with the Offeror's interest; and

2. Reduction loan repayment landing fees would be authorized, and NMFS could complete the Reduction Program, only if at least two-thirds of Subsector Members voting in a post-offer referendum voted in favor of the Reduction Plan. Presumably, Subsector Members who are not Selected Offerors would not vote in favor of the Reduction Plan unless they concluded that the Reduction Program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

Those participants remaining in the fishery after the buyback will incur additional fees of up to 5 percent of the ex-vessel production value of post-reduction landings. However, the

additional costs could be mitigated by increased harvest opportunities by post-reduction fishermen.

This final rule would affect neither authorized BSAI Pacific cod ITAC and other non-pollock groundfish harvest levels nor harvesting practices.

NMFS rejected the no action alternative considered in the EA because NMFS would not be in compliance with the mandate of Section 219 of the Act to establish a buyback program. In addition, the longline catcher processor subsector of the non-pollock groundfish fishery would remain overcapitalized. Although too many vessels compete to catch the current subsector total allowable catch (TAC) allocation, fishermen remain in the fishery because they have no other means to recover their significant capital investment. Overcapitalization reduces the potential net value that could be derived from the non-pollock groundfish resource, by dissipating rents, driving variable operating costs up, and imposing economic externalities. At the same time, excess capacity and effort diminish the effectiveness of current management measures (e.g. landing limits and seasons, bycatch reduction measures). Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery dependent communities.

NMFS determined that this final rule is not significant for purposes of Executive Order 12866 based on the RIR/FRFA.

This final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) previously approved this information collection under OMB Control Number 0648-0376 with requirements for 878 respondents with a total response time of 38,653 hours.

NMFS estimates that the public reporting burden for this information collection would average 4 hours for making an offer (which includes executing the Reduction Agreement and Reduction Contract) and 4 hours for voting in a referendum. Persons affected by this final rule will also be subject to other collection-of-information requirements referred to in the final rule and also approved under OMB Control Number 0648-0376. These requirements and their associated response times are: completing and filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails

either to pay or to collect the loan repayment fee (2 hours).

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Public comment is sought regarding: whether this 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. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

This action should not result in any adverse effects on endangered species or marine mammals.

#### List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs—business, Reporting and recordkeeping requirements.

Dated: September 21, 2006.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 600, subpart M, as follows:

#### PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

##### Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

■ 1. The authority citation for 50 CFR part 600, subpart M, is revised to read as follows:

**Authority:** 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub.

L. 107–117, Pub. L. 107–206, Pub. L. 108–7, Pub. L. 108–199, and Pub. L. 108–447.

■ 2. Section 600.1105 is added to subpart M to read as follows:

##### § 600.1105 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

(a) *Purpose.* This section implements the capacity reduction program that Title II, Section 219(e) of Public Law 108–447 enacted for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

*Act* means Title II, Section 219 of Public Law 108–447.

*AI* means the Aleutian Islands.

*Application Form* means the form published on the FLCC's website that sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

*Auditor* means Jack V. Tagart, Ph.D., d.b.a. Tagart Consulting.

*Authorized Party* means the individuals authorized by Subsector Members on the application form to execute and submit Offers, Rankings, protests and other documents and/or notices on behalf of Subsector Member.

*Ballot* means the form found on the auditor's website used to cast a vote in favor of, or in opposition to, the currently Selected Offers.

*BS* means the Bering Sea.

*BSAI* means the Bering Sea and the Aleutian Islands.

*BSAI Pacific Cod ITAC* means the Total Allowable Catch for Pacific cod after the subtraction of the 7.5 percent Community Development Program reserve.

*Capacity Reduction Agreement or Reduction Agreement* means an agreement entered into by the Subsector Members and the FLCC under which the FLCC is permitted to develop and submit a Capacity Reduction Plan to the Secretary.

*Certificate of Documentation (COD)* means a document issued by the U.S. Coast Guard's National Documentation Center that registers the vessel with the United States Government.

*Closing Vote* means a vote held pursuant to paragraph (d)(7) of this section, after two-thirds (2/3) or more of the Nonoffering Subsector Members

submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process, and there are no unresolved Protests or Arbitrations.

*Current Offer* means an Offer submitted by a Subsector Member to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term "Current Offer" includes Selected Offers.

*Current Offeror* means an Offering Subsector Member that has submitted an Offer to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term "Current Offeror" includes Selected Offerors.

*Database* means the online LLP License database maintained by NMFS as downloaded by the Auditor pursuant to paragraph (c)(1) of this section.

*Effective Date* means the date the Capacity Reduction Agreement becomes effective pursuant to section 4.e of the Capacity Reduction Agreement.

*Fishing Capacity Reduction Contract or Reduction Contract* means the contract that any Current Offeror must sign and agree to abide by if NMFS accepts the offer by signing the Reduction Contract.

*FLCC Counsel* means Bauer Moynihan & Johnson LLP or other counsel representing the FLCC in any review or arbitration under the Capacity Reduction Agreement.

*Latent License* means an LLP License on which a vessel was not designated at the time an Offer is submitted.

*LLP License* means a Federal License Limitation Program groundfish license issued pursuant to § 679.4(k) of this chapter or successor regulation that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, Pacific cod and hook and line gear.

*Longline Subsector* means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery as defined in the Act.

*Longline Subsector ITAC* means the longline catcher processor subsector remainder of the Total Allowable Catch after the subtraction of the 7.5 percent Community Development Program reserve.

*Nonoffering Subsector Member* shall have the meaning ascribed thereto in paragraph (d)(5)(i) of this section.

*Offer Content* means all information included in Offers submitted to the Auditor pursuant to paragraph (d)(2)(ii) of this section.

*Offer Form* means the form found on the Auditor's website used to make an offer.

*Offer(s)* means a binding offer(s) from a Subsector Member to sell its LLP, right to participate in the fisheries, the fishing history associated with such LLP, and any vessel set forth on the Offer Form submitted by Offeror pursuant to the terms of this Capacity Reduction Agreement.

*Opening Date* means the first Monday following the Effective Date set forth in paragraph (c)(3) of this section.

*Person* includes any natural person(s) and any corporation, partnership, limited partnership, limited liability company, association or any other entity whatsoever, organized under the laws of the United States or of a state.

*Prequalification Offer* shall have the meaning ascribed thereto in paragraph (d)(2)(iii) of this section.

*Ranking Form* means the form posted by the Auditor pursuant to paragraph (d)(5)(iii) of this section.

*Ranking Period* shall have the meaning ascribed thereto in paragraph (d)(5)(ii) of this section.

*Reduction Fishery* means the BSAI non-pollock groundfish fishery.

*Reduction Fishing Interests* shall have the meaning ascribed thereto in the Fishing Capacity Reduction Contract.

*Reduction Plan* means a business plan prepared by the Subsector Members in accordance with Section 1 of the Capacity Reduction Agreement and forwarded to the Secretary for approval.

*Reduction Privilege Vessel* means the vessel listed on the Offeror's License Limitation Program license.

*Rejected Offer* means an Offer that has been through one or more Rankings and is not a Selected Offer following the latest Ranking Period, with respect to which the Offering Subsector Member's obligations have terminated pursuant to paragraphs (d)(2)(i) and (d)(6)(v) of this section.

*Rejected Offeror* means a Subsector Member that has submitted an Offer which has been ranked and was not posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

*Restricted Access Management (RAM)* means the Restricted Access Management Program in the Alaska Region, NMFS, located in Juneau, Alaska.

*Secretary* means the Secretary of Commerce or a designee.

*Selected Offer* shall have the meaning ascribed thereto in paragraph (d)(6)(iv) of this section.

*Selected Offeror* means a Subsector Member that has submitted an Offer which has been ranked and is posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

*Selection Process* means the process set forth in paragraph (d) of this section for selecting the fishing capacity to be removed by the Reduction Plan.

*Submission Period(s) or Submitting Period(s)* shall have the meaning ascribed thereto in paragraph (d)(3)(ii) of this section.

*Subsector Member(s)* means a member(s) of the Longline Subsector.

*Web site* means the internet Web site developed and maintained on behalf of the FLCC for implementation of the Selection Process described herein with a URL address of <http://www.freezerlonglinecoop.org>.

(c) *Qualification and enrollment of subsector members*—

(1) *Distribution*. A copy of the Reduction Agreement, Application Form, and Reduction Contract shall be mailed to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, as the Auditor determines from the Database downloaded by the Auditor as of January 30, 2006, regardless of whether the LLP License is indicated in the Database as noninterim and transferable or otherwise.

(2) *Application*. Any person, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may as a Subsector Member apply to enroll with the FLCC to participate in the Reduction Program, by submitting all of the following documents:

(i) Fully executed Reduction Agreement;

(ii) Photocopy of the LLP License(s) evidencing Subsector Member's qualification as a member of the Longline Subsector;

(iii) Unless applying as the holder of a Latent License, a photocopy of Federal Fisheries Permit for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member;

(iv) Unless applying as the holder of a Latent License, a photocopy of the Certificate of Documentation (COD) for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member; and

(v) An executed Application Form which sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

(3) *Examination by Auditor*—(i) *in general*. Each application must be submitted to the Auditor who will examine applications for completeness

and inconsistencies, whether on the face of the documents or with the Database. Any application which is incomplete or which contains inconsistencies shall be invalid. The Auditor shall notify by e-mail or mail an applicant of the basis for the Auditor's finding an application invalid. An applicant may resubmit a revised application. If the application meets all requirements, the Auditor may accept the application as valid and enroll the applicant.

(ii) *Interim LLP Licenses*. If an LLP License is interim and/or nontransferable, the applicant's enrollment shall be accepted as a Subsector Member and may fully participate in the Selection Process. However, any posting of an Offer submitted with respect to such LLP License shall note the status of such LLP License until that Subsector Member submits to the Auditor a letter from the RAM confirming that it is within the Subsector Member's control to cause the qualifying LLP License to be issued as noninterim and transferable upon withdrawal of all applicable appeals.

(4) *Enrollment period*. Applications that meet all requirements will be accepted until the Selection Process is completed.

(5) *Effective date*. The Effective Date of any Reduction Agreement shall be ten (10) calendar days after written notice is sent by the Auditor to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear (as determined by the Auditor from the Auditor's examination of the Database) advising that the number of Subsector Members that have delivered to the Auditor a complete Application, including a fully executed Reduction Agreement, exceeds seventy percent (70 percent) of the members of the Longline Subsector (as determined by the Auditor from the Auditor's examination of the Database).

(6) *Notice*. All notices related to the effective date of the Reduction Agreement shall be sent by the Auditor via registered mail.

(7) *Withdrawal*. A Subsector Member, unless such Subsector Member is a Current Offeror or Selected Offeror, may terminate the Reduction Agreement at any time with respect to that Subsector Member by giving ten (10) calendar days written notice to the Auditor preferably via e-mail. Withdrawal of a Subsector Member shall not affect the validity of the Reduction Agreement with respect to any other Subsector Members. Once effective, the Reduction Agreement shall continue in full force and effect regardless of whether subsequent withdrawals reduce the number of

Subsector Members below that level required to effectuate the Reduction Agreement. Attempted withdrawal by a Current Offeror or Selected Offeror shall be invalid, and such Offer shall remain a binding, irrevocable Offer, unaffected by the attempted withdrawal.

(d) *Selection of fishing capacity to be removed by Reduction Plan.* The fishing capacity removed by the Reduction Plan will be the Reduction Fishing Interests voluntarily offered through the Reduction Plan by offering Subsector Members and as selected by the Nonoffering Subsector Members, up to an aggregate amount of thirty six million dollars (\$36,000,000) as set forth in this paragraph (d).

(1) *Overview.* The Selection Process will begin upon the Effective Date of the Reduction Agreement. The Selection Process will alternate on a weekly basis between:

(i) Submitting Periods, during which individual Subsector Members may submit Offers of fishing capacity they wish to include in the Reduction Plan; and

(ii) Ranking Periods, during which Nonoffering Subsector Members will rank the submitted Offers.

(2) *Offers—(i) Binding agreement.* An Offer from a Subsector Member shall be a binding, irrevocable offer from a Subsector Member to relinquish to NMFS the Reduction Fishing Interests for the price set forth on the Offer contingent on such Offer being a Selected Offer at the closing of the Selection Process. Once submitted, an Offer may not be revoked or withdrawn while that Offer is a Current Offer or Selected Offer. An Offer that is submitted by a Subsector Member, but is not a Selected Offer during the subsequent Ranking Period, shall be deemed to be terminated and the Subsector Member shall have no further obligation with respect to performance of that Offer.

(ii) *Offer content.* All Offers submitted to the Auditor shall include the following information: LLP License number; LLP License number(s) of any linked crab LLP Licenses; license MLOA (MLOA—maximum length overall of a vessel is defined at § 679.2 of this chapter); the license area, gear and species endorsements; a summary of the Pacific cod catch history for the calendar years 1995–2004; and the offered price. The Offer shall also state whether a vessel is currently designated on the LLP License and as such will be withdrawn from all fisheries if the Offer is selected for reduction in the Reduction Plan. If so, the Offer shall identify such vessel by name, official number, and current owner. In addition,

the Offer shall provide a summary of the Pacific cod catch history for the calendar years 1995–2004 of the vessel to be retired from the fisheries. All summary catch histories included in Offers shall be calculated utilizing both the weekly production report and best blend methodology and shall separately state for each methodology the Pacific cod catch in metric tons and as a percentage of the overall catch for the longline catcher processor subsector on an annual basis for each of the required years. If the vessel stated to be withdrawn from the fisheries is not owned by the LLP License owner of record, the Offer shall be countersigned by the owner of record of the vessel. An Offer offering a Latent License shall state on the Offer Form that the offered LLP License is a Latent License. The Offer Form shall also include a comment section for any additional information that Offerors wish to provide to the Subsector Members concerning the Offer.

(iii) *Prequalification of Offers.* A Subsector Member may submit a Prequalification Offer to the Auditor at any time prior to the Opening Date. A Prequalification Offer shall contain all elements of an Offer, except that a price need not be provided. The Auditor shall notify the Subsector Member submitting a Prequalification Offer as to any deficiencies as soon as practicable. All details of a Prequalification Offer shall be kept confidential by the Auditor.

(3) *Submitting an Offer—(i) Offer submission.* Commencing on the first Tuesday following the Opening Date and during all Submission Periods until the Selection Process is closed, any Subsector Member may submit an Offer. All Offers are to be on the applicable form provided on the FLCC website, executed by an Authorized Party and submitted to the Auditor by facsimile. Any Subsector Member may submit an Offer during any Submission Period, even if that Subsector Member has not submitted an Offer in any previous Submission Period. If a Subsector Member holds more than one LLP License, such Subsector Member may, but is not required to, submit an Offer for each LLP License held during a Submission Period.

(ii) *Submission Periods.* The initial Submission Period shall commence at 9 a.m. (Pacific time) on the Tuesday following the Opening Date and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Submission Periods shall commence at 9 a.m. (Pacific time) on the first Tuesday following the preceding Ranking Period and end at 5 p.m. (Pacific time) on the Friday of that week. All times set forth

in the Reduction Agreement and used in the Offer process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology.

(iii) *Validity of Offer.* The Auditor shall examine each Offer for consistency with the Database and information contained in the enrollment documents. If there is an inconsistency in the information contained in the Offer, any of the elements required of an Offer pursuant to paragraph (d)(2)(ii) of this section are missing, or the Auditor does not receive the original Offer Form before the Offers are to be posted pursuant to paragraph (d)(4) of this section, the Auditor shall notify the offering Subsector Member by e-mail or mail that the Offer is nonconforming as soon as practicable after discovering the basis of invalidity. The Subsector Member may submit a revised, conforming Offer prior to the close of that Submission Period or, in any subsequent Submission Period. Only one Offer may be submitted with respect to an LLP License during a Submission Period. In the event a Subsector Member submits more than one Offer with respect to an LLP License during a Submission Period, the first conforming Offer received by the Auditor shall be binding and irrevocable and any subsequent Offers shall be deemed invalid.

(iv) *Warranty.* By submitting an Offer, the Offering Subsector Member, warrants and represents that the Offering Subsector Member has read and understands the terms of the Reduction Agreement, the Offer, and the Reduction Contract and has had the opportunity to seek independent legal counsel regarding such documents and/or agreements and the consequences of submitting an Offer.

(4) *Posting Offers—(i) Current offers.* For each Offer received during a Submission Period, the Auditor shall post on the Website no later than 5 p.m. (Pacific time) on the following Tuesday all of the details of such Offer as set forth on the Offer Form. In addition, the Auditor shall post, as available to Auditor, a summary by year of up to ten (10) years catch history during the period 1995–2004 in total round weight equivalents and percentage of Longline Subsector ITAC harvested for any vessel that is included in the Offer. Subsector Member (or vessel owner, if other than the Subsector Member) expressly authorizes Auditor to release the catch history summary information previously prepared for that Subsector Member or vessel owner by the Auditor as part of the analysis of FLCC's membership's

catch history previously conducted by the Auditor on behalf of the FLCC.

(ii) *Posting order.* Offers shall be posted on the Website by the Auditor in alphabetical order of the Offering Subsector Member's name.

(iii) *Questions as to Offer.* The Auditor shall respond to no questions from Subsector Member regarding Offers except to confirm that the posting accurately reflects the details of the Offer. If an Offering Subsector Member notices an error in an Offer posting on the Website, such Subsector Member shall notify the Auditor as soon as practicable. The Auditor shall review such notice, the posting and the original Offer. If an error was made in posting the Auditor shall correct the posting as soon as practicable and notify the Subsector Members via e-mail or mail of the correction. In the event such an error is not discovered prior to Ranking, an Offering Subsector Member shall be bound to the terms of the submitted Offer, not the terms of the posted Offer.

(iv) *Archive.* The Auditor shall maintain on the Website an archive of prior Offers posted, which shall be available for review by all Subsector Members.

(5) *Ranking*—(i) *Eligibility.* Each Subsector Member that has not submitted an Offer during the preceding Submission Period, or whose vessel is not included as a withdrawing vessel in an Offer during the preceding Submission Period (i.e., a Nonoffering Subsector Member), may submit to the Auditor a Ranking Form during a Ranking Period. With respect to Ranking, a Subsector Member that holds more than one LLP License may participate in the Ranking process for each LLP License not included in an Offer.

(ii) *Ranking Period.* The initial Ranking Period shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Ranking Periods shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week.

(iii) *Ranking Form.* Prior to each Ranking Period, the Auditor will post a Ranking Form on the Website in "pdf" file format. Each eligible Subsector Member wishing to rank the current Offers shall rank the Offers on the Ranking Form numerically in the Subsector Member's preferred order of purchase. The Offer that Subsector Member would most like to have accepted should be ranked number one (1), and subsequent Offers ranked

sequentially until the Offer that the Subsector Member would least like to see accepted is ranked with the highest numerical score. A Subsector Member wishing to call for a Closing Vote shall, in lieu of ranking the Current Offers, mark the Ranking Form to accept the Selected Offers selected during the prior Ranking Period and close the Selection Process. To be valid, the Ranking Form must rank each Current Offer listed on the Ranking Form or, if applicable, be marked to call for a Closing Vote. Ranking Forms shall be submitted by sending a completed Ranking Form, signed by an Authorized Party, to the Auditor by facsimile or mail prior to the end of the Ranking Period. A Subsector Member is not required to rank the Offers during a Ranking Period or call for a Closing Vote.

(iv) *Validity of Subsector Member Ranking.* The Auditor shall examine each Ranking Form for completeness, whether the form either ranks the Offers or calls for a Closing Vote (but not both), and authorized signature. Any incomplete or otherwise noncompliant Ranking Form(s) shall be invalid, and shall not be included in the Rankings of the Current Offers. The Auditor shall notify the Subsector Member of the reason for declaring any Ranking Form invalid as soon as practicable. A Subsector Member may cure the submission of an invalid Ranking Form by submitting a complying Ranking Form if accomplished before the end of the applicable Ranking Period.

(6) *Ranking results*—(i) *Compiling the rankings.* Unless two-thirds ( $\frac{2}{3}$ ) of the Nonoffering Subsector Members have called for a Closing Vote, the Auditor shall compile the results of the Ranking Forms by assigning one point for each position on a Ranking Form. That is, the Offer ranked number one (1) on a Ranking Form shall be awarded one (1) point, the Offer ranked two (2) shall receive two (2) points, and continuing on in this manner until all Offers have been assigned points correlating to its ranking on each valid Ranking Form. The Offer with the least number of total points assigned shall be the highest ranked Offer, and the Offer with the greatest total points assigned shall be the lowest ranked Offer.

(ii) *Posting rankings.* The Auditor shall post the results of the compilation of the Ranking Forms on the Website in alphabetical order based on the Offering Subsector Member's name no later than 5 p.m. (Pacific time) on the Monday following the Ranking Period. The Auditor shall post the highest consecutive ranking Offers that total thirty six million dollars (\$36,000,000) or less. Those Offering Subsector

Members whose Offers are posted shall be deemed Selected Offerors and their Offers shall be deemed Selected Offers. Those Offering Subsector Members whose Offers are not posted shall be deemed Rejected Offerors.

(iii) *Selected Offer information or confidentiality.* The Auditor shall post the name of the Offering Subsector Member, the amount of the Offer, and a summary of the total number of Ranking Forms received and the number of such forms on which the Members called for a Closing Vote. Other than the foregoing, the Auditor shall not post any details of the compilation of the Ranking Forms.

(iv) *Selected Offerors.* Selected Offerors may not withdraw their Offers unless in subsequent rankings their Offers no longer are within the highest ranking Offers and they become Rejected Offerors. A Selected Offeror may, however, modify a Selected Offer solely to the extent such modification consists of a reduction in the Offer price. A Selected Offeror may submit a modified Offer to the Auditor during the next Offering Period as set forth in paragraph (d)(3) of this section. Unless a Selected Offeror becomes a Rejected Offeror in a subsequent Ranking, a Selected Offeror shall be bound by the terms of the lowest Selected Offer submitted as if such modified Offer had been the original Selected Offer. In the event a Selected Offeror submits a modified Offer and such Offer is not ranked because sufficient votes are received to call for a Closing Vote, the previously Selected Offer shall remain the Selected Offer.

(v) *Rejected Offerors.* The Offer of a Rejected Offeror is terminated and the Rejected Offeror is no longer bound by the terms of its Offer. A Rejected Offeror may, at its sole discretion, resubmit the same Offer, submit a revised Offer, or elect not to submit an Offer during any subsequent Submission Period until the Selection Process is closed.

(vi) *Ties.* In the event there is a tie with respect to Offers which results in the tied Offers exceeding thirty-six million dollars (\$36,000,000), the tied Offers and all Offers ranked lower than the tied Offers shall be deemed to be rejected and the Rejected Offerors may, at their option, submit an Offer in a subsequent Submission Period.

(vii) *Archive.* Auditor shall maintain on the Website an archive of prior Offer Rankings as posted over the course of the Selection Process, which shall be available for Subsector Member review.

(7) *Closing.* The Selection Process will close when two-thirds ( $\frac{2}{3}$ ) or more of the Nonoffering Subsector Members of the Longline Subsector, as determined by the Auditor, affirmatively vote to



accept the Selected Offerors selected during the prior Ranking Period as part of the Reduction Plan to be submitted to the Secretary.

(i) *Call for Vote.* A Closing Vote will be held when: at least two-thirds ( $\frac{2}{3}$ ) of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process in lieu of Ranking the current Offers; and there are no unresolved Protests or Arbitrations. The Auditor shall notify all Subsector Members by e-mail or mail and posting a notice on the Website as soon as practicable that a Closing Vote is to be held. Such notice shall state the starting and ending dates and times of the voting period, which shall be not less than three (3) nor more than seven (7) calendar days from the date of such notice. A voting period shall commence at 9 a.m. (Pacific time) on Monday and end at 5 p.m. on the Friday of that week.

(ii) *Voting.* No less than three (3) calendar days prior to the voting period, the Auditor will post a Closing Ballot on the Website in "pdf" file format. Each eligible Nonoffering Subsector Member wishing to vote shall print out the Closing Ballot, and, with respect to each of the currently Selected Offers on the Closing Ballot, vote either in favor of or opposed to accepting that Selected Offer and submit a completed and signed Closing Ballot to the Auditor preferably by facsimile prior to the end of the Voting Period.

(iii) *Ballot verification.* The Auditor shall examine each submitted Closing Ballot for completeness and authorized signature. Any incomplete Closing Ballot shall be void, and shall not be included in the voting results. The Auditor shall not notify the Subsector Member of an invalid Closing Ballot.

(iv) *Voting results.* The Auditor shall post the results of the Vote as soon as practicable after voting closes. Each Offer on the Closing Ballot that receives votes approving acceptance of such Offer from two-thirds ( $\frac{2}{3}$ ) or more of the total number of Nonoffering Subsector Members shall be a Selected Offeror and shall be the basis for the Reduction Plan submitted to NMFS. Any Offer on the Closing Ballot that does not receive such two-thirds ( $\frac{2}{3}$ ) approval shall be rejected and shall not be included among the Offers included among the Reduction Plan submitted to NMFS.

(v) *Notification to NMFS.* Upon closing of the Selection Process, FLCC shall notify NMFS in writing of the identities of the Selected Offerors and provide to NMFS a completed and fully executed original Reduction Agreement from each of the Selected Offerors and a certified copy of the fully executed

Reduction Agreement and Reduction Contract.

(e) *Submission of Reduction Plan, including repayment.* Upon completion of the offering process, the FLCC on behalf of the Subsector Members shall submit to NMFS the Reduction Plan which shall include the provisions set forth in this paragraph (e).

(1) *Capacity reduction.* The Reduction Plan shall identify as the proposed capacity reduction, without auction process, the LLP Licenses as well as the vessels and the catch histories related to the LLP Licenses, linked crab LLP Licenses, and any other fishing rights or other interests associated with the LLP Licenses and vessels included in the Selected Offers. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback were accepted by votes of the Subsector Members, will together with the FLCC's supporting documents and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to NMFS for approval on behalf of the Secretary of Commerce.

(2) *Loan repayment*—(i) *Term.* As authorized by Section 219(B)(2) of the Act, the capacity reduction loan (the "Reduction Loan") shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed thirty-six million dollars (\$36,000,000), but may be less if the reduction cost is less. Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full.

(ii) *Interest.* The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.

(iii) *Fees.* The Reduction Loan shall be repaid by fees collected from the Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Hook & Line, Catcher Processor (Longline Subsector; sometimes referred to as the "H&LCP Subsector") portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the number of pounds in a metric ton). In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.

(A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal \$2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound. [ $2,900,000 / (100,000 \times 2,205) = .01315$ ]. The fee will be accessed and collected on Pacific cod to the extent possible and if not, will be accessed and collected as provided for in this paragraph (e).

(B) Fees must be accessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

(C) The additional fee will be limited to the amount necessary to amortize the remaining twelve months principal and interest in addition to the 5 percent fee accessed against Pacific cod. The additional fee will be a minimum of one cent per pound. In the event that collections exceed the total principal and interest needed to amortize the payment due, the principal balance of the loan will be reduced. To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues to ensure it is equal to or less

than 5 percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post reduction fishery participants.

(D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fisheries' fee rate to the maximum 5 percent of the revenues for Pacific cod and the species mentioned in paragraph (e)(2)(iii)(B), apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iv) *Reduction loan.* NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs (§ 600.1000 *et seq.*). The reduction loan shall be subject to the provisions of § 600.1012, except that: the borrower's obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.

(v) *Collection.* The LLP License holder of the vessel harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by that LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.

(vi) *Record keeping and Reporting.* The holder of the LLP License on which a vessel harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable record keeping and reporting requirements.

(3) *Agreement with Secretary.* Each Selected Offeror, and vessel owner if not the Subsector Member, that has submitted a Selected Offer shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. Any and all LLP License(s) and or vessels set forth on a Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.

(f) *Decisions of the Auditor and the FLCC.* Time is of the essence in developing and implementing a Reduction Plan and, accordingly, the Offerors shall be limited to, and bound by, the decisions of the Auditor and the FLCC.

(1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings shall be solely ministerial in nature. That is, the Auditor will verify whether the documents submitted by Subsector Members are, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and, signed by an Authorized Party. The Auditor may presume the validity of all signatures on documents submitted. The Auditor shall not make substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents is material).

(2) [Reserved]

(g) *Enforcement/specific performance.* The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Act is both unique and finite and that failure of a Selected Offeror, and vessel owner, if not a Subsector Member, to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC, the Subsector Members and other Selected Offerors. Accordingly, the parties to the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror, and vessel owner if not a Subsector Member, to fulfill its obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.

(h) *Miscellaneous—(1) Time/Holidays.* All times related to the Selection Process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology. In the event that any date occurring within the Selection Process is a Federal holiday, the date shall roll over to the next occurring business day.

(2) *Termination.* The Reduction Agreement shall automatically terminate if no vote of acceptance is completed by December 31, 2007. The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.

(3) *Choice of law/venue.* The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

(4) *Incorporation.* All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.

(5) *Counterparts.* The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.

(i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

(ii) [Reserved]

(i) *Amendment.* Subsector Member acknowledges that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute to each Subsector Member in electronic format the amended form of

the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(j) *Warranties*. Subsector Member must expressly warrant and represent in the Reduction Agreement that:

(1) Subsector Member has had an opportunity to consult with Subsector Member's attorney or other advisors of Subsector Member with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;

(2) Subsector Member has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of Subsector Member;

(3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of Subsector Member;

(4) The person executing the Reduction Agreement has been duly authorized by Subsector Member to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and

(5) Subsector Member has taken all actions necessary for the Reduction Agreement to constitute the valid and binding obligation of Subsector Member, enforceable in accordance with its terms.

(k) *Approval of the Reduction Plan*. Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and Subpart M to this part must be found by the Assistant Administrator of NMFS, to:

(1) Be consistent with the requirements of Section 219(e) of the FY 2005 Appropriations Act (Public Law 108-447);

(2) Be consistent with the requirements of Section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the

requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);

(3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;

(4) Not require a bidding or auction process;

(5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

(6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(l) *Referenda*. The provisions of § 600.1010 (including §§ 600.1004(a), 600.1008, 600.1009, 600.1013, 600.1014, and 600.1017(a)(5), (6) and (7)) shall apply to the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

#### **Appendix to § 600.1105—Fishing Capacity Reduction Contract: Bering Sea and Aleutian Islands Longline Catcher Processor Subsector**

##### **Fishing Capacity Reduction Contract: Bering Sea and Aleutian Islands Longline Catcher Processor Subsector**

This agreement, (the "Reduction Contract") is entered into by and between the party or parties named in section 46 of this contract entitled, "Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification," as the qualifying Offeror and as the co-Offeror (if there is a co-Offeror) (collectively the "Offeror") and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division ("NMFS"). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Offeror's offer, subject to the condition subsequent of NMFS' formal notification of a successful referendum.

##### *Witnesseth*

Whereas, Section 219, Title II, Division B of the Consolidated Appropriations Act, 2005, as enacted on December 8, 2004, (the "Act") authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands ("BSAI") non-pollock groundfish fishery as set forth in the Act;

Whereas, the longline catcher processor subsector (the "Longline Subsector") is

among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act;

Whereas, the Freezer Longline Conservation Cooperative (the "FLCC") has developed and is submitting to NMFS concurrently with this Reduction Contract a capacity reduction plan for the Longline Subsector (the "Reduction Plan");

Whereas, the selection process will be pursuant to the fishing capacity Reduction Contract and the Reduction Plan;

Whereas, the term "Reduction Fishery" is defined by the Reduction Plan as the longline catcher processor subsector of the BSAI non-pollock groundfish fishery;

Whereas, the Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery; Whereas, NMFS implements the Reduction Plan pursuant to Section 219 of the Act as well as the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)-(e))(as excepted by the Act, including inter alia, any requirement that the Reduction Plan include a bidding or auction process) and other applicable law;

Whereas, NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Reduction Plan, (50 CFR 600.1000 *et seq.*);

Whereas, NMFS can implement the Reduction Plan only after giving notice to all members of the Longline Subsector of the Reduction Plan pursuant to Section 219(3)(b) of the Act and approval of the Reduction Plan by referendum of the Longline Subsector; and

Whereas, this Reduction Contract is submitted by Offeror and the FLCC as an integral element of the Reduction Plan and is expressly subject to the terms and conditions set forth herein, the framework regulations, the final rule (as used in this contract "final rule" means the final rule promulgated by NMFS which sets forth the regulations implementing the Reduction Plan for the Longline Subsector) and applicable law.

Now therefore, for good and valuable consideration and the premises and covenants hereinafter set forth the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. *Incorporation of Recitals*. The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. *Further Incorporation*. The Act, framework regulations, final rule and any other rule promulgated pursuant to the Act are expressly incorporated herein by this reference. In the event of conflicting language, the framework regulations, the final rule and any other rule promulgated pursuant to the Act, take precedence over the Reduction Contract.

3. *Contract Form*. By completing and submitting the Reduction Contract to NMFS the Offeror hereby irrevocably offers to relinquish its Reduction Fishing Interests. If NMFS discovers any deficiencies in the Offeror's submission to NMFS, NMFS may, at its sole discretion, contact the Offeror in an attempt to correct such offer deficiency.

"Reduction Fishing Interests" means all of Offeror(s) rights, title and interest to the Groundfish Reduction Permit, Reduction Permit(s), Reduction Fishing Privilege and Reduction Fishing History as defined in this Reduction Contract.

4. *Groundfish Reduction Permit.* Offeror expressly acknowledges that it hereby offers to permanently surrender, relinquish, and have NMFS permanently revoke the valid non-interim Federal License Limitation Program groundfish license issued pursuant to 50 CFR 679.4(k) (or successor regulation) endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pacific cod, and hook and line gear identified in section 46 of this contract as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License and any offered and accepted interim permit that Offeror causes to become a non-interim permit, (the "Groundfish Reduction Permit").

5. *Reduction Permit(s).* Offeror hereby acknowledges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke any and all Federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License, (the "Reduction Permits").

6. *Reduction Privilege Vessel.* The Reduction Privilege Vessel is the vessel listed on the Offeror's License Limitation Program license.

7. *Reduction Fishing Privilege.* If a vessel is specified in section 46 of this contract (the "Reduction Privilege Vessel"), Offeror hereby acknowledges that Offeror offers to relinquish and surrender the Reduction Privilege Vessel's fishing privilege and consents to the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Privilege Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Privilege Vessel's fisheries trade endorsement under the Commercial Fishing Industry Vessel Anti-Reflagging Act (46 U.S.C. 12108); eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the "Reduction Fishing Privilege"). Offeror agrees to instruct the United States Coast Guard's Vessel Documentation Center to remove the fishery endorsement from the Reduction Privilege Vessel. If the Reduction Privilege Vessel is not a federally documented vessel, the Offeror offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.

8. *Reduction Fishing History.* Offeror surrenders, relinquishes, and consents to NMFS' permanent revocation of the following Reduction Fishing History (the "Reduction Fishing History"):

a. The Reduction Privilege Vessel's full and complete documented harvest of groundfish;

b. For any documented harvest of the Reduction Privilege Vessel whatsoever, including that specified in section 8 of this contract, any right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and documented harvest which could ever qualify any party for any future limited access system fishing license, permit, and other harvest authorization of any kind; including without limitation crab LLP licenses linked to License Limitation Program ("LLP") licenses, state fishing rights appurtenant to Reduction Fishing Vessels, and all fishing history associated therewith, but without prejudice to any party who before submission of this offer may have for value independently acquired the fishing history involving any such documented harvest;

c. Any documented harvest on any other vessel (Reduction Fishing Vessel) that gave rise to the Groundfish Reduction Permit; and

d. All fishing history associated with the latent LLP license identified on the Selected Offer and any fishing history associated with the fishing vessel that gave rise to the latent LLP license that remains in the Offeror's possession as of August 11, 2006 (*i.e.*, date of publication of the proposed rule in the **Federal Register**).

9. *Halibut, Sablefish and Crab IFQs Excluded.* Notwithstanding any other provision of this Reduction Contract, no right, title and/or interest to harvest, process or otherwise utilize individual fishing quota ("IFQ") quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR parts 679 and 680, nor crab LLP license history to the extent necessary for the issuance of crab IFQ pursuant to 50 CFR part 680 as in effect as of the date of this Contract, shall be included among Offeror's Reduction Fishing Interests.

10. *Representations and Warranties.* Offeror represents and warrants that, as of the date of submission of this Reduction Contract, Offeror is:

a. The holder of record, according to NMFS' official fishing license records, at the time of offer, of the Groundfish Reduction Permit and the Reduction Permit(s).

b. The Reduction Privilege Vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, at the time of offer, and that the Reduction Privilege Vessel is neither lost nor destroyed at the time of offer.

c. In retention of and fully and legally entitled to offer and dispose of hereunder, full and complete rights to the Reduction Privilege Vessel's full and complete Reduction Fishing History necessary to fully and completely comply with the requirements of section 8 of this contract.

11. *Offer Amount.* NMFS' payment to Offeror in the exact amount of the amount set forth by Offeror in section 46 of this contract is full and complete consideration for the Offeror's offer.

12. *Additional Offer Elements.* Offeror shall include with its offer an exact photocopy of the Reduction Privilege Vessel's official vessel documentation or

registration (*i.e.*, the certificate of documentation the U.S. Coast Guard's National Vessel Documentation Center issued for federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the Groundfish Reduction Permit and all Reduction Permit(s). The Offeror shall also include with the offer all other information required in this Reduction Contract and otherwise comply with Reduction Contract requirements.

13. *Use of Official Fishing License or Permit Databases.* Offeror expressly acknowledges that NMFS shall use the appropriate official governmental fishing license or permit database to:

Determine the Offeror's address of record; verify the Offeror's qualification to offer; determine the holder of record of the Groundfish Reduction Permit and Reduction Permit(s); and verify the Offeror's inclusion in the offer of all permits and licenses required to be offered in the Offer.

14. *Use of National Vessel Documentation Center Database.* Offeror expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the owner of record for a federally documented Reduction Privilege Vessel and the appropriate State records to determine the owner of record of a non-federally documented Reduction Privilege Vessel.

15. *Offeror to Ensure Accurate Records.* Offeror shall, to the best of its ability, ensure that the records of the databases relevant to sections 13 and 14 of this contract are true, accurate, and complete.

16. *Submissions are Irrevocable.* The parties hereto expressly acknowledge as the essence hereof that the Offeror voluntarily submits to NMFS this firm and irrevocable offer. The Offeror expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of the Reduction Contract and that the receipt date and time which NMFS marks on the Reduction Contract constitutes the date and time of the offer's submission.

17. *Offer Rejection.* NMFS shall reject an offer that NMFS deems is in any way unresponsive or not in conformance with the Reduction Contract, and the applicable law or regulations unless the Offeror corrects the defect and NMFS, in its sole discretion, accepts the correction.

18. *Notarized Offeror Signature(s) Required.* NMFS shall deem as non-responsive and reject an offer whose Offer Submission Form does not contain the notarized signatures of all persons required to sign the form on behalf of the Offeror.

19. *Offer Rejections Constitute Final Agency Action.* NMFS's offer rejections are conclusive and constitute final agency action as of the rejection date.

20. *Effect of Offer Submission.* Submitting an irrevocable offer conforming to the requirements stated herein entitles the Offeror to have NMFS accept the offer if NMFS, in its sole discretion, deems that the offer is fully responsive and complies with the Act, the final rule and any other rule promulgated pursuant to the Act.

21. *Offeror Retains Use.* After submitting an offer, the Offeror shall continue to hold, own, or retain unimpaired every aspect of any and all LLP License(s) and or vessels set forth on an Offer included as Reduction Fishing Interests, until such time as: NMFS notifies the Offeror that the Reduction Plan is not in compliance with the Act or other applicable law and will not be approved by NMFS; notifies the Offeror that the referendum was unsuccessful; NMFS tenders the reduction payment and the Offeror complies with its obligations under the Reduction Contract; or NMFS otherwise excuses the Offeror's performance.

22. *Acceptance by Referendum.* NMFS shall formally notify the Offeror in writing whether the referendum is successful, which written notice shall inform Offeror that the condition subsequent has been satisfied. Therefore, Offeror expressly acknowledges that all parties must perform under the Reduction Contract and the Reduction Contract is enforceable against, and binding on, the Reduction Contract parties in accordance with the terms and conditions herein.

23. *Reduction Contract Subject to Federal Law.* The Reduction Contract is subject to Federal law.

24. *Notice to Creditors.* Upon NMFS' offer acceptance notice to the Offeror, Offeror agrees to notify all parties with secured interests in the Reduction Fishing Interests that the Offeror has entered into the Reduction Contract.

25. *Referendum.* Offeror acknowledges that the outcome of the referendum of the Reduction Plan is an occurrence over which NMFS has no control.

26. *Unsuccessful Referendum Excuses Performance.* An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Offeror need not surrender and relinquish or allow the revocation or restriction of any element of the Reduction Fishing Interest specified in the Reduction Contract. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

27. *Offeror Responsibilities upon Successful Referendum.* Upon NMFS' formal notification to the Offeror that the referendum was successful and that NMFS had accepted the Reduction Contract, Offeror shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests.

28. *Written Payment Instructions.* After a successful referendum, NMFS shall tender reduction payment by requesting the Offeror to provide to NMFS, and the Offeror shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Offeror or to the Offeror's order.

29. *Request for Written Payment Instructions Constitutes Tender.* NMFS' request to the Offeror for written payment instructions constitutes reduction payment tender, as specified in 50 CFR 600.1011.

30. *Offeror Responsibilities upon Tender.* Upon NMFS' reduction payment tender to

the Offeror, the Offeror shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests. The Offeror must then return the original of its Groundfish Reduction Permit and Reduction Permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Offeror shall forever cease all fishing for any species with the Reduction Privilege Vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed on the Reduction Privilege Vessel. Offeror agrees to authorize the United States Coast Guard to cancel the fishery endorsement in the Reduction Privilege Vessel.

31. *Reduction Privilege Vessel Lacking Federal Documentation.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately scrap any vessel which the Offeror specified as a Reduction Privilege Vessel and which is documented solely under state law or otherwise lacks documentation under Federal law. The Offeror shall scrap such vessel at the Offeror's expense. The Offeror shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Offeror shall conclude such scrapping within a reasonable time.

32. *Future Harvest Privilege and Reduction Fishing History Extinguished.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part, from the use or holdship of the Groundfish Reduction Permits and the Reduction Permit(s), from the use or ownership of the Reduction Privilege Vessel (subject to and in accordance with the provisions of section 8 of this contract), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Offeror for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

33. *Post Tender Use of Federally Documented Reduction Privilege Vessel.* After NMFS' reduction payment tender to the Offeror, the Offeror may continue to use a federally documented Reduction Privilege Vessel for any lawful purpose except "fishing" as defined under the Magnuson-Stevens Act and may transfer—subject to all restrictions in the Reduction Contract, other applicable regulations, and the applicable law—the vessel to a new owner. The Offeror or any subsequent owner shall only operate the Reduction Privilege Vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Offeror fails to abide by such restrictions, the Offeror expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the Reduction Privilege Vessel and scrapping it at the Offeror's expense.

34. *NMFS' Actions upon Tender.* Contemporaneously with NMFS' reduction payment tender to the Offeror, and without regard to the Offeror's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: Permanently revoke the Offeror's Groundfish Reduction Permit and Reduction Permit(s); notify the National Vessel Documentation Center to permanently revoke the Reduction Privilege Vessel's fishery trade endorsement; notify the U.S. Maritime Administration to make the Reduction Privilege Vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the Reduction Fishing History represented by any documented harvest fishing history accrued on, under, or as a result of the operation of the Reduction Privilege Vessel and/or Reduction Fishing Vessel (subject to and in accordance with the provisions of section 8 of this contract), the Groundfish Reduction Permit, and the Reduction Permit(s) which could ever qualify the Offeror for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

35. *Material Disputes to be Identified.* Members of the public shall, up until NMFS receives the Offeror's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted Reduction Contract. Such a material dispute shall neither relieve the Offeror of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

36. *Reduction Payment Disbursement.* Once NMFS receives the Offeror's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Offeror. Reduction payment disbursement shall be in strict accordance with the Offeror's written payment instructions. Unless the Offeror's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Offeror. If the qualifying Offeror offers with a co-Offeror, both the qualifying Offeror and the co-Offeror must approve and sign the written payment instructions.

37. *Reduction Payment Withheld for Scrapping or for Other Reasons.* In the event that a Reduction Privilege Vessel which is not under Federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped before disbursing any amount withheld. NMFS may confirm, if NMFS so chooses, that the vessel has been scrapped before disbursing any amount withheld. If NMFS has reason to believe the Offeror has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction

payment disbursement until such time as the Offeror performs in accordance with the Reduction Contract terms and conditions.

38. *Offeror Assistance with Restriction.* The Offeror shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the Reduction Contract's Reduction Fishing Interest in accordance with the requirements of the Reduction Contract terms and conditions, applicable regulations and the applicable law.

39. *Recordation of Restrictions.* Upon the Reduction Fishing Privilege's revocation, the Offeror shall do everything reasonably necessary to ensure that such revocation is recorded on the Reduction Privilege Vessel's Federal documentation (which the National Vessel Documentation Center maintains in accordance with Federal maritime law and regulations) in such manner as is acceptable to NMFS and as shall prevent the Reduction Privilege Vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term "fishing" includes the full range of activities defined in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

40. *Reduction Element Omission.* In the event NMFS accepts the offer and the Offeror has failed, for any reason, to specify in the Reduction Contract any Groundfish Reduction Permit, non-Groundfish Reduction Permit(s), Reduction Privilege Vessel, Reduction Fishing Vessel, Reduction Fishing History, or any other element of the Reduction Fishing Interest which the Offeror should under Reduction Contract, applicable regulations and the applicable law have specified in Reduction Contract, such omitted element shall nevertheless be deemed to be included in the Reduction Contract and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not been omitted shall apply as if such element had not been omitted. Upon the Offeror discovering any such omission, the Offeror shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Offeror discovering any such omission, the Offeror shall act in accordance with the Reduction Contract, applicable regulations and the applicable law.

41. *Remedy for Breach.* Because money damages are not a sufficient remedy for the Offeror breaching any one or more of the Reduction Contract terms and conditions, the Offeror explicitly agrees to and hereby

authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Reduction Contract, applicable regulations and the applicable law.

42. *Waiver of Data Confidentiality.* The Offeror consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Reduction Plan requirements, including any information provided in the Reduction Contract or by any other means associated with, or necessary for evaluation of, the Offeror's Reduction Contract if NMFS finds that the release of such information is necessary to achieve the Reduction Plan's authorized purpose. The Offeror hereby explicitly waives any claim of confidentiality otherwise afforded to catch, or harvest data and fishing histories otherwise protected from release under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881 a(b)) or any other law. In the event of such information release, the Offeror hereby forever fully and unconditionally releases and holds harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act or event arising from, out of, or in any way related to, the release of any information associated with the Reduction Program.

43. *Oral Agreement Invalid.* The Reduction Contract, any addendums to section 46 of this contract, and enclosures of photocopies of licenses and permits required under section 46 of this contract, contain the final terms and conditions of the agreement between the Offeror and NMFS and represent the entire and exclusive agreement between them. NMFS and the Offeror forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

44. *Severable Provisions.* The Reduction Contract provisions are severable; and, in the event that any portion of the Reduction Contract is held to be void, invalid, non-binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against the Offeror and NMFS.

45. *Disputes.* Any and all disputes involving the Reduction Contract, and any other Reduction Plan aspect affecting them shall in all respects be governed by the

Federal laws of the United States; and the Offeror and all other parties claiming under the Offeror irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

46. *Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification.*

a. *Completion and Submission.* The Offeror must fully, faithfully, and accurately complete this section 46 of this contract and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Reduction Contract. If completing this section requires inserting more information than the places provided for the insertion of such information allows, the Offeror should attach an addendum to the Reduction Contract that: Includes and identifies the additional information, states that the addendum is a part of the Reduction Fishing Interests Identification portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Reduction Contract's Groundfish Reduction Permit, and is signed by all persons who signed the Reduction Contract as the Offeror.

b. *Offeror Information.*

(1) *Offeror name(s).* Insert in the table provided under this section 46.b(1) of this contract the name(s) of the qualifying Offeror and of the co-Offeror (if there is a co-Offeror), and check the appropriate box for each name listed.

Each name the Offeror inserts must be the full and exact legal name of record of each person, partnership, corporation or other business entity identified on the offer. If any Reduction Fishing Interest element is co-owned by more than one person, partnership, corporation or other business entity, the Offeror must insert each co-owner's name.

In each case, the Offeror is the holder of record, at the time of Offeror's execution of this Reduction Contract, of the Groundfish Reduction Permit and the Reduction Permit(s). A co-Offeror is not allowed for either the Groundfish Reduction Permit or the Reduction Permit(s). If the Offeror is also the owner of record, at the time of offering, of the Reduction Privilege Vessel, the qualifying Offeror is the sole Offeror. If, however, the owner of record, at the time of execution of this Reduction Contract, of the Reduction Privilege Vessel is not exactly the same as the Offeror, then the owner of record is the co-Offeror; and the Offeror and the co-Offeror jointly offer together as the Offeror.

OFFEROR NAME(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column to name each co-Offeror. If not, use only one row for Offeror and one row for any co-Offeror	Check appropriate box for each name listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		

OFFEROR NAME(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column to name each co-Offeror. If not, use only one row for Offeror and one row for any co-Offeror	Check appropriate box for each name listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(4)		
(5)		

(2) *Offeror address(s) of record.* Insert in the table provided under this section 46.b(2) of this contract the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact address(s) of record, and check the appropriate box for each address listed.

OFFEROR ADDRESS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.	Check appropriate box for each address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(3) *Offeror business telephone number(s).* Insert in the table provided under this section 46.b(3) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact business telephone number(s), and check the appropriate box for each number listed.

OFFEROR BUSINESS TELEPHONE NUMBER(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the telephone number of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.	Check appropriate box for each telephone number listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(4) *Offeror electronic mail address(s) (if available).* Insert in the table printed under this section 46.b(4) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact electronic mail (e-mail) address(s), and check the appropriate box for each address.

OFFEROR E-MAIL ADDRESS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the e-mail address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name in section 46.b(1) of this contract, i.e., e-mail (1) is for name (1), e-mail (2) is for name (2), e-mail (3) is for name (3), etc	Check appropriate box for each e-mail address listed in the adjacent column	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

c. *LLP license number for Groundfish Reduction Permit.* Insert in the place this section 46.c provides the full and exact license number which NMFS designated on the LLP license which the Offeror specifies as the Groundfish Reduction Permit. Attach with the Reduction Contract an exact photocopy of such license.

LLP LICENSE NUMBER(S) AND FISHERY(S) OF OF LLP LICENSE(S) SPECIFIED AS GROUND FISH REDUCTION PERMIT(S)	
License number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

d. *License number(s) for Reduction Permit(s).* Insert in the place this section 46.d provides the fishery(s) involved in, and the full and exact license number(s) with NMFS designated on the license(s) which the Offeror specifies in the Reduction Contract as the Reduction Permit(s). Enclose with the Reduction Contract an exact photocopy of each such license.

LLP LICENSE NUMBER(S) AND FISHERY OF LICENSE(S) SPECIFIED AS REDUCTION PERMITS	
License number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

e. *Reduction Fishing History.* For all Reduction Fishing History insert in the place provided in the table under this section 46.e the chronological and other information with each column heading therein requires. The information required does not include any actual landing data. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS based on the fishing history of a lost or destroyed vessel plus a replacement vessel must insert information for both vessels and meet the requirements of the framework regulations, final rule and any other regulations promulgated pursuant to the Act. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS in any part based on acquisition of fishing history from another party must insert information regarding such catch history.

NAMES(S) AND OFFICIAL NUMBER OF REDUCTION PRIVILEGE VESSEL AND NAME(S) AND OFFICIAL NUMBER(S) OF ANY VESSEL FROM WHICH FISHING HISTORY WAS ACQUIRED	FOR EACH REDUCTION PRIVILEGE VESSEL IN 1ST COLUMN PROVIDE FROM TO DATE OF EACH FISHING HISTORY OFFEROR POSSESSES	FOR EACH FISHING HISTORY IN 2ND COLUMN	
		License No. of each Groundfish Reduction Permit and Reduction Permit(s) associated with each vessel involved	If Reduction Privilege Vessel acquired fishing history from another party, provide name of party, manner in which acquired, and date acquired
(1)			
(2)			
(3)			
(4)			
(5)			

f. *Reduction Privilege Vessel.* Insert the full and exact name and official number which the National Vessel Documentation Center designated for the Reduction Privilege Vessel

which the Offeror or the co-Offeror (if there is a co-Offeror) specifies in the Reduction Contract, and check the box appropriate for the vessel's ownership of record.

Enclose with the Reduction Contract an exact photocopy of such vessel's official certificate of documentation.

REDUCTION PRIVILEGE VESSEL		Check appropriate ownership box below	
Official name	Official No.	Offeror	Co-Offeror (if any)

g. *Offer Amount.* Insert in the place this section 46.g provides the Offeror's full and exact offer amount, both in words and in numbers.

OFFER AMOUNT [U.S. DOLLARS]	
In words	In numbers

h. *Reduction Contract Signature.* In compliance with the Reduction Contract, applicable regulations and the applicable law, the Offeror submits the Reduction Contract as the Offeror's irrevocable offer to

NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Fishing Privilege, and the Reduction Fishing History—all as identified in the Reduction Contract or as required under applicable regulations, or the applicable law.

The Offeror expressly acknowledges that NMFS' acceptance of the Offeror's offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same amount specified in section 46.g of this contract (less any sum

withheld for scrapping any Reduction Privilege Vessel lacking Federal documentation or for any other purpose) to the Offeror shall, among other things, render the Reduction Privilege Vessel permanently ineligible or any fishing worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments, limitations, obligations, or other provisions which restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete Reduction Fishing Interest and any other fishery



privileges or claims associated with the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Privilege Vessel, and the Reduction Fishing History—all as more fully set forth in the Reduction Contract, applicable regulations, and the applicable law.

By completing and signing the Reduction Contract, the Offeror expressly acknowledges that the Offeror has fully and completely read the entire Reduction Contract. The Offeror expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Offeror is fully able to enter into the Reduction Contract and that the Offeror legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full Reduction Fishing Interest which the Reduction Contract specifies and the applicable regulations, and the applicable law requires that any person or entity completing the Reduction Contract and/or signing the Reduction Contract on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or

other grant of authority to bind such other person or entity to the Reduction Contract's terms and conditions. The Offeror expressly attests, warrants, and represents to NMFS that every co-owner of the Offeror necessary to constitute the Offeror's full and complete execution of the Reduction Contract has signed the Reduction Contract. The Offeror expressly attests, warrants, and represents to NMFS that the Offeror: Fully understands the consequences of submitting the completed Reduction Contract of which it is a party to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Offeror's breach of the Reduction Contract or submission of an offer which fails to conform with the Reduction Contract, final rule, applicable regulations and the applicable law. The Offeror expressly attests, warrants, and represents to NMFS that all information which the Offeror inserted in the Reduction Contract is true, accurate, complete, and fully in accordance with the Reduction Contract, final rule, other applicable regulations and the applicable law.

In witness whereof, the Offeror has, in the place provided below, executed the Reduction Contract either as an Offeror offering alone or as an Offeror and co-Offeror (if there is a co-Offeror) jointly offering together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Offeror's offer by signing the Reduction Contract.

The Offeror and co-Offeror (if there is a co-Offeror) must each sign the Reduction Contract exactly as instructed herein. Each co-owner (if there is a co-owner) of each Offeror and co-Offeror (if there is a co-Offeror) must also sign the Reduction Contract exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Offeror, complete and sign the acknowledgment and certification provision associated with each such person or entity's signature.

I. Offeror and co-Offeror's (if there is a co-Offeror) signature(s) and notary's acknowledgment(s) and certification(s).

**OFFEROR'S SIGNATURE AND NOTARY'S ACKNOWLEDGMENT AND CERTIFICATION**

If Offeror or co-Offeror consists of more than one owner, use one row of column 1 for each co-owner's signature. If not, use only one row for Offeror and one row for co-Offeror (if any).  
 Always use same Offeror row order as in Offeror Name in the table under section 46.b(1) of this contract (i.e., signature (1) is for name (1), signature (2) is for name (2) signature (3) is for name (3), etc.)

<p><b>OFFEROR SIGNATURE</b>                  (1) Sign. (2) Print: the following:                  (a) signer's name, (b) signer's title                  (if signing for corporation or other                  business entity), and (c) signing                  date</p>	<p>Check appropriate column for each signature in 1st column</p>		<p><b>NOTARY SIGNATURE</b>                  (1) Sign. (2) Print: the following:                  (a) name, (b) signing date, (3)                  date commission expires, and (4)                  State and county. Each notary                  signature attests to the following:                  "I certify that I know or have sat-                  isfactory evidence that the per-                  son who signed in the 1st column                  of this same row is the person                  who appeared before me and: (1)                  acknowledged his/her signature;                  (2) on oath, stated that he/she                  was authorized to sign; and (3)                  acknowledged that he/she did so                  freely and voluntarily."</p>
	Qualifying Offeror	Co-Offeror (if any)	
(1)			
(2)			
(3)			

II. United States of America's signature.  
 United States of America, Acting by and  
 through the Secretary of Commerce, National  
 Oceanic and Atmospheric Administration,

National Marine Fisheries Service, Financial  
 Services Division.  
 Dated: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Leo C. Erwin, Chief,

Financial Services Division, National Marine  
 Fisheries Service.  
 [FR Doc. 06-8354 Filed 9-26-06; 11:08 am]  
**BILLING CODE 3510-22-P**



# Federal Register

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**Friday,  
September 29, 2006**

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**Part V**

## **Department of Labor**

**Office of Labor-Management Standards**

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**29 CFR Part 403**

**Labor Organization Annual Financial  
Reports for Trusts in Which a Labor  
Organization Is Interested, Form T-1;  
Final Rule**

## DEPARTMENT OF LABOR

## Office of Labor-Management Standards

## 29 CFR Part 403

RIN 1215-AB54

## Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization Is Interested, Form T-1

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Department proposed to revise the forms used by labor organizations to file the annual financial reports required by the Labor-Management Reporting and Disclosure Act ("LMRDA" or "Act"), 29 U.S.C. 431(b). Under the proposal, specified labor organizations would file annual reports about particular trusts to which they contributed money or otherwise provided financial assistance (Form T-1). This document sets forth the Department's review of and response to comments on the proposal; this review was undertaken by the Department after the decision by the United States Court of Appeals for the District of Columbia Circuit in *American Federation of Labor and Congress of Industrial Organizations v. Chao*, 409 F.3d 377 (2005). Under this rule, the Department will require that a labor organization ("union") with total annual receipts of \$250,000 or more file a Form T-1 for each trust provided that the trust is of the type defined by section 3(l) of the LMRDA (defining "trust in which a labor organization is interested") and a number of conditions are met: The union's financial contribution to the trust was \$10,000 or more during the year; the trust had \$250,000 or more in annual receipts; and the union, acting either alone or with other unions, selects a majority of the members of the trust's governing board or the union's contribution to the trust, made independently or in combination with other unions, represents greater than 50% of the trust's revenue in the one-year reporting period. The Department will provide four exceptions to the Form T-1 requirements, and unions will not, therefore, be required to file a Form T-1 for: A Political Action Committee fund, if publicly available reports on the fund are filed with federal or state agencies; a political organization for which reports are filed with the Internal Revenue Service under 26 U.S.C. 527; an employee benefit plan filing a complete and timely report under the

Employee Retirement Income Security Act ("ERISA"); and a trust or trust fund for which an independent audit has been conducted, in accordance with the standard set forth in this final rule, if the audit is made publicly available. Under this exception the labor organization must submit the first page of the Form T-1 and a copy of the audit.

**DATES: Effective Date:** This rule will be effective on January 1, 2007; however, no labor organization is required to file a Form T-1 until 90 days after the conclusion of its first fiscal year that begins on or after January 1, 2007. A Form T-1 covers a trust's most recently concluded fiscal year, and a Form T-1 is required only for trusts whose fiscal year begins on or after January 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kay H. Oshel, Director, Office of Policy, Reports, and Disclosure, Office of Labor-Management Standards (OLMS), U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5605, Washington, DC, [olms-public@dol.gov](mailto:olms-public@dol.gov), (202) 693-1233 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** The following is the outline of this discussion.

## I. Background

- A. Introduction
- B. Judicial Review of the 2003 Rule
- C. LMRDA: Reporting Provisions and Their Enforcement
  1. History and Summary of the LMRDA
  2. Statutory Authority
  - D. The Rationale Underlying the Rule
    1. Should unions be required to report on section 3(l) trusts?
    2. Should some labor organizations be exempted from filing based on their size?
    3. Should there be an initial dollar threshold that a union's financial contribution to a union must exceed before the union may be required to file a Form T-1?
    4. When should a union that has met the initial dollar threshold be required to report on a trust in which it is interested?
    5. Where multiple unions participate in a single trust, which unions should be required to file the Form LM-2?
    6. Should itemization of substantial receipts and disbursements of the trust be required and, if so, what aggregate dollar value should trigger itemization?
    7. Should some unions be exempted from filing, if the trust already files a publicly-disclosed report, such as required by ERISA or other federal or state law, or the union submits an audit of the trust's finances?
    8. What if a section 3(l) trust refuses to provide the reporting union with the information required to complete the Form T-1?

9. What concerns about privacy or sensitive information are implicated by requiring the disclosure of information about the trust and how are these interests balanced with the right of members to obtain relevant financial information about their union?
10. When should the rule take effect?
11. What assistance will the Department provide unions to assist them with their section 3(l) reporting obligation?

- II. Changes to the Form T-1 Proposal
- III. Regulatory Procedures
  - A. Executive Order 12866
  - B. Small Business Regulatory Enforcement Fairness Act
  - C. Executive Order 13132: Federalism
  - D. Regulatory Flexibility Act
  - E. Unfunded Mandates Reform
  - F. Paperwork Reduction Act
  - G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)
  - H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
  - I. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)
  - J. Executive Order 12988 (Civil Justice Reform)
  - K. Environmental Impact Assessment
  - L. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

## I. Background

## A. Introduction

In December 2002, the Department proposed to revise its rules establishing the details of the annual union financial reports required under section 201(b) of the LMRDA, 29 U.S.C. 431(b) ("proposal"). See 67 FR 79280 (Dec. 27, 2002). The LMRDA requires a union to file an annual report reflecting its assets, liabilities, and cash flow during the reporting period. Under the Department's rules, the detail of the reports varied depending upon the size of a reporting organization, as measured by the amount of its annual financial receipts. The report filed by the largest labor organizations, Form LM-2, required the greatest detail. The proposed rule also addressed other aspects of financial reporting, including an expansion of the obligation to report information on trusts in which a union held an interest. Such trusts are created for a myriad of purposes; common examples include training funds, apprenticeship programs, pension and welfare plans, building funds, and educational funds. Some of these trusts may be funded with employer contributions and jointly administered by trustees appointed by the unions and the employers. The Department proposed that large unions would

submit this trust-related information on a new form created for this purpose, known as the "Form T-1."

As explained in the Department's proposal, the form used by labor organizations to report financial information had not changed significantly from its first printing shortly after the Act's passage in 1959. 67 FR 79280-81. As the form remained static, dramatic changes were occurring in the American workforce and in the financial operation of labor organizations, as the impact of information technology on the operation of organizations increased dramatically. *Id.* As noted in the proposal, unions have substantial financial dealings with, or through, trusts, funds or other organizations that meet the definition of a "trust in which a labor organization is interested," as defined by section 3(l) of the LMRDA, 29 U.S.C. 402(l), such as joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, strike funds, and redevelopment or investment groups. 67 FR 79284. Historically, however, the Department has required unions to report on only a segment of such trusts: those in which the ownership is wholly vested in the union, or its officers, employees, or members; which is governed or controlled by the officers, employees, or members of the union; and which is wholly financed by the union ("subsidiary organizations" or "wholly-owned trusts"). The Department explained its finding that revisions were needed to require unions to report on the assets, liabilities, receipts, and disbursements of other trusts because "[t]hese separate organizations pose the same transparency challenges as "off-the-books" accounting procedures in the corporate setting: large-scale, potentially unattractive financial transactions can be shielded from public disclosure and accountability through artificial structures, classification and organizations." 67 FR 79282.

Before issuing its proposal, Department officials met with many representatives of the affected community, including union officials and their legal counsel, to hear their views on the need for reform and the likely impact of changes that might be made. *See* 68 FR 58374. The Department's proposal, developed with these discussions in mind, requested comments on several specific issues in order to base any revisions on a complete record reflecting the views of the parties affected and the Department's consideration of the comments. *Id.* When the comment

period closed, on March 27, 2003, the Department had received over 35,000 comments. *Id.* After careful consideration of the comments, the Department issued its new union financial reporting rule on October 9, 2003. 68 FR 58374.

In November 2003, the AFL-CIO filed a complaint against the Department, challenging the rule. The suit was filed with the U.S. District Court for the District of Columbia; through this action, the AFL-CIO asked the court to order temporary, preliminary, and permanent relief to enjoin and vacate the Department's rule. The rule was upheld on its merits by the district court (*American Federation of Labor and Congress of Industrial Organizations v. Chao*, 298 F.Supp.2d 104 (D.D.C. 2004)), but on appeal the U.S. Court of Appeals for the District of Columbia Circuit (*American Federation of Labor and Congress of Industrial Organizations v. Chao*, 409 F.3d 377 (DC Cir. 2005)) ("AFL-CIO v. Chao") vacated the rule relating to the Form T-1.

In light of the decision by the DC Circuit and guided by its opinion, the Department has again reviewed the proposal as it related to the Form T-1 and the comments received on the proposal. This final Form T-1 rule is based on that review. Under this final Form T-1 rule a union must file a Form T-1 for a section 3(l) trust if it, alone or in combination with other unions, selects or appoints the majority of the members of the trust's governing board or it contributes, alone or in combination with other unions, more than 50% of the trust's revenue during the annual reporting period. This final Form T-1 rule will close a gap in the financial reporting regime that has provided unions and others with an opportunity to evade their reporting obligations under the Act. The rule achieves the Department's goal, consistent with the Act's purpose, of providing union members and the public with detailed information about the financial operations of unions. Such transparency allows union members to obtain the information they need to monitor their union's affairs and to make informed choices about the leadership of their union and its direction. At the same time, this transparency promotes both the unions' own interests as democratic institutions and the interests of the public and the government.

#### B. Judicial Review of the 2003 Rule

The district court upheld the rule in its entirety, except for temporarily delaying the rule's implementation date. *See American Federation of Labor and*

*Congress of Industrial Organizations v. Chao*, 298 F.Supp.2d 104 (D.D.C. 2004).

On appeal, the DC Circuit unanimously upheld the Department's promulgation of the revised Form LM-2 as a reasonable exercise of its LMRDA rulemaking authority. *AFL-CIO v. Chao*, 409 F.3d 377 (D.C. Cir. 2005). In a divided decision, however, the court vacated the Form T-1 rule because, in its view, the Department exceeded its authority by "requiring general trust reporting." 409 F.3d at 378-79, 391. The court framed the issue before it as "whether Form T-1 comports with the statutory requirements that the Department "find [such rule is] necessary to prevent" evasion of LMRDA Title II reporting requirements." *Id.* at 386 (quoting section 208 of the LMRDA, 29 U.S.C. 438).

Given what it viewed as the ambiguity inherent in the word "necessary" as used in section 208 (authorizing reports "necessary to prevent circumvention or evasion of \* \* \* reporting requirements"), the court examined the rule to determine whether the Department's interpretation of the statute was permissible. *Id.* at 386-87; *see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). The AFL-CIO argued that the Department's T-1 rule was impermissible, in part, because it encompassed joint trusts, which by operation of statute were independent of a union's control. *Id.* at 388; *see* 29 U.S.C. 186(c). In rejecting this argument, the court noted that the statutory definition of "trust in which a union is interested," 29 U.S.C. 402(l), included joint trusts, such as Taft-Hartley employer-funded benefit plans, and agreed with the Department's interpretation that such trusts could be used to evade the reporting requirements. *Id.* at 387-88. The court agreed with the Department's reasoning that "[s]ince the money an employer contributes to such a 'trust' \* \* \* might otherwise have been paid directly to the workers in the form of increased wages and benefits, the members \* \* \* have a right to know what funds were contributed, how the money is managed and how it is being spent." *Id.* at 387. The court held that "[s]ection 208 does not limit the [Department] to requiring reporting only in order to disclose transactions involving the misuse of union members' funds because leaving the decision about disclosure to such trusts \* \* \* would allow unions to circumvent or evade reporting on the use of members' funds diverted to the trust." *Id.* at 388-89.

The court recognized that reports on trusts that reflect a union's financial condition and operations are within the Department's rulemaking authority, including trusts "established by one or more unions or through collective bargaining agreements calling for employer contributions, [where] the union has retained a controlling management role in the organization," and also those "established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of that trust." *Id.* at 388, 389. The court acknowledged that the Department's findings in support of its rule were based on particular situations where reporting about trusts would be necessary to prevent evasion of the related unions' own reporting obligations. *Id.* at 387-88. One example included a situation where "trusts [are] funded by union members' funds from one or more unions and employers, and although the unions retain a controlling management role, *no individual union* wholly owns or dominates the trust, and therefore the use of the funds is not reported by the related union." *Id.* at 389 (emphasis added). In citing these examples, the court explained that "absent circumstances involving dominant control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues, a report on the trust's financial condition and operations would not reflect on the related union's financial condition and operations." *Id.* at 390. For this reason, while acknowledging that there are circumstances under which the Secretary may require a report, the court disapproved of a broader application of the rule to require reports by any union simply because the union satisfied a reporting threshold (a union with annual receipts of at least \$250,000 that contributes at least \$10,000 to a section 3(l) trust with annual receipts of at least \$250,000). *Id.*

In reaching its conclusion, the court rejected an underlying premise of the rule that a union's appointment of a single member to a trust's governing board could trigger a reporting obligation, even though the union's contribution to the trust constituted a fraction of the trust's total revenues. *Id.* at 390. The court explained that "[w]here a union has minimal control over trust fund spending and a union's contribution is so small a part of the trust's revenues, and the trust is not otherwise controlled by unions or dominated by union members' funds, the trust lacks the characteristics of the

unreported transactions in the examples on which the [Department] based the final rule." *Id.* at 391. In these circumstances, in contrast to the examples relied upon by the Department, the element of management control or financial dominance is missing. *Id.*

In a separate opinion, then Circuit Judge Roberts concurred with the majority's conclusion that the Form LM-2 was valid, but dissented on the majority's decision to vacate the provisions of the Final Rule relating to Form T-1. 409 F.3d at 391. Contrary to the majority, he concluded, as had the district court, that the Department had established, as shown by the rulemaking record, that a section 3(l) trust report was necessary to prevent a union's circumvention of its reporting obligations.

The Department sought rehearing and rehearing en banc of the panel's decision, asserting that the panel erred in requiring the Department to make additional findings in order to establish a reporting obligation with respect to any trust that met the statutory definition of a section 3(l) trust and which satisfied the rule's monetary threshold requirements. The petitions were denied on October 28, 2005.

#### *C. LMRDA: Reporting Provisions and Their Enforcement*

### **1. History and Summary of the LMRDA**

In enacting the LMRDA in 1959, a bipartisan Congress made the legislative finding that in the labor and management fields "there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives." LMRDA, section 2(a), 29 U.S.C. 401(a). The statute creates a comprehensive scheme designed to empower union members by providing them the means to maintain democratic control over their unions and ensure a proper accounting of union funds. Together with the Act's fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of union officials, the Act's various reporting requirements, 29 U.S.C. 431-433, operate to safeguard a union's funds from depletion by improper or illegal

means. The reporting requirements also help ensure that a union official's duty to the union and its members is not subordinate to that official's own personal financial interests.

The legislation was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of union racketeering and corruption; and its findings of financial abuse, mismanagement of union funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. See generally Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 851-55 (1960). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local unions and employers (and labor consultants aligned with the employers) whose employees were represented by the unions in question or might be organized by them. Similar arrangements also were found to exist between union officials and the companies that handled matters relating to the administration of union benefit funds. See generally *Interim Report of the Select Committee on Improper Activities in the Labor or Management Field*, S. Report No. 85-1417 (1957); see also William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of Employee Rights*, 59 Colum.L.Rev. 96 (1959).

The statute was designed to remedy these various ills through a set of integrated provisions aimed at union governance and management. These include a "bill of rights" for union members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for union democracy, see LMRDA, sections 101-105, 29 U.S.C. 411-415; financial reporting and disclosure requirements for unions, union officers and employees, employers, labor relations consultants, and surety companies, see LMRDA, sections 201-206, 211, 29 U.S.C. 431-436, 441; detailed procedural, substantive, and reporting requirements relating to union trusteeships, see LMRDA, sections 301-306, 29 U.S.C. 461-466; detailed procedural requirements for the conduct of elections of union officers, see LMRDA, sections 401-403, 29 U.S.C. 481-483; safeguards for unions, including bonding requirements, the

establishment of fiduciary responsibilities for union officials and other representatives, criminal penalties for embezzlement from a union, loans by a union to officers or employees, employment by a union of certain convicted felons, and payments to employees for prohibited purposes by an employer or labor relations consultant, *see* LMRDA, sections 501–505, 29 U.S.C. 501–505; and prohibitions against extortionate picketing and retaliation for exercising protected rights, *see* LMRDA, sections 601–611, 29 U.S.C. 521–531. As explained in the Department’s 2002 proposal and 2003 rule, the reporting regimen had hardly changed in the more than 40 years since the Department issued its first reporting rule under the LMRDA. 25 FR 433, 434 (1960).

## 2. Statutory Authority

This rule is issued pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the Act’s reporting provisions. Secretary’s Order 4–2001, issued May 24, 2001, and published in the **Federal Register** on May 31, 2001 (66 FR 29656), continued the delegation of authority and assignment of responsibility to the Assistant Secretary for Employment Standards in Secretary’s Order 5–96 of the Secretary’s functions under the LMRDA.

Section 208 allows the Secretary to issue “reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as [she] may find necessary to prevent the circumvention or evasion of [the Act’s] reporting requirements.” 29 U.S.C. 438.

Section 3(l) of the LMRDA, 29 U.S.C. 402(l) provides:

“Trust in which a labor organization is interested” means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The authority to prescribe rules relating to section 3(l) trusts augments the Secretary’s general authority to prescribe the form and publication of other reports required to be filed under the LMRDA. Section 201 of the Act requires unions to file annual, public reports with the Department, detailing the union’s cash flow during the reporting period, and identifying its assets and liabilities, receipts, salaries

and other direct or indirect disbursements to each officer and all employees receiving \$10,000 or more in aggregate from the union, direct or indirect loans (in excess of \$250 aggregate) to any officer, employee, or member, any loans (of any amount) to any business enterprise, and other disbursements. 29 U.S.C. 431(b). The statute requires that such information shall be filed “in such detail as may be necessary to disclose [a union’s] financial conditions and operations.” *Id.* Large unions report this information on the Form LM–2. Smaller unions report less detailed information on the Form LM–3 or LM–4.

### D. The Rationale Underlying the Rule

In the proposal and the 2003 rule, the Department outlined the reasons why labor organizations should report on the financial details of section 3(l) trusts. The guiding point in the rulemaking is the statutory command that the Department determine whether such reporting is necessary to prevent the circumvention or evasion of the LMRDA’s reporting obligations. *See* 67 FR 79284 (“Form T–1 contains various types of financial information that is intended to discourage circumvention or evasion of the reporting requirements in title II [of the LMRDA]”). “The objective of this rule is to increase the transparency of union financial reporting by revising the LMRDA disclosure forms \* \* \* [to] enable workers to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by [the Department].” *Id.* at 68 FR 58420 (emphasis added).

As explained further below, the Form T–1 is designed to close a reporting gap under the Department’s former rule whereby unions were only required to report on “subsidiary organizations.” Today’s rule will assure that union members will receive a more complete accounting of how their union’s funds are invested or otherwise expended. By reviewing the Form T–1, union members will receive information on funds that would be accounted for on the LM–2 but for their distribution through a trust in which the union has an interest. This rule will make it more difficult for a union, union officials, or other parties with influence over the union to avoid, simply by transferring money from the union’s books to the trust’s books, the basic reporting

obligation that would apply if the funds had been retained by the union. Although the rule will not require such an accounting for all section 3(l) trusts in which a union participates, it will be required where a union, alone or in combination with other unions, appoints or selects a majority of the members of the trust’s governing board or where contributions by unions represent greater than 50% of the revenue of the trust. Thus the rule follows the instruction in *AFL–CIO v. Chao*, where the court concluded that the Secretary had shown that trust reporting was necessary to prevent evasion or circumvention where “trusts [are] established by one or more unions with union members’ funds because such establishment is a reasonable indicium of union control of the trust,” as well as where there are characteristics of “dominant union control over the trust’s use of union members’ funds or union members’ funds constituting the trust’s predominant revenues.” 409 F.3d at 389, 390.

The Act’s primary reporting obligation (Forms LM–2, LM–3, and LM–4) applies to labor organizations, as institutions; other important reporting obligations apply to officers and employees of labor organizations (Form LM–30), requiring them to report any conflicts between their personal financial interests and the duty they owe to the union they serve and to employers and labor relations consultants who must report payments to labor organizations and their representatives (Form LM–10). *See* 29 U.S.C. 432; 29 U.S.C. 433. Thus, requiring unions to report the information requested by the Form T–1 rule provides an essential check for union members and the Department to ensure that unions, union officials, and employers are accurately and completely fulfilling their reporting duties under the Act, obligations that can easily be ignored without fear of detection if reports related to trusts are not required.

Under the instructions of the Department’s pre-2003 Form LM–2, a reporting obligation concerning section 3(l) trusts would arise only if the trust was a “subsidiary” of the reporting union and met other requirements set by the Department, *i.e.*, an entity wholly owned, wholly controlled and wholly financed by the union. *See* 68 FR 58413. Thus, the former rule, which was crafted shortly after the Act’s enactment, required reporting by only a portion of the unions that contributed to section 3(l) trusts, and, in many cases, no reporting at all. During the intervening

decades, the financial activities of individuals and organizations have increased exponentially in scope, complexity, and interdependence. 67 FR 79280–81. For example, many unions manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. 67 FR 79280. The complexity of union financial practices, including business relationships with outside firms and vendors, increases the likelihood that union officers and employees may have financial interests in these businesses that might conflict with fiduciary obligations owed to the union and its members. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for union officers and employees who may operate, receive income from, or hold an interest in such businesses. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between unions, union officials, employers, and other entities, including section 3(l) trusts.

In addition to the extensive changes in unions' financial activities, some of the historical problems that led to the establishment of the LMRDA's reporting provisions and other federal statutes regulating trusts still persist, as illustrated by the 2002 proposal and the comments received on the proposal. As suggested by the proposal (67 FR 79285) and reflected in the 2003 rule (68 FR 58413), the enactment of ERISA has ameliorated many of the historical problems, but many section 3(l) trusts do not file the detailed financial reports that add transparency to the operations of such trusts. The Department provided examples of situations where funds held in section 3(l) trusts were being used for improper purposes by union officials:

- Credible allegations that funds from a training benefits trust jointly administered by the union and employer had, without any public disclosure, been used to pay union officials supplementary salaries.
- A case in which no information was publicly disclosed about the disposition of tens of thousands of dollars (over \$60,000 per month) paid into a trust established to provide strike benefits. No information was disclosed because the trust was established by a group of union locals and not controlled by any single union.

- A case in which a credit union trust largely financed by a union local had made large loans to union officials but had not been obligated to report them because the trust was not wholly owned by the union. Four loan officers, three of whom were officers of the Local, received 61% of the credit union's loans.

- A case in which local union officials established a building fund financed in part with union members' pension funds.

67 FR 79283. In each of these instances, the information would have been reported if the Form T-1 had been in place.

Such trusts "pose the same transparency challenges as 'off-the-books' accounting procedures in the corporate setting: Large scale, potentially unattractive financial transactions can be shielded from public disclosure and accountability through artificial structures, classification and organizations." 67 FR 79282. The Department's former rule required unions to report on only a subset of such trusts, which resulted in a gap in the reporting requirements on these trusts. As a result, members have long been denied important information about union funds that were being directed to other entities, ostensibly for the members' benefit, such as joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. See 67 FR 79285. The Form T-1 is necessary to close this gap, prevent certain trusts from being used to evade the Title II reporting requirements, and provide union members with information about financial transactions involving a significant amount of money relative to the union's overall financial operations and other reportable transactions. 68 FR 58415 (2003). As explained in the proposal, additional trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a union's financial condition and operations, including a full accounting to union members from whose toil the payments were exacted. 67 FR 79282–83.

This final Form T-1 rule preserves the key aspects of the 2002 proposal, as revised by the 2003 rule, but the scope of the reporting requirement has been narrowed to conform with the D.C. Circuit's decision in *AFL-CIO v. Chao*. Today's rule is tied to the union's reporting obligation under the LMRDA and its relationship to a section 3(l) trust. In general terms, the final Form T-

1 rule applies only to those unions that, alone or in combination with other unions, select or appoint a majority of the trustees or the members of the governing body of the section 3(l) trust, or, alone or in combination with other unions, contributed over 50% of the trust's revenue during a one-year reporting period. A union that meets either of these conditions will be required to file the Form T-1. On the form, the union will report the amount of its contribution to the section 3(l) trust (including any contribution made on its behalf), and the trust's total receipts and liabilities. In completing the form, the union must separately identify: any individual or entity from which the trust received \$10,000 or more; any individual disbursement of \$10,000 or more by the trust; and any entity or individual that received disbursements from the trust that aggregated to \$10,000 or more. The rule reiterates the Department's determination, expressed in both the proposal and the 2003 rule, that no union need file the Form T-1 if the trust already files a detailed ERISA report (Form 5500) or other reports required by federal or state law. Further, a union is excused from providing the detailed financial information required by the Form T-1 if it chooses to submit an audit of the trust that meets the criteria prescribed by the rule. A union that must file the Form T-1 will use the form and instructions published as an appendix to this rule.

In the following discussion, the Department addresses the major components of the Form T-1 rule, its consideration of the views expressed in the comments, its rationale for the specific aspects of the final Form T-1 rule and the determination that the Form T-1 rule is "necessary to prevent the circumvention and evasion of [the] reporting requirements" imposed by the LMRDA.

To address the main points in the proposal, the comments received on the proposal, and the rationale for adopting or modifying various aspects of the proposal, the Department has chosen to utilize a question and answer format. For each question, the Department outlines the rationale it provided in the proposal and the preamble to the 2003 rule. As appropriate, further explanation is provided in light of the Department's review of the rulemaking record after the D.C. Circuit's decision in *AFL-CIO v. Chao*.

1. Should unions be required to report on section 3(l) trusts?
2. Should some labor organizations be exempted from filing based on their size?

3. Should there be an initial dollar threshold that a union's financial contribution to a union must exceed before the union may be required to file a Form T-1?

4. When should a union that has met the initial dollar threshold be required to report on a trust in which it is interested?

5. Where multiple unions participate in a single trust, which unions should be required to file the Form LM-2?

6. Should itemization of substantial receipts and disbursements of the trust be required and, if so, what aggregate dollar value should trigger itemization?

7. Should some unions be exempted from filing, if the trust already files a publicly-disclosed report, such as required by ERISA or other federal or state law, or the union submits an audit of the trust's finances?

8. What if a section 3(l) trust refuses to provide the reporting union with the information required to complete the Form T-1?

9. What concerns about privacy or sensitive information are implicated by requiring the disclosure of information about the trust and how are these interests balanced with the right of members to obtain relevant financial information about their union?

10. When should the rule take effect?

11. What assistance will the Department provide unions to assist them with their section 3(l) reporting obligation?

1. Should unions be required to report on section 3(l) trusts?

The Department invited comment on whether its proposal was appropriate and sufficient for the purpose of providing full disclosure of pertinent financial information about section 3(l) trusts and whether alternate or additional approaches would achieve full disclosure while minimizing the reporting burden on unions. 68 FR 79285. Numerous comments were received in favor of and against the proposal. Many comments objected to the Form T-1 as burdensome; they generally expressed similar opposition to any change in the rules relating to the Form LM-2. The Department disagreed with these comments and explained in detail why the Form LM-2 and Form T-1 were needed and appropriate to achieve the reporting purposes underlying the LMRDA. *See generally* 68 FR 58375-95. Other comments addressed the Department's legal authority to require the unions to provide any information other than that required by the Department's longstanding rules. *See generally* 68 FR 58376-80. In response, the Department explained that the LMRDA vests the Department with authority to revise the reporting requirements in the manner proposed. *Id.*

In preparing today's rule, the Department determined that it would be helpful to clarify a point that may

continue to confuse stakeholders about the effect of a trust's coverage by ERISA, particularly insofar as Taft-Hartley trusts are concerned. For example, one comment objected to the Form T-1 as "absolutely duplicative" of existing reporting requirements. An international union supported the proposition that members should know about the receipts and disbursements, including those made by relatively "mundane trusts," such as building funds and credit unions, but that the Form T-1 merely duplicates information that is already reported on the Form 5500 that ERISA requires. Another comment indicated that such reporting was unnecessary because of the fiduciary obligation that attaches to individuals associated with union benefit funds.

These comments fail to fully understand the reporting required of Taft-Hartley trusts and the reporting requirements under other laws regulating these trusts. In both the proposed and the 2003 rule, the Department acknowledged that the LMRDA's reporting requirements would be satisfied by the submission of the detailed report filed by an ERISA-covered trust or an audit that satisfied ERISA requirements. 67 FR 79285; 68 FR 58413. In the 2003 rule, the Department explicitly referred to the Form 5500 and explained that the audit alternative could be satisfied by a union that submitted an audit meeting prescribed, ERISA-based standards. 68 FR 58413.

The misconception underlying the comments is based in the assumption that Form 5500 reports are filed for all section 3(l) trusts. They are not. Some section 3(l) trusts fall outside of the reporting requirements of ERISA. ERISA only covers pension and "employee welfare benefit plans." 29 U.S.C. 1002. While there is overlap between many section 3(l) trusts and ERISA "employee welfare benefit plans," there are also funds in which unions participate that fall outside ERISA coverage, including strike funds, recreation plans, hiring hall arrangements, and unfunded scholarship programs. 29 CFR 2510.3-1. Other section 3(l) trusts that are subject to ERISA are not required to file the Form 5500 or file only abbreviated schedules. *See* 29 CFR 2520.104-20 (plans with fewer than 100 participants); 29 CFR 2520.104-22 (apprenticeship and training plans); 29 CFR 2520.104-26 (unfunded dues financed welfare plans); 29 CFR 2520.104-27 (unfunded dues financed pension plans). *See also* Reporting and Disclosure Guide for Employee Benefit Plans, U.S. Department of Labor

(reprinted 2004), available at <http://www.dol.gov/ebsa/pdf/rdguide.pdf>. Thus, the Form T-1 fills the information gap confronted by union members who, absent the rule, would be unable to obtain information about a trust comparable to that disclosed by the Form 5500, even though the trust may be used to circumvent or evade LMRDA Title II reporting requirements.

The fiduciary duty to refrain from taking a proscribed action has never been thought to be sufficient by itself to protect the interests of a trust's beneficiaries. Disclosure and accounting complement the duty of an agent to act in his principal's interest. *See* Restatement (Third) of Agency § 8.01 (T.D. No. 6, 2005) *et seq.*; *see also* 1 American Law Institute, Principles of Corporate Governance § 1.14 (1994). Today's rule extends the reporting requirement to those union benefit funds that previously were under no explicit federal obligation to make such disclosure. Despite the additional coverage provided by this rule, it is likely that some officials will doubtless continue to devise methods to deny union members the benefit of trust funds derived from their own dues. *See* Archibald Cox, *Internal Affairs of Labor Organizations Under the Labor Reform Act of 1959*, 58 Mich.L.Rev. 819, 827 (1960) ("True criminals will undoubtedly ignore the duty to report"). Union officers and union representatives have a similar fiduciary duty to their union, but the Department's case files reveal numerous examples of embezzlement of union funds. The Form T-1, by disclosing information to union members, the true beneficiaries of section 3(l) trusts, will increase the likelihood that wrongdoing is detected. *See* Cox, *id.* ("The official whose fingers itch for a 'fast buck' but who is not a criminal will be deterred by the fear of prosecution if he files no report and by fear of reprisal from the members if he does"). Further, since the union's obligation to submit a Form T-1 overlaps with the responsibility of union officials to disclose payments received from the trust, the prospect that one party may report the payment increases the likelihood that a failure by the other party to report the payment will be detected. Moreover, given the increased transparency that results from the Form T-1 reporting, in some instances today's rule may cause the parties to reconsider the primary conduct that would trigger the reporting requirement.

The comments received by the Department further illustrated how the absence of a rule like the Form T-1 facilitated the diversion of union-



contributed trust funds for improper personal gain, and permitted the evasion of the LMRDA's Title II reporting obligations. A labor policy group identified multiple instances where union officials were charged, convicted, or both, for embezzling or otherwise improperly diverting union trust funds for their own gain, including the following: (1) Five individuals charged with conspiring to steal over \$70,000 from a local's severance fund; (2) two local union officials confessed to stealing about \$120,000 from the local's job training funds; (3) an administrator of a local's retirement plan was convicted of embezzling about \$300,000 from the fund; (4) a local union president embezzled an undisclosed amount of money from the local's disaster relief fund; (5) an employee of an international union embezzled over \$350,000 from a job training fund; (6) a former international officer, who had also been a director and trustee of a union benefit fund, was convicted of embezzling about \$100,000 from the union's apprenticeship and training fund; (7) a former officer of a national union was convicted of embezzling about \$15,000 in funds from the union and about \$20,000 from the union's welfare benefit fund; and (8) a former training director of a union's pension and welfare fund was charged and convicted of receiving gifts and kickbacks from a vendor that provided training for union members.

These comments recognize that existing safeguards intended to protect trusts and trust beneficiaries do not prevent the diversion of funds by some officials to trusts in order to circumvent or evade the LMRDA's reporting provisions. Both historical and recent examples demonstrate the vulnerability of trust funds to looting by union officials and others. The McClellan Committee, as discussed above, provided several examples of union officials using funds held in trust for their own purposes rather than for their union and its members. Additional examples of the misuse of union benefit funds and trust funds for personal gain may be found in the 1956 report of the Senate's investigation of welfare and pension plans, completed as the McClellan Committee was beginning its investigation. See *Welfare and Pension Plans Investigation, Final Report of the Comm. of Labor and Public Welfare, S. Rep. No. 1734 (1956)*. Such problems continued, even after the passage of the LMRDA and ERISA. In the most comprehensive report concerning the influence of organized crime in some unions, a presidential commission

concluded that "the plunder of union resources remains an attractive end in itself. \* \* \* The most successful devices are the payment of excessive salaries and benefits to organized crime-connected union officials and the plunder of workers' health and pension funds." President's Commission on Organized Crime, *Report to the President and Attorney General, The Edge: Organized Crime, Business, and Labor Unions* (1986), at 12.

More recently, union officials in New York were convicted in a "pension-fund fraud/kickback scheme" where union officials were bribed by members of organized crime to invest pension fund assets in corrupt investment vehicles. The majority of the funds were to be invested in legitimate securities but millions of dollars were to be placed into a sham investment, the body of which was to be used to fund kickbacks to the union officers with the hope that the return on investment from the majority of the legitimately invested assets would cover the amounts lost as kickbacks. *U.S. v. Reifler*, 2006 WL 999937 (2d Cir. 2006). In another case, nepotism and no-bid contracts depleted the union's health and welfare funds to the sum of several million dollars. The problems associated with the fund included, among others, paying the son-in-law of a board member, a local union official, a salary of \$119,000 to manage a scholarship program that gave out \$28,000 per year; a daughter of this board member was paid \$111,799 a year as a receptionist; and the fund paid \$123,000 for claims review work that required only a few hours of effort a week. See Steven Greenhouse, *Laborers' Union Tries to Oust Officials of Benefits Funds*, *N.Y. Times*, June 13, 2005, at B5.

In addition, while the comments received from unions and their members generally opposed any reporting obligation concerning trusts (beyond the then-existing regulation that limited reporting to subsidiaries, entities "wholly owned" by unions), there were some notable exceptions among the union members who commented on this point. As stated in the preamble to the 2003 rule, "[m]any union members recommended generally greater scrutiny of joint employer-union funds authorized under the LMRDA." 68 FR 58414. These members included several from a single international union. They explained that under the union's collective bargaining agreements, the employer sets aside at least \$.20 for each hour worked by a member and that this amount is paid into a benefit fund known as a "joint committee." The comments indicate that some of the funds are "lavished on junkets and

parties" and that the union uses the joint committees to reward political supporters of the union's officials. They stated that the union refuses to provide information about the funds, including amounts paid to "union staff." From the perspective of one member, the union does not want "this conflict of interest" to be exposed.

As the foregoing discussion, like the preamble to the 2003 rule, makes clear, the Form T-1 rule will add necessary safeguards to deter circumvention and evasion of the Act's reporting requirements. The rule will make it more difficult for unions and complicit trusts to avoid the disclosure required by the LMRDA. Union members will be able to review financial information they may not otherwise have had, empowering them to better oversee their union's officials and finances as contemplated by Congress.

2. Should some labor organizations be excepted from filing based on their size?

The Department proposed that all unions that contributed \$10,000 or more to a "significant" section 3(l) trust file a Form T-1. A "significant trust" was defined as one having annual receipts of at least \$200,000. 67 FR 79284. Thus, the obligation would attach to all unions without regard to their size as measured by the amount of their own annual receipts. See 68 FR 58412. In this regard, the proposal departed from the model proposed for the Form LM-2, where only unions with annual receipts of at least \$200,000 would be obliged to provide the kind of detailed reporting comparable to the Form T-1. Many comments expressed the view that the Form T-1 would impose a substantial burden on small labor organizations that are usually staffed with part-time volunteers, with little computer or accounting experience and limited resources to hire professional services. *Id.* In the 2003 rule, the Department explained that it had been persuaded that the relative size of a union, as measured by its overall finances, will affect its ability to comply with the proposed Form T-1 reporting requirements. 68 FR 58412-13. For this reason, the Department set as a Form T-1 reporting threshold a union's receipt of at least \$250,000 during the one-year reporting period, the same filing threshold that applies for the Form LM-2. 68 FR 58413. For the same reason, the final Form T-1 rule applies only to unions that have \$250,000 or more in annual receipts and meet the other parts of the test for filing the Form T-1 as stated in the new rule.

3. Should there be an initial dollar threshold that a union's financial contribution to a trust must exceed before the union may be required to file a Form T-1?

The Department proposed that any union that contributes \$10,000 or more to a section 3(l) trust must file the Form T-1, and that unions that contributed less than this amount would not have to file the form. 67 FR 79284. The Department explained that without contributions of this magnitude a union likely would encounter some difficulty in persuading the trust to provide a detailed accounting of the latter's financial activities. 67 FR 79284. The Department invited comment on whether the \$10,000 contribution was appropriate as a filing threshold or whether it would be preferable to prescribe a threshold that reflected the union's proportional share of the trust's receipts, such as 5%, 10%, or 25%. 67 FR 79285.

A number of comments stated that the \$10,000 union contribution threshold was too low and recommended various alternatives. 68 FR 58415. Those comments urged the Department to revise the proposal so that the threshold was based on ownership or control of at least 50% of the trust. *Id.* In the 2003 rule, the Department explained that the alternatives suggested would not achieve the full disclosure sought by the proposal; instead, it would deny information to the members of all the other unions participating in the trust. 68 FR 58415-16. The Department explained that the \$10,000 threshold for union contributions provided an appropriate compromise between unnecessarily burdening a union and providing union members with information about how a trust that has received a significant amount of their union's revenues has managed the trust's finances. 68 FR 58415. The Form T-1 provides them with the means to identify the amount and purpose of large payments to individuals or entities and thereby determine whether there might be an irregularity in the payment or the relationship between the payee and officials of the members' own union. *Id.*

The comments that sought to impose a filing threshold based on principles of ownership or control of the trust are addressed in the response to question 4, below. In that section, the Department discusses its determination that unions' filing obligations will depend on their selection of a majority of the governing members of a trust or their contribution of more than 50% of the union's annual revenue. Despite its adoption of this

test, the Department has chosen to retain a \$10,000 initial threshold. Unions that contribute less than this amount have no Form T-1 filing obligation. The Department concludes that the burden on a union of filing the Form T-1 under these circumstances outweighs the marginal increase in transparency that would be provided to union members whose union has contributed less than \$10,000 that year. Pursuant to this bright-line threshold, a union that contributes less than \$10,000 need not take the time to consider any other factors relevant to a determination of whether the Form T-1 is required. Based on the amount of its annual contribution alone, the union will recognize that it need not file a Form T-1.

4. When should a union that has met the initial dollar threshold be required to report on a trust in which it is interested?

The Department's proposal required any union, regardless of its size or the portion of the trust's receipts its payments represented, to file a report if it contributed \$10,000 or more to a section 3(l) trust during the reporting period and the trust had annual receipts of at least \$200,000. The proposal, however, invited comment on whether adequate disclosure could be achieved instead by expanding the definition of "subsidiary" to include trusts that were closely related to the union but not "100% owned, controlled and financed by the [union]." 67 FR 79285. The Department suggested that this alternative would borrow from the test, used in other contexts, to determine whether multiple companies constitute a "single entity." *Id.* The Department explained that this approach would be based on various factors, including an assessment as to the integration of the companies' operations and their common management. *Id.*

In the 2003 rule, the Department explained that it had received only a few comments on the "single entity" test. 68 FR 58416. After considering the comments, the Department determined that the test would be less effective than other approaches, because it could be easily evaded by unions seeking to conceal their relationship with a trust. *Id.* The Department further explained that even if information concerning the relationship between the trust and the union was readily available, the test could prove difficult to apply and thus was a poor substitute for a "bright line" standard pegged to a specified dollar threshold. *Id.*

The "single entity" alternative was mentioned in the D.C. Circuit's opinion

in *AFL-CIO v. Chao*, but the court did not approve or disapprove of this approach. 409 F.3d at 390-91. Instead, the court focused its inquiry on the extent of the unions' relationship with section 3(l) trusts and indicia of their management control or financial domination of the trusts. *Id.* at 388-89.

Several comments received by the Department noted that the union's control over, not merely its participation in, a trust should fix any reporting obligation, and thus objected to the Department's proposal imposing a general reporting obligation on all large unions. The AFL-CIO's objection to the proposal was twofold: "If the union does not control the trust, the trust cannot be used to circumvent the reporting requirements; and if the union does not control the trust it cannot compel the trust to divulge the detailed financial information [required]." It explained: "[T]he Department's proposal does not require that the union have effective control over the trust. Without de facto, or actual, control over a trust's financial management, a labor organization has no mechanism by which it can circumvent or evade the Act's reporting requirements." Further, even though the AFL-CIO did not embrace the "single entity" approach, it viewed this approach as "a helpful starting point." While disagreeing with the mechanisms suggested by the Department, it acknowledged that the Department possessed the authority "for developing an analytical framework for identifying "significant trusts" as to which financial disclosure should be required." A local union, while generally opposed to the Form T-1, stated that "it seems reasonable that ownership or control can only be attributed to parties holding over 50% ownership of an organization."

Under the proposed rule, all covered unions were required to report on organizations with annual receipts of \$200,000 or more and that met the definition of a section 3(l) trust. Based on the comments and the decision in *AFL-CIO v. Chao*, the Department has reduced the types of trusts for which reports are required. Under today's Form T-1 rule, a reporting obligation exists where the union, alone or with other unions, appoints or selects the majority of a section 3(l) trust's governing board or its contributions to the trust, alone or in combination with other unions, represents more than 50% of the trust's revenue during the reporting period. For the purpose of determining whether a union selected the majority of the members of a section 3(l) trust's governing board, a member selected solely by one or more members

who were themselves selected solely by a union will be considered a union-selected member.

Under the Form T-1, unions that select the majority of trust board members, or provide the majority of a union's annual revenue, are required to file a report. This test is responsive to the comments that contended that reporting is justified only when there are aspects of union ownership or control over the trust. The test is also responsive to the concerns expressed by the Court of Appeals when it vacated the 2003 Form T-1, in that the test looks to the relationship between the union or unions and the trust and relies on principles of management control and financial domination. Although the Department recognizes that a union that meets this test may or may not be directing the disbursements of a trust, either directly or through union officials, it is apparent that this type of union/trust relationship can lead to the circumvention or evasion of the reporting requirements. See the response to question 1, above. The Department has determined that this test is necessary to prevent the circumvention and evasion of the Title II reporting requirements.

A union that, along with other unions, selects a majority of the trust's board members, or, along with other unions, contributes more than 50% of the union's annual revenue, will be required to file Form T-1. As discussed in greater detail under question 5, directly below, the Department recognizes that such a union did not unilaterally select a majority of a trust's board, and did not single-handedly provide more than 50% of the trust's revenue. The Department nevertheless recognizes, as did the Court in *AFL-CIO v. Chao*, that there are examples establishing that such participating unions "retain a controlling management role, [even though] no individual union wholly owns or dominates the trust." 409 F.3d at 389. Absent the Form T-1, the contributing unions, if so inclined, would be able to use the trusts as a vehicle to expend pooled union funds without the disclosure required by Form LM-2 and the members of these unions would continue to be denied information vital to their interests. It seems apparent that if a single union may circumvent its Form LM-2 reporting obligations when it retains a controlling management role or financially dominates a trust, then a group of unions is equally capable of doing so. A rule directed to preventing a single union from circumventing the law must, in all logic, be similarly

directed to preventing multiple unions from also evading their legal obligations.

5. Where multiple unions participate in a single trust, which unions should be required to file the Form LM-2?

The proposal did not differentiate among the reporting obligations of unions contributing to the same trust. Any union that satisfied the reporting threshold would have to submit the Form T-1, even though the union's share only represented a relatively small portion of the total contributions made to the trust by unions. Several comments opposed the Department's approach as requiring duplicate reports and described trust reporting as unduly burdensome unless a union contributed a substantial share of the trust's receipts.

An international union explained that it was not uncommon for several locals to participate in an apprenticeship and training fund that would be funded by payments from employers pursuant to negotiated agreements providing for "a cents per hour" contribution for hours worked by each of their employees. As an example, the union discussed a fund with annual contributions over \$300,000 in which seven locals participated. Per local contributions ranged from about \$10,000 to about \$100,000. The fund had four management and four labor trustees; three from different locals contributing to the trust and a fourth from the unions' parent organization. The union also explained that it is common for local unions in different crafts (affiliated with different parent bodies) to participate in a fund. It explained that in these instances, it would be unusual for a single craft or local to represent a majority of the union trustees. It stated that in such circumstances, it is unrealistic to suggest that any single union or craft controls the trust.

As suggested by the Department's proposal and the apprenticeship and training fund just discussed, it is not uncommon for multiple unions to participate in a section 3(l) trust without any single union contributing a majority of the trust's revenues. In some trusts, such as strike funds, unions may be the sole contributors to the fund; in others, such as Taft-Hartley trusts, the trust will be funded by employers, but such funds are established through collective bargaining agreements and the employer contributions are made for the benefit of the members of the participating unions.

Thus, multiple-union funds typically will consist solely of funds that are held in trust for the members of the various participating unions, with no particular union contributing directly, or indirectly by an employer on its behalf,

a majority of the trust's revenues. As such, unless a reporting obligation is imposed on one or more of the unions on some basis other than majority contributions, no union members will receive any information on the trust's finances—without regard to the importance of the revenues relative to other assets of any participating union. In its proposal, the Department illustrated the need for reporting on section 3(l) trusts with four examples in which unions had evaded their reporting obligations through their involvement with such trusts. One of these examples included the improper diversion of funds from a strike fund in which no single union held a controlling interest. 67 FR 79283. The absence of any union reporting obligations facilitated the improper disposition of thousands of dollars (over \$60,000 per month) from the strike fund. As discussed above, a single union may circumvent its Form LM-2 reporting obligations when it retains a controlling management role or financially dominates a trust, and there is no basis to conclude that a group of unions is not equally capable of doing so. Disbursements from a trust of pooled union money reflect the contributing unions' financial conditions and operations as clearly as the disbursements from a trust funded by a single union. A rule directed to preventing a single union from circumventing or evading the law should not permit the same conduct when it is undertaken by more than one union.

As a result of this conclusion, multiple unions may be required to report on a single trust. In responding to comments about where to place the reporting obligation in such situations, the Department considered two alternatives: fixing the obligation on the union with the greatest stake in the trust; or allowing one of the participating unions to voluntarily take on this responsibility. 68 FR 58415. While these alternatives may provide an appropriate rationale for fairly and roughly allocating the reporting burden, each suffers from the same basic infirmity—union members are not likely to view reports filed by other unions when searching for information on the financial activities of their own union and its trusts. Members of other unions participating in the trust would be effectively denied information no less vital to their interests than the information provided to members of the reporting union. Furthermore, this reporting gap could allow some unions and individuals to evade their reporting

obligations under the Act. Improper payments will be much easier to conceal if the Form T-1 was only filed by some of the participating unions (some vendors or contributors to the section 3(l) trust may only be known by members of a particular union). See example discussed below in question 6. For these reasons, the Department has determined that where multiple unions each contribute \$10,000 or more to the trust during the reporting period, and either they appoint a majority of the members of the trust's governing board or their combined contributions constitute greater than 50% of the trust's annual revenues, each will be required to file a Form T-1.

6. Should itemization of substantial receipts and disbursements of the trust be required and, if so, what aggregate dollar value should trigger itemization?

The Department proposed that itemization should be required for "major disbursements" by the section 3(l) trust. 67 FR 79284. The Department defined "major disbursements" for Form T-1 purposes as \$10,000 or more. Thus, a union would report any payee who received \$10,000 or more from the trust during the reporting period, the amount of the disbursement, its purpose, and other pertinent information about the transaction. *Id.*

The comments on this proposal, in large part, mirrored the comments on the itemization required by the Form LM-2 proposal. Several comments stated that itemization was likely to impose a significant burden on unions with little corresponding benefit to members. Only a few unions, they argued, had accounting systems capable of capturing items for itemization and the number of entries alone for large trusts would be overwhelming. Other comments supported itemization of Form T-1 receipts and disbursements.

In responding to these comments, the Department restated its commitment to itemization. The Department explained that itemization is integral to preventing circumvention or evasion of the reporting obligations imposed on unions and union officials. *See, e.g.*, 68 FR 58384-91, 58416-17. Moreover, by excepting from the reporting requirements unions with less than \$250,000 in annual receipts, the Department significantly reduced the overall burden associated with the Form T-1. The Department observed that no comment suggested that section 3(l) trusts lacked the capacity to provide the information requested by the Form T-1. 68 FR 58416. The Department acknowledged that the rule would require large section 3(l) trusts to

itemize numerous entries. *Id.* The Department noted, however, that these trusts will have available to them bookkeeping and accounting software capable of collecting the information required to complete the form. *Id.* With regard to the itemization threshold of \$10,000, the Department stated that a disbursement in such amount represents a substantial transaction of interest to union members. 68 FR 58414-15. The Department explained that the difference between the reporting threshold for itemized transactions under the Form LM-2 (\$5,000) and the threshold under Form T-1 (\$10,000) was appropriate because the finances of a trust are less likely to directly impact union members than the expenditures by the union itself. 68 FR 58417.

Itemization is helpful in preventing circumvention or evasion of the Act's reporting requirements. Among other requirements, Form T-1 requires a union to identify:

- The names of all the trust's officers and all employees making more than \$10,000 in salary and allowances and all direct and indirect disbursements to them;
- Disbursements to any individual or vendor that aggregate to \$10,000 or more during a reporting period and provide for each of the vendors, their business address, and the purpose of the disbursements, and
- Any loans made at favorable terms by the trust to the union's officers or employees, the amount of the loan, and the terms of repayment.

68 FR 58430-31 (2003). *See also* 68 FR 58493 (officers); 68 FR 58495 (employees). Where payments from a business that buys, sells or otherwise deals with a trust in which a labor union is interested are made to a union officer or employee or his or her spouse, or minor child, the LMRDA imposes on the union officer or employee a separate obligation to report such payments (Form LM-30, as required by 29 U.S.C. 432). The itemization of trust payments of at least \$10,000 also allows union members to determine whether any of the recipients of the trust's payments are businesses in which a union official (or the official's spouse or minor child) holds an interest, a circumstance that may also require a report to be filed by the union official (LM-30). Thus, the Form T-1 operates to deter a union official from evading this reporting obligation.

To illustrate how the Form T-1 ties into the other reporting obligations under the Act, in addition to the examples in section D.1, above, consider an instance in which a trust identifies

a \$15,000 payment to a company for duplicating services. With this information, coupled with information about a union official's "personal business" interests, the union member or the Department may discover whether the official has reported this payment on a Form LM-30. The same information might allow a union member to ascertain whether the trust and the union have used the same printing company and whether there was a pattern of payments by the trust and the union from which an inference could be drawn that duplicate payments were being made for the same services. Upon further inquiry into the details of the transactions, a member or the government may be able to determine whether the payments masked a kickback or other conflict-of-interest payment, and, as such, reveal an instance where the union, a union official, or an employer may have failed to comply with their reporting obligations under the Act.

7. Should some unions be excepted from filing the Form T-1 if the trust already files a publicly-disclosed report, such as required by ERISA or other federal or state law, or if the union submits an audit of the trust's finances?

In the NPRM, the Department explained that its proposal did not require unions to file a report if a similar publicly available report already was filed with a government agency. 67 FR 79285. The proposal identified the following exceptions: A Political Action Committee fund if reports on such funds are filed with a federal or state agency, a political organization for which reports are filed with the Internal Revenue Service pursuant to 26 U.S.C. 527, or a fund described in sections 302(c)(5) through (9) of the LMRA, 29 U.S.C. 186(c)(5) through (9), or for a plan that filed complete annual financial reports, returns and schedules pursuant to the requirements of ERISA, 29 U.S.C. 1023 and 29 CFR 2520.103-1. *Id.* The proposal also provided that no separate report would be required if annual audits were made freely available on demand for inspection by interested persons under section 302(c)(5)(B) of the LMRA, 29 U.S.C. 186(c)(5)(B). *Id.*

The 2003 rule revised some of the exceptions proposed. The Department clarified that no Form T-1 need be filed for any trust that met the first three exceptions just discussed. 68 FR 58413. With regard to the ERISA exception, as discussed above in connection with the first question, the Department explained that the exception was available only if the trust filed complete and timely Form

5500 reports. *Id.* With regard to the audit alternative, the Department explained that the audit must meet either the requirements of 29 CFR 2520.103-1 (relating to annual reports and financial statements required to be filed under ERISA) or comparable standards described in the Form T-1 instructions. 68 FR 58413-14. The Department explained that the standards in the instructions overlap partially with the ERISA standards, as adapted to serve the particular needs of the Department in administering the T-1 rule. 68 FR 58414. The Department recognized that the audit option may not provide the same detail as the itemization required by the Form T-1, but that this was an acceptable trade off as a way to reduce the overall reporting burden on the union and the section 3(l) trust. 68 FR 58413-14. The final Form T-1 rule preserves the reporting exceptions and audit alternative provided under the 2003 rule. Under the audit alternative a labor organization need only complete the first page of the T-1 (items 1-15 and the signatures of the organizations' officers) and submit a copy of an audit that meets all the following standards:

- The audit is performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles or Other Comprehensive Basis of Accounting.
- The audit includes notes to the financial statements that disclose, for the preceding twelve-month period:
  - Losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale;
  - Liabilities and loans liquidated, reduced, or written off without the disbursement of cash;
  - Loans made to union officers or employees that were granted at more favorable terms than were available to others; and
  - Loans made to officers and employees that were liquidated, reduced, or written off.
- The audit is accompanied by schedules that disclose, for the preceding twelve-month period:
  - A statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; and

- A statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in \$10,000 or more of commerce and the total of the transactions with each party.

Under this final rule, the Department has provided unions with alternative approaches to meeting their disclosure obligations while at the same time ensuring that unions make an accounting of the funds in section 3(l) trusts, as they already do on the Form LM-2 for funds maintained in the unions' own accounts.

8. What if a section 3(l) trust refuses to provide the reporting union with the information required to complete the Form T-1?

The Department's proposal did not directly address the concern, later expressed in several comments, that a section 3(l) trust in which a union held a significant financial interest would refuse to provide the information needed to complete the Form T-1. Several comments expressed concern about a union's liability for failure to file a timely report, given that the trust might refuse to provide the information and the union's inability to compel its production. 68 FR 58417-18. In response, the Department acknowledged the possibility that there may be some instances in which a trust will not fully cooperate in providing timely information to the reporting union. 68 FR 58418. The Department explained that unions are required to make a good-faith effort to obtain timely information from a trust, adding that after such good faith effort, the Department would exercise any available investigative and other authority to assist the reporting union in obtaining the necessary information. *Id.*

In this regard, it deserves emphasis that no comment suggested that an administrator of a section 3(l) trust had expressed an intention to withhold from a union information required to complete the Form T-1. And, although there were some comments that a trust would be bound by its own fiduciary obligations in determining whether to make the information available, there was no indication that a trust held the view that it would violate such duty by providing the information required by the form. In addition, where a union, alone or in combination with other unions, appoints or selects a majority of the trust's board members, a majority of the board would then have an interest in disclosure, which, by all appearances, would result in the trust releasing the information necessary to

meet the Form T-1 obligation either on its own initiative or by vote of the board members. Also, by all appearances, where a union's contributions to the trust, alone or in combination with other unions, constitute greater than 50% of the revenue of the trust for that fiscal year, the union or unions should have some control over whether the trust releases this information. For these reasons, the Department expects that trusts will routinely and voluntarily comply in providing such information to reporting unions and that any need for the Department to intercede will be rare. Nevertheless, the Department also reaffirms its intention to use its available investigatory authority to assist the reporting union to obtain information necessary to complete the Form T-1.

9. What concerns about privacy or sensitive information are implicated by requiring the disclosure of information about the trust and how are these interests balanced with the right of members to obtain relevant financial information about their union?

As noted, the Department invited general comments about its proposed reporting requirements for section 3(l) trusts. 67 FR 79285. Several labor organizations raised privacy concerns about the itemization requirement of the Form T-1; specifically, they identified the concern that the disclosure of the name and address of individuals receiving trust funds (as well as the date, purpose, and amount of the transfer) would be unwise and perhaps unlawful under federal privacy laws. 68 FR 58417. Some comments recommended aggregating all disbursements as a way to protect the privacy of beneficiaries. While noting its concern that aggregating all disbursements would substantially reduce the amount and quality of the information reported on a Form T-1, the Department acknowledged the importance of ensuring personal privacy. *Id.* To achieve such protection, the Department modified the rule so as to permit a reporting union to choose not to disclose sensitive information about individuals; the modification allows a reporting union to withhold specific information if the union concludes that the disclosure of such information would inappropriately divulge private information. *Id.* The Form LM-2 also permits unions to withhold personal information in similar circumstances. *Id.*

One comment questioned the wisdom of requiring the particular identification of any loans to officers, employees, or members that exceeded \$250. 68 FR

58417. The comment suggested that in most cases such loans would be made only on customary, commercial terms and that, consequently, there would be little gained by disclosing this information. Any benefit from disclosure in these circumstances would be outweighed by opening the financial circumstances of union members and others to public inspection. The Department agreed that individual financial circumstances should be kept private. The Department explained that it had deleted the proposed schedule to the Form T-1 that would have collected information on individual loans. *Id.* The Department explained that the Form T-1 instead was revised to contain a question asking the union to state whether the trust had loaned money to a union official on terms that are substantially more favorable than terms available to others, or has forgiven loans to officers or employees of the union during the reporting period. *Id.* The Form T-1 requirements, as crafted, meet the privacy concerns expressed in the comments.

In response to a number of comments expressing concern that the disclosure of some financial information would impede the organizational and collective bargaining strategies of filing unions, the Department crafted a procedure to accommodate both these concerns and the countervailing interest of union members in obtaining financial information about their union's finances. The procedure, applicable to both Form LM-2 and Form T-1 filers, allows unions to withhold such information so long as they comply with the specific conditions applicable to such information, including requests by union members for such information. The instructions published for Form LM-2 and Form T-1 are virtually identical on this point. *See* 68 FR 58499-100 (LM-2) 68 FR 58534 (T-1). Although it seems much less likely that disaggregated information reported on the Form T-1 would raise the same concerns as information reported on the Form LM-2, the Department believes that it is prudent to extend the same option to Form T-1 filers. Thus, for the same reasons as articulated in the preamble to the 2003 rule (*see* 68 FR 58386-88) and the instructions, the Department has adopted the same approach in today's rule. In this regard, the Department notes that the regulation promulgated by the 2003 rule (*see* 68 FR 58448, codified at 29 CFR 403.8(b)), as distinct from the forms and the instructions, only specifically referred to Form LM-2. To remedy this oversight, today's rule adds a new

regulatory provision comparable to section 403.8(b)(1), to clarify that the same treatment applies to the Form T-1 filers. The only difference in the two provisions is that each addresses the distinct itemization thresholds for the two reports (\$5,000 for Form LM-2 and \$10,000 for Form T-1).

#### 10. When should the rule take effect?

The Department proposed that unions should submit the Form T-1 to the Department within 90 days after the end of the trust's fiscal year. 67 FR 79284. Comments were invited on alternative filing deadlines. *Id.* Several comments suggested that 90 days after the close of the trust's fiscal year did not allow unions sufficient time to complete the Form T-1. The Department explained that, based on past experience with the trust and the union's own records, unions likely would have information available to them that would enable them to know ahead of time whether a T-1 filing would be necessary. 68 FR 58417. Moreover, none suggested that the trusts would be unable to provide the information within the necessary timeframe.

The Department ultimately determined that a union should file the Form T-1 at the same time as it files the Form LM-2, rather than 90 days after the close of the trust's fiscal year. 68 FR 58418. Significantly, the Department explained that the union should file the Form T-1 based on the latest available information reported to the union by the trust or from a qualifying audit. *Id.* Thus, the Department explained that if a trust's fiscal year ends on a different date than the reporting union's fiscal year, the union will have the amount of time between the end of the trust's most recent fiscal year and the end of the union's own fiscal year, plus 90 days, to file the report. *Id.*

The final Form T-1 rule will not take effect until 90 days from the date of this publication and will apply only to unions with fiscal years beginning on or after the rule's effective date. A Form T-1 covers a trust's most recently concluded fiscal year, and a Form T-1 is required only for trusts whose fiscal year begins on or after the effective date of this publication (90 days after publication).

The final rule revises the Form T-1 instructions to make plain that the Form T-1 should be filed at the same time that the union's Form LM-2 is filed; it also makes plain that no Form T-1 is due until after the close of the trust's first fiscal year that begins after the effective date of today's rule. The instructions will restate this

requirement and provide examples of its application.

#### 11. What assistance will the Department provide unions to assist them with their section 3(l) reporting obligation?

This document, along with the preamble to the 2003 rule, the T-1 Form (unchanged by today's rule), and the instructions, as revised, will be the authoritative source of information regarding the obligation of unions to file reports on section 3(l) trusts. Additionally, the Department will continue its substantial efforts to assist unions with their reporting obligations under the Act. The Department's Form T-1-specific compliance assistance will include an overview of the reporting requirements; a schedule of Form T-1 seminars for international, national, intermediate and local unions, and section 3(l) trust administrators conducted by OLMS offices throughout the country; an email list-serve to provide periodic updates to interested parties; and web-based materials that include frequently asked questions, a description of the Form T-1 registration process, and other topics of interest to unions and trust administrators.

## II. Changes to the Form T-1 Proposal

As explained above, the Department has determined to narrow the scope of its proposal, as revised by its 2003 rule. While both the proposal and 2003 rule required any union meeting the threshold reporting requirements with an interest in a section 3(l) trust to file a Form T-1 unless it met specified "audit" or "other reporting" exceptions, today's rule limits the filing to those unions that, alone or with other unions, selected or appointed the majority of the members of a section 3(l) trust's governing board or contributed, alone or in combination with other unions, more than 50% of the trust's revenue during the trust's plan year ending during the union's annual reporting period. For the purpose of determining whether a union selected the majority of the members of a trust's governing board, a member selected solely by one or more members who were themselves selected solely by a union will be considered a union-selected member.

Only a few paragraphs of text are required to revise the Form T-1 instructions published at 68 FR 58524-38: a revised first paragraph under section I ("Who Must File") and a new paragraph to be added to section II ("When to File"). The form itself is unchanged. The revised language to section I of the instructions follows:

### I. Who Must File

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA), with total annual receipts of \$250,000 or more ("union"), must file Form T-1 each year for each trust *if the following conditions exist:*

- *The trust is a trust defined by section 3(l) of the LMRDA, that is, the trust is a trust or other fund or organization (1) that was created or established by the union or the union appoints or selects a member to the trust's governing board; and (2) the trust has as a primary purpose to provide benefits to the members of the union or their beneficiaries (29 U.S.C. 402(l)); and*

- *The union's financial contribution to the trust, a contribution made as a result of a collective bargaining agreement to which the union is a party, or a contribution otherwise made on the union's behalf, was \$10,000 or more during the trust's fiscal year and the trust had \$250,000 or more in annual receipts; and either*

- *The union, alone or in combination with other unions, appoints or selects a majority of the members of the trust's governing board; or*

- *The union's contributions to the trust, alone or in combination with other unions, represent greater than 50% of the trust's revenues during the one-year reporting period (contributions by an employer on behalf of the union's members as required by a collective bargaining agreement are considered to be contributions of the union as are any contributions otherwise made on the union's behalf).*

No Form T-1 should be filed for any trust that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that the LMRDA exempts from reporting. No separate report need be filed for Political Action Committee (PAC) funds if publicly available reports on the PAC funds are filed with a Federal or state agency, or for a political organization for which reports are filed with the Internal Revenue Service pursuant to 26 U.S.C. 527. No separate report is required for an employee benefit plan that filed a complete and timely annual report pursuant to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1023, 1024(a), and 1030, and 29 CFR 2520.103-1, for a plan year ending during the reporting period of the union. A notice filed with the Secretary of Labor pursuant to an exemption from reporting and disclosure, however, does not constitute a complete annual financial report. *An abbreviated report may be filed for any covered trust or trust fund for which an independent audit has been conducted, in accordance with the standards of section 29 CFR 2520.103-1, as discussed in the next paragraph [of the instructions].*

The quoted language (without italics and bracketed material) appears verbatim in the revised Form T-1 instructions. To highlight the limited reach of the reporting obligation, a shortened version is included as part of

the Department's financial reporting regulations (to be codified at 29 CFR 403.2(d)).

A new paragraph will be added to the beginning of section II of the instructions to clarify when a union must file a Form T-1. The clarification replaces the first paragraph of section II as published in the 2003 final rule. See 68 FR 58525. The new paragraph ensures that unions recognize that the Form T-1 must be filed at the same time that they file their Form LM-2. The new paragraph reads:

Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The Form T-1 shall cover the trust's most recent fiscal year, *i.e.*, the fiscal year ending on or before the closing date of the union's own fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities and Penalties) of these instructions.

Filers should note that they have comparable lead time to prepare their initial Form T-1 as they were provided by the 2003 rule. [The following assumes that this rule is published on October 1, 2006 and becomes effective January 1, 2007.]

No Form T-1 is due for any trust whose fiscal year began before January 1, 2007, the effective date of the Form T-1 rule. Thus, no union is required to file a Form T-1 until at least March 31, 2008. As the examples below demonstrate, the union's obligation to file its first Form T-1 depends primarily on the date on which the trust's fiscal year begins. No Form T-1 is due until sometime after the close of the trust's first fiscal year that begins on or after the Form T-1 rule takes effect, January 1, 2007.

- If a union's fiscal year runs from the effective date of the Form T-1 rule, January 1, 2007, until December 31, 2007, and the trust's fiscal year also runs from those same dates, a Form T-1 would be due on March 31, 2008. This date is 90 days after the close of the union's fiscal year.

- If both the union's and the trust's fiscal years run from October 1, 2006, to September 30, 2007, the union's first Form T-1 would not be due until December 29, 2008. This date is 90 days after the close of the trust's fiscal year that began on October 1, 2007. Because the Form T-1 rule did not take effect until January 1, 2007, the trust's first fiscal year covered by the rule closed on September 30, 2008.

- If a union's fiscal year runs from January 1, 2007, to December 31, 2007, and the trust's fiscal year runs from April 1, 2007, to March 31, 2008 (the first fiscal year that began on or after the effective date of the Form T-1 rule), the

union's first Form T-1 would not be due until March 31, 2009. This date is 90 days after the close of the union's fiscal year on December 31, 2008.

### III. Regulatory Procedures

#### A. Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this final rule is not an "economically significant" regulatory action under section 3(f)(1) of Executive Order 12866. Because compliance with the rule can be achieved at a reasonable cost to covered labor organizations and trusts in which they are interested (as defined by 29 U.S.C. 402(l)), the rule is not likely to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Order. Because of its importance to the public, however, the rule was treated as a significant regulatory action and was reviewed by the Office of Management and Budget.

Based on the criteria set forth in the preamble and discussed in further detail below, the Department estimates that 1,664 Form T-1s will be filed for each of the first three years after the effective date. The Department estimates the total cost of the final rule to be \$3.3 million in the first year, \$1.6 million in the second year, and \$1.4 million in the third year (see the following Paperwork Reduction Act section for a description of how the universe of filers and resulting costs were estimated). The three-year total average cost of the rule is \$2.1 million per year.

The Department believes that there are substantial unquantifiable benefits resulting from the greater transparency of labor organizations' financial information to their members, the public, and the Department, including the benefits of deterring fraud or facilitating its detection.

### B. Small Business Regulatory Enforcement Fairness Act

The Department has concluded that this final rule is not a “major” rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### C. Executive Order 13132: Federalism

The Department has reviewed this final rule in accordance with Executive Order 13132, regarding federalism, and has determined that the rule does not have “federalism implications.” The economic effects of the rule are not substantial, and it has no “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.”

### D. Regulatory Flexibility Act

The Department’s NPRM in this rulemaking contained initial Regulatory Flexibility Act and Paperwork Reduction Act analyses, which were also submitted to, and approved by, OMB. Based upon careful consideration of the comments and the changes made to the Department’s proposal in this final rule, the Department has made significant adjustments to its burden estimates. The costs to the Department for administering the reporting requirements of the LMRDA also were adjusted. These adjustments are discussed in the PRA analysis, Section F. *See also* discussion at 68 FR 58428.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Small Business Administration (“SBA”) determined, in a regulation that became effective on October 1, 2000, that the maximum annual receipts allowed for a labor union or similar labor organization and its affiliates to be considered a small organization or entity under section 601(4), (6) of the Regulatory Flexibility

Act was \$5.0 million. 13 CFR 121.201 (2002) [Code Listing 813930]. This amount was adjusted for inflation to \$6.5 million by a regulation that became effective on January 5, 2006. 13 CFR 121.201 (2006). Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

#### 1. Statement of the Need for, and Objectives of, the Rule

The following is a summary of the need for and objectives of the rule. A more complete discussion is found in the preamble.

The objective of this rule is to increase the transparency of union financial reporting by revising the LMRDA disclosure forms to enable workers to be responsible, informed, and effective participants in the governance of their unions; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the Act by the Department. The Form T-1 is designed to close a reporting gap where union finances in relation to LMRDA section 3(l) trusts were not disclosed to members, the public, or the Department.

One of the Act’s primary reporting obligations (Forms LM-2, LM-3, and LM-4) applies to labor organizations, as institutions; other important reporting obligations apply to officers and employees of labor organizations (Form LM-30), requiring them to report any conflicts between their personal financial interests and the duty they owe to the union they serve, and to employers and labor relations consultants who must report payments to labor organizations and their representatives (Form LM-10). *See* 29 U.S.C. 432; 29 U.S.C. 433. Requiring unions to report the information required by the Form T-1 final rule provides an essential check for union members and the Department to ensure that unions, union officials, and employers are accurately and completely fulfilling their reporting duties under the Act, obligations that can easily be ignored without fear of detection if reports relating to trusts are not required.

Under the Department’s former rule, a reporting obligation concerning section 3(l) trusts would arise only if the trust was a “subsidiary” of the reporting union and met other requirements previously set by the Department (*see* Form LM-2 instructions in effect prior to the 2003 final rule). *See also* 68 FR

58413. Thus, the former rule, which was crafted shortly after the Act’s enactment, required reporting by only a portion of the unions that contributed to section 3(l) trusts. During the intervening decades, the financial activities of individuals and organizations have increased exponentially in scope, complexity, and interdependence. 67 FR 79280–81. For example, many unions manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. 67 FR 79280. The complexity of union financial practices, including business relationships with outside firms and vendors, increases the likelihood that union officers and employees may have interests in, or receive income from, these businesses. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for union officers and employees who may operate, receive income from, or hold an interest in such businesses. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between unions, union officials, employers, and other entities, including section 3(l) trusts.

Such trusts “pose the same transparency challenges as ‘off-the-books’ accounting procedures in the corporate setting: Large scale, potentially unattractive financial transactions can be shielded from public disclosure and accountability through artificial structures, classification and organizations.” 67 FR 79282. The Department’s former rule required unions to report on only a subset of such trusts, which resulted in a gap in the reporting requirements on these trusts, where, were the union to retain the funds, these funds would appear on the union’s Form LM-2; however, despite the close relationship between the union and the trust, and the purpose of the funds to benefit the members, once such funds leave the union, there is no accountability under the current rule. Thus, Form T-1 essentially follows union funds that remain in closely connected trusts, but which would otherwise go unreported. As a result of non-disclosure of these funds, members have long been denied important information about union funds that were being directed to other entities, ostensibly for the members’ benefit,



such as joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. See 67 FR 79285. The Form T-1 is necessary to close this gap, prevent certain trusts from being used to evade the Title II reporting requirements, and provide union members with information about financial transactions involving a significant amount of money relative to the union's overall financial operations and other reportable transactions. 68 FR 58415 (2003). The purpose of the LMRDA disclosure requirements is to prevent financial malfeasance of union money. 67 FR 79282-83. This purpose is demonstrably frustrated when existing reporting obligations fail to disclose, for example, opportunities for fraud. (Examples of situations where money in section 3(l) trusts was being used to circumvent or evade the reporting requirements can be found in the preamble and at 67 FR 79283.)

As explained in the proposal, additional trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a union's financial condition and operations, including a full accounting to union members from whose work the payments were earned. 67 FR 79282-83. The rule will prevent circumvention and evasion of these reporting requirements by providing union members with financial information concerning trusts that their unions have helped select the directors or provided the majority of the funds. The Form T-1 will also identify the trust's significant vendors and service providers. A union member who is aware that a union official has a financial relationship with one or more of these businesses will be able to determine whether the business and the union official have made required reports.

## 2. Number of Small Entities Covered Under the Rule

The impact of this final rule will be on the largest labor organizations, defined as those that have \$250,000 or more in annual receipts, which are interested in a trust for purposes of section 3(l) of the LMRDA. There are approximately 3,827 labor organizations with \$250,000 or more in receipts, which amounts to 18% of all labor organizations covered by the LMRDA. Based on fiscal year 2005 LM-2 filings, the Department estimates that 3,508 of these unions, or 92% of unions with receipts of \$250,000 or more, are considered small under the current SBA standard (annual receipts less than \$6.5

million). These unions have average annual receipts of approximately \$1.1 million and an average of 13 officers and 6 employees. From this universe of potential filers (those unions interested in a trust under Section 3(l) of the LMRDA which meets the \$250,000 receipt threshold and other requirements as outlined above), the Department expects approximately 1,664 Form T-1 reports. These estimates are derived from the best available information as noted below in the Paperwork Reduction Act analysis, Overview of Form T-1.

## 3. Reporting, Recordkeeping and Other Compliance Requirements of the Rule

This final rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact of the final rule will be the cost of obtaining and reporting required information.

In the 2003 final rule, the Department estimated that 2,769 Form T-1s would be filed annually based on a three-tier analysis of unions organized by receipt size. 68 FR 58435. In response to the opinion of the D.C. Circuit in *AFL-CIO v. Chao*, the Department has imposed a more restrictive description of the labor organizations that must file Form T-1, thereby effectively decreasing the overall number of labor organizations that will file Form T-1. Based on these restrictions, the Department has reconstructed the three-tier analysis in estimating the burdens and costs of Form T-1. (A more detailed discussion of the methodology for estimating burden hours and costs for the Form T-1 appears below at section F.4.) First, it was assumed that 10% of the 1,055 labor organizations with annual receipts of \$250,000 to \$499,999.99 (Tier 1) would file one Form T-1. Second, it was assumed that 25% of the 2,723 labor organizations with annual receipts of \$500,000 to \$49.9 million (Tier 2) would file on average two Form T-1s. Third, it was assumed that 100% of the 49 labor organizations with annual receipts of \$50 million or more (Tier 3) would file an average of four Form T-1 reports each (see Table 1 below). The implementation of a tier system is based on the underlying assumption that the size of a union, as measured by the amount of its annual receipts, will affect its recordkeeping and reporting burden for Form T-1. Larger unions have more trusts to account for: The three tiers are constructed to differentiate these relative burdens among those unions with \$250,000 or more in receipts 68 FR 58433. These numbers represent an

estimated decline from the 2003 estimates that: 15% of Tier 1 labor organizations would file on average 1 Form T-1; 35% of Tier 2 labor organizations would file on average 2.6 Form T-1s; and 100% of Tier 3 labor organizations would file on average 5 Form T-1s. 68 FR 58444.

For each of the three tiers, the Department estimated burden hours for nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three-year annual average for the nonrecurring and recurring burden hours similar to the way it had estimated the burden hours for revised Form LM-2 filers 68 FR 58436.

As explained below, the Department estimates the average reporting and recordkeeping burden for Form T-1 to be 71.7 hours per respondent in the first year (including non-recurring implementation costs), 33.9 hours per respondent in the second year, and 30.4 hours per respondent in the third year (see Table 3). The Department estimates the total annual burden hours for Form T-1 respondents to be approximately 119,000 hours in the first year, 56,000 hours in the second year, and 51,000 hours in the third year (see Table 3).

In arriving at these totals, the Department estimates the initial burden required for preparing to complete the Form T-1 for all three tiers as follows: 2.4 hours to provide the Form T-1 requirements to the trust, 4.3 hours for reviewing the new form and instructions, and 8.0 non-recurring (first year) hours for installing, testing, and reviewing the OLMS provided software. The overall time required to read and review the form and instructions is estimated to decline to 2.0 hours the second year and 1.0 hour the third year as unions and trusts become more familiar with the revised form.

The Department estimates the average reporting burden required to complete pages one and two of the Form T-1 for each of the three tiers to be 6.1 hours and the average recordkeeping burden associated with the items on pages one and two to be 1.6 hours. These estimates are proportionally based on the recordkeeping and reporting burden estimates for the first two pages of the current Form LM-4, which are very similar to the first two pages of Form T-1. The first two pages of Form LM-4 have 21 items (8 questions that identify the union; four yes/no questions; seven summary numbers for maximum amount of bonding, number of members, total assets, liabilities, receipts, and disbursements, and total disbursements to officers; and an

additional information item). The first two pages of Form T-1 have 25 items (14 questions that identify the union and trust; six yes/no questions; four summary numbers for total assets, liabilities, receipts, and disbursements; and an additional information item). For comparison, Form LM-3 has 56 items with two statements on assets, liabilities, receipts, and disbursements.

For the Form T-1 receipt and disbursement schedules, the Department estimates that on average, respondents will take 9.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel for each of the schedules. Further, the Department also estimates that on average Form T-1 respondents will take 1.2 (recurring) hours to prepare and transmit the receipts schedule and 1.4 hours for the disbursements schedule. The Department also estimates that on average, Form T-1 respondents will take 8.3 hours (recurring) of recordkeeping burden for each schedule to maintain the additional information required by the final rule.

For the Form T-1 schedule of disbursements to officers and employees of the trust the Department estimates that it will take respondents an average of 2.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department estimates it will take on average 0.8 hours to prepare and transmit the schedule.

The Department also estimates that it will take 2.0 hours for the trust to review Form T-1 and 1.0 hours for this information to be sent to the Form LM-2 filer. In addition, the Department estimates that the union president and secretary-treasurer will take 4.0 hours to review and sign the form. The time for the president and secretary-treasurer to review and sign the form declines to 2.0 hours the second year and 1.0 hour the third year as they become more familiar with the form.

The Department estimates the average annual cost for Form T-1 to be \$1,986 per respondent in the first year (including non-recurring implementation costs), \$934 per respondent in the second year, and \$838 per respondent in the third year (see Table 4). The Department also estimates the total annual cost to respondents for Form T-1 to be \$3.3 million in the first year, \$1.6 million in the second year, and \$1.4 million in the third year (see Table 4).

The cost estimates are based on wage rate data obtained from the Department's Bureau of Labor Statistics ("BLS") 2004 National Compensation Survey for personnel employed in service industries (*i.e.*, accountant, bookkeeper, etc.) and adjusted to be total compensation estimates based on the BLS Employer Cost data. The estimates used for salaries of labor organization officers and employees are obtained from the annual financial reports filed with OLMS and are also adjusted to be total compensation estimates.

These expenses are not expected to have a substantial impact on the 3,508 unions considered to be small by SBA standards because they amount to only 0.1% of each of these unions' average annual receipts over three years (\$1,253 [three-year average cost per respondent] / \$1.1 million [average annual receipts]). Further, the final rule will apply to 3,508 unions that meet the SBA standard for small entities, or just 16% of all unions with annual receipts of less than \$6.5 million that must file an annual financial report under title II of the LMRDA. Even fewer will incur any actual costs as not all unions with \$250,000 or more in receipts will be required to file Form T-1 as other requirements must be met. Therefore, the Department has determined that the final rule does not have a significant impact on a substantial number of small entities.

#### 4. Steps Taken To Minimize the Impact on Small Entities

Only unions with receipts of \$250,000 or more that are "interested" in a trust for purposes of the LMRDA will be required to file Form T-1. The NPRM tied the Form T-1 to the revised Form LM-2 and required those unions with receipts of \$200,000 or more to file the revised Form LM-2 and Form T-1 for a section 3(1) trust. 67 FR 79820. The Department, in response to comments received from the public, raised the Form LM-2 and Form T-1 reporting threshold to \$250,000. 68 FR 58383. Raising the threshold for filing a Form LM-2 from \$200,000 to \$250,000 resulted in 501 of the smallest labor organizations previously required to file a Form LM-2 to no longer be required to file Form LM-2. The impact on Form T-1 is that these 501 smallest labor organizations likewise are not required to file Form T-1. Furthermore, the union need only file a Form T-1 for trusts which have \$250,000 or more in annual receipts thus further reducing the impact on small entities.

The Department is also allowing for alternative acceptable filing

requirements. Providing alternative acceptable filing requirements for those unions that would otherwise file Form T-1 is aimed at promoting disclosure while reducing the recordkeeping and reporting burdens for unions with trusts that are already subject to other disclosure requirements. Specifically, no Form T-1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of ERISA, 29 U.S.C. 1023, or if the organization files publicly available reports with a Federal or state agency as a Political Action Committee ("PAC"). Additionally, a labor organization may substitute an audit that meets the criteria set forth in the Form T-1 instructions for the financial information otherwise reported on a Form T-1 for a qualifying trust.

The instructions for Form T-1 provide examples and guidance on how to complete the report and maintain records, and OLMS staff will provide compliance assistance for any questions or difficulties that may arise in completing the form or using the reporting software. A help desk is staffed during normal business hours and can be reached by calling a toll-free telephone number: 1-866-4-USA-DOL (1-800-487-2365).

#### E. Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a federal mandate that might result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million in any one year.

#### F. Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 ("PRA"). See 5 CFR 1320.9. As discussed in the preamble to this final rule and the analysis that follows, the rule implements an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on unions that must provide the information, including small unions; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting unions; (5)

the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of unions that must comply with them; (6) this preamble informs unions of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, which is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is "appropriate to the purpose for which the information is to be collected"; and (9) the changes implemented by this rule make extensive, appropriate use of information technology "to reduce burden and improve data quality, agency efficiency and responsiveness to the public." See 5 CFR 1320.9; 44 U.S.C. 3506(c).

The Department's NPRM in this rulemaking contained initial Regulatory Flexibility Act and PRA analyses, which were also submitted to, and approved by, OMB. Based upon careful consideration of the comments and the changes made to the Department's proposal in this final rule, the Department has made significant adjustments to its burden estimates. The costs to the Department for administering the reporting requirements of the LMRDA also were adjusted. Nearly all of the comments addressing the paperwork burden received in the course of this rulemaking were directed at the revisions being made to Form LM-2.

Some comments, however, did apply to the Form T-1. These were largely supportive of the Department's effort to specifically estimate the burden hours associated with the unions' compliance with the proposal. The organization, however, suggested that the burden estimates could be improved if the Department capitalized its estimates of costs and provided additional documentation of the Department's own costs associated with the rule. Although capitalization would be a reasonable alternative to the direct cost approach used in this rulemaking, the Department believes that averaging the costs over the first three years, as the Department has done here, yields approximately the same result in estimating burden.

Moreover, in this rulemaking, there was relatively little to be capitalized. Only the computer equipment and software and the one-time labor costs could be considered for capitalization. In its analysis, the Department has assumed that most of the computer equipment and software would be purchased for normal business operations. The minimal additional costs associated with the final rule have been allocated in the first year. This same procedure was used for the one-time labor costs. While the procedure used by DOL does not include any "opportunity costs" for capital (e.g., interest charges), DOL believes that by using, in effect, a three-year life cycle for all such costs it has reasonably estimated the burden.

The commenter estimated the average burden associated with the Department's proposal, per union per year, at about 180 hours. In reaching its conclusions, it assumed that completing the Form LM-2 and the Form T-1 would pose an equal burden on filers; therefore, the combined estimate for completing both forms was 360 hours. Based on this assumption, the commenter broke down its estimate for a single form as follows: Install new software, 4 hours; design/adjust report forms and format structures, 72 hours; modify existing accounting systems, 32 hours; incorporate electronic signatures, 16 hours; systems testing, 24 hours; and employee training, 32 hours (8 hours × 4 employees). However, the Department disagrees with the assumption that Form LM-2 and Form T-1 pose an equal burden on filers as Form T-1 requires substantially less information than Form LM-2. For example, Form T-1, using three schedules, requires itemization of receipts, disbursements, and disbursements to officers and employees of the trust; meanwhile, Form LM-2 requires itemization of information in twenty schedules in addition to two statements, which include a total of 68 individual questions, pertaining only to the union's assets and liabilities. Further, Form LM-2 filers must itemize on these schedules every transaction valued at \$5,000 or higher; Form T-1 filers need only itemize for transactions valued at \$10,000 or higher.

To compute the compensation costs associated with these tasks, the commenter used \$27.80 as a "fully loaded wage rate." It also noted that the Department's analysis did not appropriately recognize that the Department's proposal would have an impact beyond the bookkeeping and accounting staff. *Id.* 8. Commenter noted that the rule likely would affect the manner by which union staff document

or record their activities, and that such costs, though minimal on a transaction basis, will have a measurable cost in the aggregate. *Id.* The Department has considered such costs in its analysis of the final rule. As discussed below, the Department has provided estimates to account for additional union and trust personnel as well as outside independent accountants.

Pursuant to the PRA, the information collection requirements contained in this final rule have been submitted to OMB for approval (1215-0188). Within 30 days of the date of publication of this final rule, you may direct comments by fax (202-395-6974) to: Desk Officer for the Department of Labor/ESA, Office of Management and Budget. The Form T-1 and its instructions, which are modified to reflect the new filing criteria, are published as an appendix to this final rule.

#### 1. Summary

This final rule implements the Form T-1 Trust Annual Report required to be filed by the largest labor organizations for trusts in which they are interested, under conditions prescribed by the Secretary of Labor. See 29 U.S.C. 402(l); 431(b); 438.

As discussed in the preamble, members have long been denied important information about union funds that were being directed to other entities, ostensibly for the members' benefit, such as joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. The Form T-1 is necessary to close this gap, prevent certain trusts from being used to evade the Title II reporting requirements, and provide union members with information about financial transactions involving a significant amount of money relative to the union's overall financial operations and other reportable transactions. Trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a union's financial condition and operations, including a full accounting to union members whose work obtained the payments to the trust. It is also necessary to prevent circumvention and evasion of the reporting requirements imposed on officers and employees of unions and on employers.

The form is designed to take advantage of technology that makes it possible to increase the detail of information that is required to be reported, while at the same time making it easier to file and publish the contents

of the reports. Union members thus will be able to obtain a more accurate and complete picture of their union's financial condition and operations without imposing an unwarranted burden on respondents. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such documentation in the event of an inquiry from a union member or an audit by an OLMS investigator.

The Department's NPRM in this rulemaking contained an initial PRA analysis, which was also submitted to, and approved by, OMB. Based upon careful consideration of the changes made to the Department's proposal in this final rule, the Department made adjustments to its burden estimates. The costs to the Department also were adjusted. Federal annualized costs are discussed after the burden on the reporting unions is considered.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply with Form T-1 will be 119,309 hours. The total first year compliance costs associated with this burden, including the cost for computer hardware if necessary, is estimated to be \$3.3 million. Therefore, this final rule is not a major economic rule. Both the burden hours and the compliance costs associated with Form T-1 decline in subsequent years. The Department estimates that the total burden averaged over the first three years to comply with the Form T-1 to be 75,379 hours per year. The total compliance costs associated with this burden averaged over the first three years are estimated to be \$2.1 million.

## 2. Overview of Form T-1

This final Form T-1 rule preserves the key aspects of the NPRM, as revised in some minor respects by the 2003 rule, but the scope of the reporting requirement has been narrowed pursuant to the D.C. Circuit's decision in *AFL-CIO v. Chao*, as discussed in the preamble. The rule reiterates the Department's determination that no Form T-1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or pursuant to the requirements of ERISA, or if the organization files publicly available reports with a Federal

or state agency as a PAC. Additionally, a labor organization may substitute an audit that meets the criteria set forth in the Form T-1 instructions for the financial information otherwise reported on a Form T-1.

Form T-1 consists of 14 questions that identify the union and trust; six yes/no questions covering issues such as whether any loss or shortage of funds was discovered during the reporting year and whether the trust had made any loans to officers or employees of the union at terms below market rates; four summary numbers for total assets, liabilities, receipts, and disbursements; a schedule for itemizing all receipts of \$10,000 or more, individually or in the aggregate, from any entity or individual; a schedule for itemizing all disbursements of \$10,000 or more, individually or in the aggregate, from any entity or individual; and a schedule for listing all officers of the trust and payments to them and all employees of the trust who received more than \$10,000 from the trust.

## 3. Recordkeeping and Reporting Burden Hour Estimates

a. Methodology for the Burden Estimates. The figures used here by the Department are derived from the Department's computations based on assumptions, rounded to the nearest hundredth, published in the 2003 rule. 68 FR 58433. Both the Form LM-2 and the Form T-1 have the same filing dollar threshold, \$250,000 or more in receipts. For today's rule, baselines and other estimates (such as whether union, trust, or outside personnel will complete the form) for the Form T-1 will be assumed to parallel those of the revised Form LM-2. Filers of Form T-1 will be a subset of the Form LM-2 filers, *i.e.*, those Form LM-2 filers that participate in a section 3(l) trust will be required to file the Form T-1 when other criteria, as explained above, are met. In reaching its estimates, the Department considered both the one-time and recurring costs associated with the final rule. Separate estimates are included for the initial year of implementation as well as the second and third years. For filers, the Department included separate estimates, based on the relative size of unions as measured by the amount of their annual receipts.

This final rule will affect the largest labor organizations, defined as those that have \$250,000 or more in annual receipts. Such labor organizations that are interested in a section 3(l) trust must file a Form T-1 when: (1) The trust has annual receipts of \$250,000 or more; (2) the labor organization contributes \$10,000 or more to the trust; and (3) the labor organization, alone or in combination with other labor organizations, (A) appoints a majority of the members of the trust's governing board, or (B) contributes more than 50% of the trust's annual revenue. During fiscal year 2005, the Department received approximately 3,827 Form LM-2 reports. Therefore, the Department estimates that there are 3,827 reporting labor organizations with receipts of \$250,000 or more. The Department estimates that of these 3,827 labor organizations, 1,664 will file Form T-1s. This cohort represents 18% of all labor organizations covered by the LMRDA. See Table 1. These figures differ from the Department's 2003 estimates where it was assumed that 2,769 Form T-1s would be filed annually. 68 FR 58435. The differences between today's estimates and those used in the 2003 rule reflect the narrower reach of today's rule.

Today's estimates, like the 2003 rule, are based on a three-tier analysis of unions organized by receipt size. The Department first assumed that 10% of the 1,055 labor organizations with annual receipts of \$250,000 to \$499,999.99 (Tier 1) would file one Form T-1. Second, it was assumed that 25% of the 2,723 labor organizations with annual receipts of \$500,000 to \$49.9 million (Tier 2) would file on average two Form T-1s. Third, it was assumed that 100% of the 49 labor organizations with annual receipts of \$50 million or more (Tier 3) would file an average of four Form T-1 reports each. The implementation of a tier system is based on the underlying assumption that the size of a union, as measured by the amount of its annual receipts, will affect its recordkeeping and reporting burden for Form T-1. Larger unions have more trusts for which to account: the three tiers are constructed to differentiate these relative burdens among those unions with \$250,000 or more in receipts (68 FR 58433).

TABLE 1.—TIER SYSTEM BASED ON FY 2005 FIGURES

Total Labor Organizations with 250,000 or more in receipts: 3,827.

Tier 1 (\$250,000 – 499,999 receipts):  $1,055 \times 10\%$  (# filers)  $\times 1$  (# reports) = 106.

Tier 2 (\$500,000 – 49.9 mil receipts):  $2,723 \times 25\%$  (# filers)  $\times 2$  (# reports) = 1,362.

TABLE 1.—TIER SYSTEM BASED ON FY 2005 FIGURES—Continued

Tier 3 (\$50 mil and higher receipts):  $49 \times 100\% = 49$  (# filers)  $\times 4$  (# reports) = 196.  
Form T-1 Filers: 1,664.

The Department's cost estimates include costs for both labor and equipment that will be incurred by filers. The labor costs reflect the Department's assumption that unions and trusts will rely upon the services of some or all of the following positions (union president, union secretary-treasurer, accountant, bookkeeper, computer programmer, lawyer, consultant) and the compensation costs for these positions, as measured by wage rates and employer costs published by the Bureau of Labor Statistics or derived from data in the Department's Electronic Labor Organization Reporting System database ("e.LORS"), which stores and automatically culls certain information, such as union officer and employee salaries, from annual reports submitted by labor organizations. The Department also made assumptions relating to the time that particular tasks or activities would take. The activities generally involve only one of the three distinct "operational" phases of the rule: First, tasks associated with modifying bookkeeping and accounting practices, including the modification or purchase of software, to capture data needed to prepare the required reports; second, tasks associated with recordkeeping; and third, tasks associated with completing the report and all appropriate levels of review and signature. Where an estimate depends upon the number of unions subject to the LMRDA or included in one of the tier groups, the Department has relied upon data in the e.LORS system (for the years stated for each example in the text or tables).

The relative burden associated with the final rule will correspond to the following predictable stages: Review of the rule, instructions, and forms; adjustments to or acquisition of accounting software and computer hardware; changing accounting structures and developing, testing, reviewing, and documenting accounting software queries as well as designing query reports; training officers and employees involved in bookkeeping and accounting functions; the actual recordkeeping of data; and additional review by trust officials and the reporting union's president and secretary-treasurer. As those unions that will be required to file Form T-1 already are required to file Form LM-2, which requires the use of digital

signatures, T-1 filers will not incur an additional cost or burden associated with the need to affix a digital signature to the Form T-1.

Burden can be categorized as recurring or non-recurring, with the latter primarily associated with the initial implementation stages. Recordkeeping burden, as distinct from reporting burden, will predominate during the first months of implementation. Burden can be reasonably estimated to vary over time with the greatest burden in the initial year, decreasing in later years as filers gain experience. Estimates for each of the first three years and a three-year average will provide useful information to assess the burden. Burden can be usefully reported as an overall total for all filers in terms of hours and cost. The estimated burden associated with the current LM forms is the appropriate baseline for estimating the burden and cost associated with the final rule because only a subset of those unions which file Form LM-2 will be required to file Form T-1. As the Form T-1 will be filed only by unions with \$250,000 or more in receipts, which is the dollar threshold for the revised Form LM-2, it is presumed that many of the same union and/or outside personnel will be performing the recordkeeping and responding duties. Therefore, these estimates are used as the Form T-1 baseline.

For each of the three tiers, the Department estimated burden hours for the nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three-year annual average for the nonrecurring and recurring burden hours similar to the way it has previously estimated the burden hours when updating financial disclosure forms required by the LMRDA. As shown on Table 2, the Department estimates the burden required for preparing to complete the Form T-1 for all three tiers to be 2.4 hours to provide the Form T-1 requirements to the trust, 4.3 hours for reviewing the form and instructions, and 8.0 non-recurring (first year) hours for installing, testing, and reviewing acquired software/hardware and/or implementing recordkeeping and/or reporting procedures. The time required to read and review the form and instructions is estimated to decline to 2.0 hours the second year and 1.0

hour the third year as unions and trusts become more familiar with the form.

The Department estimates the average reporting burden required to complete pages one and two of the Form T-1 for each of the three tiers to be 6.1 hours and the average recordkeeping burden associated with the items on pages one and two to be 1.6 hours. The Department also estimates that trusts will spend 2.0 hours reviewing the form once it is completed. These estimates are proportionally based on the recordkeeping and reporting burden estimate for the first two pages of the current Form LM-4, which are very similar to the first two pages of the Form T-1. The first two pages of Form LM-4 have 21 items (8 questions that identify the union, four yes/no questions, seven summary numbers for: maximum amount of bonding, number of members, total assets, liabilities, receipts, and disbursements, total disbursements to officers, and a space for additional information). The first two pages of Form T-1 have 25 items (14 questions that identify the union and trust, six yes/no questions, four summary numbers for total assets, liabilities, receipts, and disbursements, and a space for additional information).

For the receipts and disbursements schedules, the Department estimates that on average Form T-1 respondents will take 9.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel for each of the schedules. Further, the Department also estimates that on average Form T-1 respondents will take 1.2 (recurring) hours to prepare and transmit the receipts schedule and 1.4 hours to prepare and transmit the disbursements schedule. The Department also estimates that on average Form T-1 respondents will take 8.3 hours (recurring) of recordkeeping burden for each schedule to maintain the additional information required by the final rule.

For the Form T-1 disbursements to officers and employees of the trust schedule, the Department estimates that it will take respondents an average 2.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department estimates it

will take on average 0.8 hours to prepare and transmit the schedule.

The Department also estimates that it will take 2.0 hours for the trust to review the Form T-1 and 1.0 hours for

this information to be sent to the union filer. In addition, the Department estimates that the union president and secretary-treasurer will take 4.0 hours to review and sign the form. The time for

the president and secretary-treasurer to review and sign the form declines to 2.0 hours the second year and 1.0 hour the third year as they become more familiar with the form.

TABLE 2.—SUMMARY OF AVERAGE FIRST YEAR BURDEN FOR FORM T-1

Reporting or recordkeeping requirement	Nonrecurring burden hours	Reporting burden hours	Recordkeeping burden hours
Information on Form T-1 Provided to Trust .....	0.0	2.4	0.0
Review Form T-1 and Instructions .....	0.0	4.3	0.0
Install, Test, and Review Software .....	8.0	0.0	0.0
Pages 1 and 2 .....	0.0	6.1	1.6
Individually Identified Receipts .....	9.8	1.2	8.3
Individually Identified Disbursements .....	9.8	1.4	8.3
Disbursements to Officers and Employees .....	2.8	0.8	0.0
Review by Trust .....	0.0	2.0	0.0
Form/Information Sent to Union .....	0.0	1.0	0.0
President Review and Sign Off .....	0.0	2.0	0.0
Treasurer Review and Sign Off .....	0.0	2.0	0.0
Total First Year Burden for Form T-1 .....	30.4	23.2	18.1

**Note:** Some numbers may not add due to rounding.

**Source:** U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Paperwork Reduction Act Analysis.

The Department's cost estimates are based on wage-rate data obtained from BLS for personnel employed in service industries (i.e., accountant, bookkeeper, etc.) and adjusted to be total compensation estimates based on the BLS Employer Cost data from the 2004 NCS. The estimates used for salaries of labor organization officers and employees are obtained from the annual financial reports filed with OLMS and are also adjusted to be total compensation estimates.

The Department estimates that, on average, the completion by a union of Form T-1 will involve an independent and/or union accountant, a union bookkeeper or clerk, the union's president, and the union's secretary treasurer. Based on the 2004 NCS, an independent accountant/auditor earns on average \$24.56 per hour (accountants employed by unions are presumed to make the same average salary). Based on reviewed annual labor organization reports for fiscal year 2005, union

bookkeepers/clerks earn on average \$14.00 per hour, presidents \$37.82 per hour, and secretary-treasurers \$34.00 per hour. Given the nexus between a trust and a union for purposes of Form T-1, the Department believes that the salary rates of union officers and employees are applicable to corresponding trust positions. These salaries combine for an average of \$27.60 per hour.

The Department estimates the average reporting and recordkeeping burden for Form T-1 to be 71.7 hours per respondent in the first year (including non-recurring implementation costs), 33.9 hours per respondent in the second year, and 30.4 hours per respondent in the third year. The Department estimates the total annual burden hours for respondents for Form T-1 to be 119,309 hours in the first year, 56,409 hours in the second year, and 50,585 hours in the third year (see Table 3). Under today's rule only the estimated number of filers, not the form itself, has

changed from the 2003 rule; therefore, the current burden hour estimates, *per respondent*, are identical to the 2003 estimates. See 68 FR 58446.

The Department estimates the average annual cost for the Form T-1 to be \$1,979 per respondent in the first year (including non-recurring implementation costs) ( $71.7 \times 27.60 = 1,978.92$ ); \$936 per respondent in the second year ( $33.9 \times 27.60 = 935.64$ ); and \$839 per respondent in the third year ( $30.4 \times 27.60 = 839$ ). These per respondent figures are also close to the 2003 estimates (see 68 FR 58446).

The Department also estimates the total annual cost to respondents for Form T-1 to be \$3.3 million in the first year, \$1.6 million in the second year, and \$1.4 million in the third year (see Table 4). Because the scope of the form has been narrowed from the 2003 approach, these estimates are less than the overall costs estimated in 2003 (\$5.5, \$2.6, and \$2.3 million). See 68 FR 58466.

TABLE 3.—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR FORM T-1

Form	Number of responses	Reporting hours per respondent	Total reporting hours	Recordkeeping hours per respondent	Total recordkeeping hours	Total burden hour per respondent	Total burden hours
Form T-1/First Year .....	1,664	23.2	38,605	48.5	80,704	71.7	119,309
Second Year .....	1,664	15.8	26,291	18.1	30,118	33.9	56,409
Third Year .....	1,664	12.3	20,467	18.1	30,118	30.4	50,585
Three-Year Average .....	1,664	17.1	28,454	28.2	46,925	45.3	75,379

**Note:** Some numbers may not add due to rounding.

**Source:** U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards.

TABLE 4.—RESPONDENT COSTS FOR FORM T-1

Form/year	Number of respondents	Average cost per respondent	Total
Form T-1/First Year .....	1,664	\$1,979	\$3,293,056
Second Year .....	1,664	936	1,557,504
Third Year .....	1,664	839	1,396,096
Three-Year Average .....	1,664	1,249	2,078,336

**Note:** Some numbers may not add due to rounding.

*Source:* U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards.

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The current forms can be downloaded from the OLMS web site. OLMS has also implemented a system to require Form LM-2 and Form T-1 filers and permit Form LM-3 and Form LM-4 filers to submit forms electronically with digital signatures. Unions are currently required to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form.

The OLMS Internet Disclosure site is available for public use. The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information in each report that is searchable through the Internet. Form T-1 filings will be available on the Web site.

OLMS includes e.LORS information in its outreach program, including compliance assistance information on the OLMS website, individual guidance provided through responses to email, written, or telephone inquiries, and formal group sessions conducted for union officials regarding compliance.

Information about this system can be obtained on the OLMS Web site at <http://www.olms.dol.gov>. Digital signatures ensure the authenticity of the reports.

#### Federal Costs Associated With Final Rule

The estimated annualized Federal cost of the Form T-1 is \$173,000. This represents estimated operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices that are involved with reporting and disclosure activities. These estimates include time devoted to: (a) Receipt and processing of reports; (b) disclosing reports to the public; (c) obtaining delinquent reports; (d) obtaining amended reports if reports are determined to be deficient; (e) auditing reports; and (f) providing compliance assistance training on recordkeeping and reporting requirements.

Previously, the Department estimated that the combined Federal cost for implementing the revised electronic Form LM-2 and the T-1 was \$79.9 million. Much of this initially proposed cost represented implementation of technology needed for electronic filing. The implementation of the electronic Form LM-2 has absorbed this cost, leaving continuing administration the remaining technology cost. The current figure represents an analysis of Departmental staff and contractors used to administer solely the Form T-1. Further, as there are fewer anticipated reports, the Federal cost for processing Form T-1 will likewise be reduced.

#### G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the final rule on children. The Department has determined that the final rule will have no effect on children.

#### H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this final rule in accordance with Executive Order 13175, and has determined that it does not have "tribal implications." The final rule does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

#### I. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

#### J. Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

#### K. Environmental Impact Assessment

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

#### L. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

#### List of Subjects in 29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

#### Text of Final Rule

■ Accordingly, the Department amends part 403 of 29 CFR Chapter IV as set forth below:

#### PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 1. The authority citation for part 403 continues to read as follows:

**Authority:** Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438);

Secretary's Order No. 4-2001, 66 FR 29656, May 31, 2001.

■ 2. In § 403.2, paragraph (d) is revised to read as follows:

**§ 403.2 Annual financial report.**

\* \* \* \* \*

(d)(1) Every labor organization with annual receipts of \$250,000 or more shall file a report on Form T-1 for each trust if the following conditions exist:

(i) The trust is of the type defined by section 3(l) of the LMRDA, *i.e.*, the trust was created or established by the labor organization or the labor organization appoints or selects a member to the trust's governing board; and the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(l)); *and*

(ii) The labor organization's financial contribution to the trust, or a contribution made on its behalf or as a result of a negotiated agreement to which it is a party, was \$10,000 or more during the reporting period and the trust had \$250,000 or more in annual receipts; *and either*

(A) The labor organization, alone or with other labor organizations, appoints or selects a majority of the members of the trust's governing board; *or*

(B) The labor organization's contributions to the trust, alone or in combination with other labor organizations, constitute greater than 50% of the revenue of the trust during the trust's fiscal year; and none of the exceptions discussed in paragraph (d)(2) of this section apply.

(2) A separate report shall be filed on Form T-1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the

labor organization. No Form T-1 need be filed for a trust if an annual financial report providing the same information and a similar level of detail is filed with another agency pursuant to federal or state law, as specified in the instructions accompanying Form T-1. In addition, an audit that meets the criteria specified in the instructions for Form T-1 may be substituted for all but page 1 of the Form T-1. If, on the date for filing the annual financial report of such trust, such labor organization is in trusteeship, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in § 408.5 of this chapter.

■ 3. Amend § 403.5 by revising paragraph (d) to read as follows:

**§ 403.5. Terminal financial report.**

\* \* \* \* \*

(d) If a labor organization filed or was required to file a report on a trust pursuant to § 403.2(d) and that trust loses its identity during its subsequent fiscal year through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T-1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

■ 4. In § 403.8, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

**§ 403.8 Dissemination and verification of reports.**

\* \* \* \* \*

(c)(1) If a labor organization is required to file a report under this part using the Form T-1 and indicates that it has failed or refused to disclose information required by the Form concerning any disbursement or receipt to an individual or entity in the amount of \$10,000 or more, or any two or more disbursements or receipts that, in the aggregate, amount to \$10,000 or more, because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed "just cause" for purposes of paragraph (a) of this section.

(2) Disclosure may be adverse to a labor organization's legitimate interests under this paragraph if disclosure would reveal confidential information concerning the organization's organizing or negotiating strategy or individuals paid by the trust to work in a non-union facility in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the trust who receive more than \$10,000 in the aggregate in the reporting year from the trust.

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual.

\* \* \* \* \*

**Appendix [Form T-1 and Instructions]**

**Note:** This appendix, which will not appear in the Code of Federal Regulations, contains the Form T-1 and the instructions for this form.

**BILLING CODE 4510-CP-P**



U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
Washington, DC 20210

# FORM T-1 TRUST ANNUAL REPORT

Form Approved  
Office of Management and Budget  
No. XXXXXXXX  
Expires: XX-XX-XXXX

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only		1. FILE NUMBERS UNION a) [ ][ ] - [ ][ ] TRUST b) [T][ ][ ] - [ ][ ][ ][ ]		2. PERIOD COVERED From [ ][ ] MO [ ][ ] DAY [ ][ ] YEAR [ ][ ][ ][ ] Through [ ][ ] MO [ ][ ] DAY [ ][ ] YEAR [ ][ ][ ][ ]		3. (a) AMENDED - If this is an amended report, check here: <input type="checkbox"/> (b) HARDSHIP - If filing under the hardship procedures, check here: <input type="checkbox"/> (c) TERMINAL - If this is a terminal report, check here: <input type="checkbox"/>	
4. NAME OF UNION		10. NAME OF TRUST					
5. DESIGNATION (Local, Lodge, etc.)		6. DESIGNATION NUMBER		11. TAX STATUS OF TRUST			
7. UNIT NAME OF UNION (if any)		12. PURPOSE OF TRUST					
8. MAILING ADDRESS OF UNION (use capital letters)		13. MAILING ADDRESS OF TRUST (use capital letters)					
First Name		Last Name		First Name		Last Name	
P.O. Box - Building and Room Number (if any)		P.O. Box - Building and Room Number (if any)		Number and Street			
Number and Street		Number and Street		City			
State		State		State		State	
Zip Code + 4		Zip Code + 4		Zip Code + 4		Zip Code + 4	
9. Are the union's records kept at its mailing address? (If "No," provide address in Item 25.) Yes <input type="checkbox"/> No <input type="checkbox"/>		14. Are the trust's records kept at its mailing address? (If "No," provide address in Item 25.) Yes <input type="checkbox"/> No <input type="checkbox"/>					
26. SIGNED: _____ / ____ / ____ ( ) Date Telephone Number		PRESIDENT _____ / ____ / ____ ( ) Date Telephone Number		27. SIGNED: _____ / ____ / ____ ( ) Date Telephone Number			
26. SIGNED: _____ / ____ / ____ ( ) Date Telephone Number		PRESIDENT _____ / ____ / ____ ( ) Date Telephone Number		27. SIGNED: _____ / ____ / ____ ( ) Date Telephone Number			
<p>Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section V on penalties in the instructions.)</p>							
26. SIGNED: _____ / ____ / ____ ( ) Date Telephone Number		PRESIDENT _____ / ____ / ____ ( ) Date Telephone Number		27. SIGNED: _____ / ____ / ____ ( ) Date Telephone Number			
26. SIGNED: _____ / ____ / ____ ( ) Date Telephone Number		PRESIDENT _____ / ____ / ____ ( ) Date Telephone Number		27. SIGNED: _____ / ____ / ____ ( ) Date Telephone Number			

**COMPLETE ITEMS 16 THROUGH 25**

UNION FILE NUMBER (a): 


 - 


TRUST FILE NUMBER (b): 


 T 


 - 


- 16. During the reporting period did the trust discover any loss or shortage of funds or other property? (Answer "Yes" even if there has been repayment or recovery.) Yes  No
- 17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale? Yes  No
- 18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest? Yes  No
- 19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates? Yes  No
- 20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest? Yes  No

**If the answer to any of the above questions is "Yes," provide details in Item 25 (Additional Information) as explained in the instructions for each item.**

- 21. Enter the total assets of the trust at the end of the reporting period.  \$
- 22. Enter the total liabilities (debts) of the trust at the end of the reporting period.  \$
- 23. Enter the total receipts of the trust during the reporting period.  \$
- 24. Enter the total disbursements of the trust during the reporting period.  \$

Please be sure to:

- \* Enter your labor organization's 6-digit file number and the trust's 7-digit file number in Item 1.
- \* Have your labor organization's president and treasurer sign the Form T-1 in Items 26 and 27.
- \* Complete Schedules 1 through 3

**25. ADDITIONAL INFORMATION (if more space is needed, attach additional pages properly identified.)**

Item Number	
-------------	--

**SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS**

(List all entities from whom the trust received a total of \$10,000 or more during the reporting period.)

UNION FILE NUMBER (a): 


 - 


TRUST FILE NUMBER (b): 


**T** - 


**Initial Itemization Page**

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
(F) Total of Receipts Listed Above			
(G) Total of All Receipts from Continuation Pages with this Payer			
(H) Total of All Itemized Receipts with this Payer (Sum of (F) and (G))			
(I) Total of All Non-Itemized Receipts with this Payer			
<b>(J) Total of All Receipts with this Payer (Sum of (H) and (I))</b>			

**SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS**

(List all entities that received \$10,000 or more in total disbursements from the trust during the reporting period.)

UNION FILE NUMBER (a): 

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TRUST FILE NUMBER (b): 

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**T** - 

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**Initial Itemization Page**

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
(F) Total of Disbursements Listed Above			
(G) Total of All Disbursements from Continuation Pages with this Payee			
(H) Total of All Itemized Disbursements to this Payee (Sum of (F) and (G))			
(I) Total of All Non-Itemized Disbursements to this Payee			
<b>(J) Total of All Disbursements to this Payee (Sum of (H) and (I))</b>			





**SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST**

UNION FILE NUMBER (a): 

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TRUST FILE NUMBER (b): 

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**T**

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**Continuation Page**

Page \_\_\_\_\_ of \_\_\_\_\_

Full Name Title	(A) LAST, FIRST, MIDDLE INITIAL Treasurer, Trustee, Attorney, etc.	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	TOTAL (F)
1. Full Name						
Title						
2. Full Name						
Title						
3. Full Name						
Title						
4. Full Name						
Title						
5. Full Name						
Title						
6. Full Name						
Title						
7. Full Name						
Title						
8. Full Name						
Title						
9. Full Name						
Title						
<b>10. Total of Lines 1 through 9</b>						

Public reporting burden for this collection of information is estimated to average 72 hours per response in the first year, 34 hours per response in the second year, and 30 hours per response in the third year. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5605, 200 Constitution Avenue, NW, Washington, DC 20210.

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# INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

## GENERAL INSTRUCTIONS

### I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA), with total annual receipts of \$250,000 or more, must file each year with its Form LM-2 a Form T-1 for each trust for which the following conditions exist:

- *The trust is a trust defined by section 3(l) of the LMRDA, that is, the trust is a trust or other fund or organization (1) that was created or established by the union **or** the union appoints or selects a member of the trust's governing board; **and** (2) that has as a primary purpose to provide benefits to the members of the union or their beneficiaries (29 U.S.C. 402(l)); and*
- *The union's financial contribution to the trust, a contribution made as a result of a collective bargaining agreement to which the union is a party, or a contribution otherwise made on the union's behalf, was \$10,000 or more during the trust's most recent fiscal year, that is, the fiscal year ending on or before the ending date of the union's own fiscal year, and the trust had \$250,000 or more in annual receipts during its fiscal year; and either*
- *The union, alone or in combination with other unions, appoints or selects a majority of the members of the trust's governing board; or*



- *The union's contributions to the trust, alone or in combination with other unions, represent greater than 50% of the trust's revenues during the trust's most recent fiscal year (contributions by an employer on behalf of the union's members as required by a collective bargaining agreement are considered to be contributions of the union as are any contributions otherwise made on the union's behalf).*

No Form T-1 should be filed for any union that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that the LMRDA expressly exempts from reporting. No separate report need be filed for Political Action Committee (PAC) funds if publicly available reports on the PAC funds are filed with a Federal or state agency, or for a political organization for which reports are filed with the Internal Revenue Service pursuant to 26 U.S.C. 527.

No separate report is required for an employee benefit plan that filed a complete and timely annual report pursuant to the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1023, 1024(a), and 1030, and 29 CFR 2520.103-1, for a plan year ending during the reporting period of the union (a notice filed with the Secretary of Labor pursuant to an exemption from reporting and disclosure does not constitute a complete annual financial report). An abbreviated report may be filed for any covered trust for which an independent audit, which is publicly available, has been conducted in accordance with the standards of 29 CFR 2520.103-1, as discussed in the next paragraph.

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits are prepared for the trust according to the following standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose, for the preceding twelve-month period: losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; loans made to union officers or employees that were granted at more favorable terms than were available to others; and loans made to officers and employees that were liquidated, reduced, or written off. The audit must be accompanied by schedules that disclose, for the preceding twelve-month period: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in \$10,000 or more of commerce and the total of the transactions with each party.

Form T-1 must be filed with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. The labor organization must file a separate Form T-1 for each trust that meets the above requirements. The LMRDA, CSRA, and FSA cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government

employees. Questions about whether a labor organization is required to file should be referred to the nearest OLMS field office listed at the end of these instructions.

## II. WHEN TO FILE

Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The Form T-1 shall cover the trust's most recent fiscal year, *that is*, the fiscal year ending on or before the ending date of the union's own fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities and Penalties) of these instructions.

If a trust for which a labor organization was required to file a Form T-1 goes out of existence, a terminal financial report must be filed within 30 days after the date it ceased to exist. Similarly, if a trust for which a labor organization was required to file a Form T-1 continues to exist, but the labor organization's interest in that trust ceases, a terminal financial report must be filed within 30 days after the date that the labor organization's interest in the trust ceased. See Section IX (Trusts That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

## III. HOW TO FILE

Form T-1 must be prepared using software that can be downloaded from the OLMS Web site at <http://www.olms.dol.gov> and must be submitted electronically to OLMS. A Form T-1 filer will be able to file a report in paper format only if it applies for and is granted a continuing hardship exemption of up to one year, but a paper format copy may be submitted initially if the filer asserts a temporary hardship and files electronically thereafter.

Further information on Form T-1 and a detailed user guide can be found on the OLMS Web site at <http://www.olms.dol.gov>.

### HARDSHIP EXEMPTIONS

A labor organization that must file Form T-1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s, electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

#### TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing of Form T-1, it may be filed in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing this form under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards by email at [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov), by phone at 202-693-0123, or by fax at 202-693-1340.

**Note:** *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

**CONTINUING HARDSHIP EXEMPTION:**

(a) The labor organization may apply in writing for a continuing hardship exemption if Form T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b).

The application must be mailed to the following address:

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-5605  
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov), by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the union would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

**Note:** *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

**SPECIAL INSTRUCTIONS FOR SUBMITTING FORM T-1 IN PAPER FORMAT:**

Those labor organizations that are granted an exemption to complete the Form T-1 in paper format should download the reporting software from the OLMS Web site at [www.olms.dol.gov](http://www.olms.dol.gov). If they are unable to download the Form T-1 they should contact OLMS at [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov), by phone at (202) 693-0124, or by fax at (202) 693-1340 and OLMS will provide a paper form. The form must be completed, signed, and filed at the following address:

U.S. Department of Labor

Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-5616  
Washington, DC 20210-0001

### Information Entry

Entries on the report should be typed or clearly printed in black ink. Do not use a pencil or any other color ink.

In all Items and Schedules dealing with monetary values, report amounts in dollars only. Do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the labor organization has nothing to report.

#### *Entering Dollars:*

\$1,573,844 – do not enter cents

#### *Entering Zero:*

\$ \_\_, \_\_\_\_, \_\_ 0

#### *Entering "Yes" or "No"*

For items requiring a "Yes" or "No" answer, enter an "X" in the appropriate box. Do not use check marks or other marks.

### Schedules 1 through 3 Continuation Pages

If the union is completing the report in paper format, multiple copies of the Initial Itemization Page and the Continuation Itemization Pages for Schedules 1 and 2 and continuation pages for Schedule 3 can be generated from the Form T-1 software available on the OLMS Web site at [www.olms.dol.gov](http://www.olms.dol.gov). If you are unable to download the software, additional copies of these pages may be requested by email from [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov); by phone at (202) 693-1233; or by fax at (202) 693-1340.

Some of the items on the report require that further details be provided in Item 25 (Additional Information). If there is not enough space in Item 25 of a paper format report, enter the additional information on a separate letter-size (8 ½ x 11) page(s), giving the number of the item to which the information applies.

At the top of each page, enter the 6-digit (###-###) file number of the labor organization and the 7-digit (T###-###) file number of the trust as reported in Item 1 (File Number), the page number for each additional page, and the total number of additional pages attached. Totals from any additional pages must be entered on the line provided in each schedule.

## IV. PUBLIC DISCLOSURE

The LMRDA requires that the Department make reports filed by labor organizations available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web

site at <http://www.union-reports.dol.gov>. Reports may also be examined and copies purchased through the OLMS Public Disclosure Room (telephone: 202-693-0125) at the following address:

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-1519  
Washington, DC 20210-0001

## **V. OFFICER RESPONSIBILITIES AND PENALTIES**

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form T-1 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in the report or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form T-1 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

The reporting labor organization and the officers required to sign Form T-1 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440), provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

## **VI. RECORDKEEPING**

The officers required to file Form T-1 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents used to complete and file the report.

## **SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS**

### **VII. LABOR ORGANIZATIONS IN TRUSTEESHIP**

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial reports. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. Trustees must sign and date Form T-1 in the space below the officers' signatures and telephone numbers in Items 26 and 27 (Signatures).

## VIII. COMPLETING FORM T-1

### ITEMS 1 THROUGH 20

Answer Items 1 through 20 as instructed. Enter an "X" in the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank.

**1. FILE NUMBER** — Enter in Item 1(a) the 6-digit (###-###) file number that OLMS assigned to the labor organization. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at <http://www.union-reports.dol.gov> or by contacting the nearest OLMS field office listed at the end of these instructions. The labor organization's 6-digit (###-###) file number must also be entered in the File Number boxes at the top of each page of Form T-1.

Enter in Item 1(b) the 7-digit (T###-###) file number that OLMS assigned to the trust. For an initial filing of a Form T-1, this number may be obtained by calling the OLMS Division of Reports, Disclosure & Audits at (202) 693-0124 or by contacting OLMS at the following address:

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-5616  
Washington, DC 20210-0001

For future filings, if the labor organization does not have the number on file and cannot obtain the number from the trust or from prior reports filed with the Department, information on obtaining the number can be found on the OLMS website at <http://www.olms.dol.gov>.

**2. PERIOD COVERED** — Enter the beginning and ending dates of the period covered by this report. The report should never cover more than a 12-month period. For example, if the trust's 12-month fiscal year begins on January 1 and ends on December 31, enter these dates as 01/01/20XX and 12/31/20XX. It would be incorrect to enter January 1 of one year through January 1 of the next year.

If the fiscal year changed, enter in Item 2 (Period Covered) the ending date for the period of less than 12 months, which is the new fiscal year ending date, and report in Item 25 (Additional Information) that the trust changed its fiscal year. For example, if the fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the annual report should cover a full 12-month period from January 1 to December 31.

**3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT** — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Enter an "X" in the box in Item 3(a) if the labor organization is filing an amended Form T-1 correcting a previously filed Form T-1. Enter an "X" in the box in Item 3(b) if the labor organization is

filing under the hardship exemption procedures defined in Section III. Enter an "X" in the box in Item 3(c) if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust, or if the labor organization's interest in the trust has ceased and this is the terminal report for the trust. Be sure the date the trust ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section IX (Trusts That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

**4. AFFILIATION OR ORGANIZATION NAME** — Enter the name of the national or international labor organization that granted the labor organization a charter.

If the labor organization has no such affiliation, enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

**5. DESIGNATION** — Enter the specific designation, if any, that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc.

**6. DESIGNATION NUMBER** — Enter the number or other identifier, if any, by which the labor organization is known.

**7. UNIT NAME** — Enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local."

**8. MAILING ADDRESS OF UNION** — Enter the current address where mail is most likely to reach the labor organization as quickly as possible. Be sure to indicate the first and last name of the person, if any, to whom such mail should be sent and include any building and room number.

**9. PLACE WHERE UNION RECORDS ARE KEPT** — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address of Union), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the labor organization's records are kept.

**10. NAME OF TRUST** — Enter the name of the trust.

**11. TAX STATUS OF TRUST** — Enter the tax status of the trust. For instance, a nonprofit trust may have a 501(C)(3) tax designation.

**12. PURPOSE** — Enter the purpose of the trust. For example, if the trust is a credit union that provides loans to union members, the purpose may be "credit union."

**13. MAILING ADDRESS OF TRUST** — Enter the current address where mail is most likely to reach the trust as quickly as possible. Be sure to indicate the first and last name of the person, if any, to whom such mail should be sent and include any building and room number.

**14. PLACE WHERE TRUST RECORDS ARE KEPT** — If the records required to be kept to verify this report are kept at the address reported in Item 13 (Mailing Address of Trust), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the trust's records are kept. The labor organization need not keep separate copies of these records at its own location, as long as members have the same access to such records from the trust as they would be entitled to have from the labor organization.

*Note: The president and treasurer of the labor organization are responsible for maintaining the records used to prepare the report.*

**15. AUDIT EXEMPTION** — Answer “Yes” to Item 15 if the labor organization will be submitting an independent, certified audit in place of the remainder of Form T-1. If an audit report meeting the standards described in Section I (Who Must File) is submitted with a Form T-1 that has been completed for Items 1 through 15 then it is not necessary to complete Items 16 through 25, and Schedules 1 through 3. However, Items 26-27 (Signatures) must be completed.

**16. LOSSES OR SHORTAGES** — Answer “Yes” to Item 16 if the trust experienced a loss, shortage, or other discrepancy in its finances during the period covered. Describe the loss or shortage in detail in Item 25 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

**17. ACQUISITION OR DISPOSITION OF ASSETS** — If Item 17 is answered “Yes,” describe in Item 25 (Additional Information) the manner in which the trust acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the trust. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 25 the cost or other basis at which any acquired assets were entered on the trust’s books or the cost or other basis at which any assets disposed of were carried on the trust’s books.

For assets that were traded in, enter in Item 25 the cost, book value, and trade-in allowance.

**18. LIQUIDATION OF LIABILITIES** — If Item 18 is answered “Yes,” provide in Item 25 (Additional Information) all details in connection with the liquidation, reduction, or writing off of the trust’s liabilities without the disbursement of cash.

**19. LOANS AT FAVORABLE TERMS** — If Item 19 is answered “Yes,” provide in Item 25 (Additional Information) all details in connection with each such loan, including the name of the union officer or employee, the amount of the loan, the amount that was still owed at the end of the reporting period, the purpose of the loan, terms for repayment, any security for the loan, and a description of how the terms of the loan were more favorable than those available to others.

**20. WRITING OFF OF LOANS** — If Item 20 is answered “Yes,” describe in Item 25 (Additional Information) all details in connection with each such loan, including the amount of the loan and the reasons for the writing off, liquidation, or reduction.

## **FINANCIAL DETAILS**

### **REPORT ONLY DOLLAR AMOUNTS**

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in \$.01 through \$.49 should be rounded down. Amounts ending in \$.50 through \$.99 should be rounded up.

Enter a single “0” if there is nothing to report.



## REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

### ITEMS 21 THROUGH 24

**21. ASSETS** — Enter the total value of all the trust's assets at the end of the reporting period including, for example, cash on hand and in banks, property, loans owed to the trust, investments, office furniture, automobiles, and anything else owned by the trust. Enter "0" if the trust had no assets at the end of the reporting period.

**22. LIABILITIES** — Enter the total amount of all the trust's liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, the total amount of mortgages owed, payroll withholdings not transmitted by the end of the reporting period, and other debts of the trust. Enter "0" if the trust had no liabilities at the end of the reporting period.

**23. RECEIPTS** — Enter the total amount of all receipts of the trust during the reporting period including, for example, interest, dividends, rent, money from the sale of assets, and loans received by the trust.

**24. DISBURSEMENTS** — Enter the total amount of all disbursements made by the trust during the reporting period including, for example, net payments to officers and employees of the trust, payments for administrative expenses, loans made by the trust, taxes paid, and disbursements for the transmittal of withheld taxes and other payroll deductions. Enter "0" if the trust made no disbursements during the reporting period.

### SCHEDULES 1 THROUGH 3

#### SCHEDULES 1 AND 2 — RECEIPTS AND DISBURSEMENTS

Schedules 1 and 2 provide detailed information on the financial operations of the trust. These schedules will be populated by the electronic filing software as long as the trust's records are maintained using a properly configured electronic recordkeeping system that is compatible with the software provided by the Department. Information about the electronic filing software and the technical specifications can be found on the OLMS Web site at <http://www.olms.dol.gov>. A detailed user guide is included with the electronic filing software.

All "major" receipts during the reporting period must be separately identified in Schedule 1. A "major" receipt includes: 1) any individual receipt of \$10,000 or more; or 2) total receipts from any single entity or individual that aggregate to \$10,000 or more during the reporting period. This process is discussed further below.

All "major" disbursements during the reporting period must be separately identified in Schedule 2. A "major" disbursement includes: 1) any individual disbursement of \$10,000 or more; or 2) total disbursements to any single entity or individual that aggregate to \$10,000 or more during the reporting period. This process is discussed further below.

*Note: Disbursements to officers and employees of the trust who received more than \$10,000 from the trust during the reporting period should be reported in Schedule 3, and need not also be reported in Schedule 2.*

**Example 1:** The trust has an ongoing contract with a law firm that provides a wide range of legal services to which a single payment of \$10,000 is made each month. Each payment would be listed in Schedule 2.

**Example 2:** The trust received a settlement of \$14,000 in a small claims lawsuit. The receipt would be individually identified in Schedule 1.

**Example 3:** The trust made three payments of \$4,000 each to an office supplies vendor for office supplies during the reporting period. The \$12,000 in disbursements to the vendor would be reported in Schedule 2 in Line I of an Initial Itemization Page for that vendor.

#### Procedures for Completing Schedules 1 and 2

Complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of \$10,000 or more or (2) total receipts/disbursements that aggregate to \$10,000 or more during the reporting period. For each major receipt/disbursement, provide the full name and business address of the entity or individual, type of business or job classification of the entity or individual, purpose of the receipt/disbursement, date, and amount of the receipt/disbursement. Receipts/disbursements must be listed in chronological order.

An Initial Itemization Page must be completed for each payer/payee described above. If the Form T-1 is being prepared using the reporting software provided by the Department, the Initial Itemization Page will expand to fit the number of major receipts/disbursements for the payer/payee. If the report is being completed in paper format and more than one page is needed for a single payer/payee, the Continuation Itemization Page should be used for all subsequent pages.

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not have access to the full address, the city and state is sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, bookkeeper, receptionist, shop steward, legal counsel, union member, etc.

Enter in Column (C) the purpose of the receipt/disbursement, which means a brief statement or description of the reason the receipt/disbursement was made.

Enter in Column (D) the date that the receipt/disbursement was made. The date of receipt/disbursement for reporting purposes is the date the trust actually received or disbursed the money, rather than the date that the right to receive, or the obligation to disburse, was incurred.

Enter in Column (E) the amount of the receipt/disbursement.

Enter in Line (F) the total of all transactions listed in Column (E).

Enter in Line (G) the totals from any Continuation Itemization Pages for this payer/payee.

Enter in Line (H) the total of all itemized transactions with this payer/payee (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all other transactions with this payer/payee (that is, all individual transactions of less than \$10,000 each).

Enter in Line (J) the total of all transactions with this payer/payee (the sum of Lines (H) and (I)).

#### Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedule that is available to the union.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the trust does not have access to any other documents that would contain the information, the union should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the union should report as much information as is available and no less than the city and state.

Once these transactions have been incorporated into the recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) of Schedule 1 must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

#### Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the trust to work in a non-union bargaining unit in order to assist the union in organizing employees, provided that such individuals are not employees of the trust who receive more than \$10,000 in the aggregate in the reporting year from the trust. Employees receiving more than \$10,000 must be reported on Schedule 3;
- Information that would expose the reporting union's prospective organizing strategy. The union must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;
- Information that would provide a tactical advantage to parties with whom the reporting union or an affiliated union is engaged or will be engaged in contract negotiations. The union must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances

information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the union or trust is otherwise prohibited by law from disclosing; and,
- Information in those situations where disclosure would endanger the health or safety of an individual.

With respect to these specific types of information, if the reporting union can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement would be adverse to the union or trust's legitimate interests, the union may exclude the transaction from Schedules 1 and 2. In Item 25 (Additional Information) the union must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality based on one of the first three reasons listed above. No notation need be made for exclusions of information disclosure of which is prohibited by law or that would endanger the health or safety of an individual. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required.

A union member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 1 or 2 for one of the first three reasons listed above would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any union member (and the Department), upon request, has the right to review the undisclosed information in the union's possession at the time of the request that otherwise would have appeared in the applicable schedule if the information is withheld in order to protect confidentiality interests. The union also must make a good faith effort to obtain additional information from the trust. Exclusion of information disclosure of which is prohibited by law or that would endanger the health or safety of an individual creates no *per se* demonstration of "just cause."

### **SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST**

List the names and titles of all officers of the trust, whether or not any salary or disbursements were made to them or on their behalf by the trust. Report all direct and indirect disbursements to all officers of the trust and to all employees of the trust who received more than \$10,000 in gross salaries, allowances, and other direct and indirect disbursements from the trust during the reporting period. If no direct or indirect disbursements were made to any officer of the trust enter 0 in Columns (B) through (F) opposite the officer's name.

**NOTE:** A "direct disbursement" to an officer or employee is a payment made by the trust to the officer or employee in the form of cash, property, goods, services, or other things of value.

An "indirect disbursement" to an officer or employee is a payment made by the trust to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer or employee. "On behalf of the officer or employee" means received by a party other than the officer or employee of the trust for the personal interest or benefit of

*the officer or employee. Such payments include payments made by the trust for charges on an account of the trust for credit extended to or purchases by, or on behalf of, the officer or employee.*

**Column (A):** Enter in Column (A) the last name, first name, and middle initial of each person who was either (1) an officer of the trust at any time during the reporting period or (2) an employee of the trust who received more than \$10,000 in total disbursements from the trust during the reporting period. Also enter the title or the position held by each officer or employee listed. If an officer or employee held more than one position during the reporting period, in Item 25 (Additional Information) list each position and the dates during which the person held the position.

**Column (B):** Enter the gross salary of each officer or employee (before tax withholdings and other payroll deductions). Include disbursements for "lost time" or time devoted to trust activities.

**Column (C):** Enter the total allowances made by direct and indirect disbursements to each officer or employee on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (D) or (E), as applicable.

**Column (D):** Enter all direct and indirect disbursements to each officer or employee that were necessary for conducting official business of the trust, except salaries or allowances which must be reported in Columns (B) and (C), respectively.

Examples of disbursements to be reported in Column (D) include: all expenses that were reimbursed directly to an officer or employee, meal allowances and mileage allowances, expenses for officers' or employees' meals and entertainment, and various goods and services furnished to officers or employees but charged to the trust. Such disbursements should be included in Column (D) only if they were necessary for conducting official business; otherwise, report them in Column (E). Include in Column (D) travel advances that meet the following conditions:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.
- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

Do not report the following disbursements in Schedule 3, but should be reported in Schedule 2 if they meet the definition of a major disbursement:

- Reimbursements to an officer or employee for the purchase of investments or fixed assets, such as reimbursing an officer or employee for a file cabinet purchased for office use;
- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer or employee is in travel status away from his or her home and principal place of employment with the trust if payment is made by the trust directly to the provider or through a credit arrangement;

- Disbursements made by the trust to someone other than an officer or employee as a result of transactions arranged by an officer or employee in which property, goods, services, or other things of value were received by or on behalf of the trust rather than the officer or employee, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of meetings, and food and refreshments for the entertainment of groups other than the officers or employees on official business;
- Office supplies, equipment, and facilities furnished to officers or employees by the trust for use in conducting official business; and
- Maintenance and operating costs of the trust's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

**Column (E):** Enter all other direct and indirect disbursements to each officer or employee. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer or employee and were essentially for the personal benefit of the officer or employee and not necessary for conducting official business of the trust.

Include in Column (E) all disbursements for transportation by public carrier between the officer or employee's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the trust's assets (automobiles, etc.) furnished to officers or employees essentially for the officers or employees' personal use rather than for use in conducting official business.

**Column (F):** Add Columns (B) through (E) of each Line and enter the totals in Column (F).

Enter on Line 10 the totals from any continuation pages for Schedule 3.

Enter the totals of Lines 1 through 10 for each Column on Line 11.

### **SPECIAL RULES FOR AUTOMOBILES**

Include in Column (E) of Schedule 3 that portion of the operating and maintenance costs of any automobile owned or leased by the trust to the extent that the use was for the personal benefit of the officer or employee to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (E) must be reported in Column (D).

Alternatively, rather than allocating these operating and maintenance costs between Columns (D) and (E), if 50% or more of the officer or employee's use of the vehicle was for official business, the trust may enter in Column (D) all disbursements relative to that vehicle with an explanation in Item 25 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer or employee's use of the vehicle was for official business, the trust may report all disbursements relative to the vehicle in Column (E) with an explanation in Item 25 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% of the time for the personal benefit of an officer or employee must also be reported in Item 25.

### **ADDITIONAL INFORMATION**

## AND SIGNATURES

**25. ADDITIONAL INFORMATION** — Use Item 25 to provide additional information as indicated on Form T-1 and in these instructions. If you are filing the Form T-1 in a paper format and there is not enough space in Item 25, see the instructions for continuation pages in Section III (How to File).

**26-27. SIGNATURES** — The completed Form T-1 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in Item 26 or 27, and explain in Item 25 (Additional Information) why the president or treasurer did not sign the report. Electronically submitted forms must be signed with digital signatures which will automatically enter the date. Information about this system can be obtained on the OLMS Web site at <http://www.olms.dol.gov>.

Enter the date the report was signed and the telephone number at which the signatories conduct official business; a private, unlisted telephone number does not have to be reported. On a paper Form T-1 submitted pursuant to a hardship exemption, original signatures are required; stamped or mechanical signatures are not acceptable.

## IX. TRUSTS THAT HAVE CEASED TO EXIST

If a trust has gone out of existence as a trust in which a labor organization is interested, the president and treasurer of the labor organization must file a terminal financial report for the period from the beginning of the trust's fiscal year to the date of termination. A terminal financial report must be filed if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust. Similarly, if a trust in which a labor organization previously was interested continues to exist, but the labor organization's interest terminates, the labor organization must file a terminal financial report for that trust.

The terminal financial report must be filed within 30 days after the date of termination to the following address:

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-5616  
Washington, DC 20210-0001

To complete a terminal report on Form T-1, follow the instructions in Section VIII and, in addition:

- Enter the date the trust, or the labor organization's interest in the trust, ceased to exist in Item 2 after the word "Through."
- Enter an "X" in the box in Item 3(c) indicating that the trust, or the labor organization's interest in the trust, ceased to exist during the reporting period and that this is the terminal Form T-1 for the trust from the labor organization.

- Enter "3(c)" in the Item Number column in Item 25 (Additional Information) and provide a detailed statement of the reason the trust, or the labor organization's interest in the trust, ceased to exist. If the trust ceased to exist, also report in Item 25 plans for the disposition of the trust's cash and other assets, if any. Provide the name and address of the person or organization that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

### ***If You Need Assistance***

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA  
Birmingham, AL  
Boston, MA  
Buffalo, NY  
Chicago, IL  
Cincinnati, OH  
Cleveland, OH  
Dallas, TX  
Denver, CO  
Detroit, MI  
Grand Rapids, MI  
Guaynabo, PR  
Honolulu, HI  
Houston, TX  
Kansas City, MO  
Los Angeles, CA  
Miami (Ft. Lauderdale), FL  
Milwaukee, WI  
Minneapolis, MN  
Nashville, TN  
New Haven, CT  
New Orleans, LA  
New York, NY  
Newark (Iselin), NJ  
Philadelphia, PA  
Pittsburgh, PA  
St. Louis, MO  
San Francisco, CA  
Seattle, WA  
Tampa, FL  
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at



<http://www.union-reports.dol.gov>. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available at:

<http://www.olms.dol.gov>

Signed at Washington, DC, this 21st day of September, 2006.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

Signed at Washington, DC, this 22nd day of September, 2006.

**Don Todd,**

*Deputy Assistant Secretary for Labor-Management Programs.*

[FR Doc. 06-8339 Filed 9-28-06; 8:45 am]

**BILLING CODE 4510-CP-C**



# Federal Register

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**Friday,  
September 29, 2006**

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## **Part VI**

# **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Part 660  
Magnuson-Stevens Act Provisions;  
Fisheries off West Coast States; Pacific  
Coast Groundfish Fishery; Biennial  
Specifications and Management Measures;  
Amendment 16-4; Pacific Coast Salmon  
Fishery; Proposed Rule**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 060824226-6226-01; I.D. 082806B]

RIN 0648-AU57

**Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Amendment 16-4; Pacific Coast Salmon Fishery**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a rule to implement Amendment 16-4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and to set the 2007-2008 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California. Amendment 16-4 would modify the FMP to implement revised rebuilding plans for seven overfished species: bocaccio, canary rockfish, cowcod, darkblotched rockfish, Pacific ocean perch (POP), widow rockfish, and yelloweye rockfish. Groundfish harvest specifications and management measures for 2007-2008 are intended to: achieve but not exceed optimum yields (OYs); prevent overfishing; rebuild overfished species; reduce and minimize the bycatch and discard of overfished and depleted stocks; provide harvest opportunity for the recreational and commercial fishing sectors; and, within the commercial fisheries, achieve harvest guidelines and limited entry and open access allocations as closely as possible. Together, Amendment 16-4 and the 2007-2008 harvest specifications and management measures are intended to rebuild overfished stocks as soon as possible, taking into account the status and biology of the stocks, the needs of fishing communities, and the interaction of the overfished stocks within the marine environment. In addition to the management measures implemented for directed and incidental groundfish fisheries, this proposed rule would implement a new Yelloweye Rockfish Conservation Area off Washington State, which will be closed to commercial salmon troll fishing.

**DATES:** Comments must be received no later than 5 p.m., Pacific Standard Time, on October 31, 2006.

**ADDRESSES:** You may submit comments, identified by I.D. 082806B by any of the following methods:

- E-mail: *Amendment 16-4.nwr@noaa.gov*: Include I.D. 082806B in the subject line of the message.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 206-526-6736, Attn: Yvonne deReynier
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Yvonne deReynier.

Information relevant to this proposed rule, which includes a draft environmental impact statement (DEIS), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280. Copies of additional reports referred to in this document may also be obtained from the Council.

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier (Northwest Region, NMFS), phone: 206-526-6129; fax: 206-526-6736 and; e-mail: [yvonne.dereynier@noaa.gov](mailto:yvonne.dereynier@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Electronic Access**

The proposed rule also is accessible via the Internet at the Office of the **Federal Register's** website at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents, including the DEIS, are available at the Council's website at <http://www.pccouncil.org>.

**Background**

Groundfish harvest specifications are the amounts of West Coast groundfish species or species groups available to be caught in a particular year. Harvest specifications include acceptable biological catches (ABCs), optimum yields (OYs), and harvest guidelines (HGs), as well as set-asides of harvestable amounts of fish for particular fisheries or particular geographic areas. The ABC is a biologically based estimate of the amount of fish that may be harvested from the fishery each year without jeopardizing the resource. The ABC may be modified with precautionary adjustments to account for uncertainty. A stock's OY is its target harvest level,

and is usually lowered from its ABC. The Council's policies on setting ABCs, OYs, and other harvest specifications are discussed later in the preamble to this proposed rule. Proposed harvest specifications for 2007-2008 are provided in proposed Tables 1a through 2c of this proposed rulemaking.

Management measures set in this biennial management process are intended to constrain the fisheries so that OYs of healthier groundfish stocks are achieved as much as is practicable within the constraints of requirements to rebuild co-occurring overfished groundfish species. In order to rebuild overfished species, allowable harvest levels of healthy species will only be achieved where such harvest will not deter rebuilding of overfished stocks. Routine management measures for the commercial fisheries include trip landing and frequency limits, time/area closures, size limits, and gear restrictions. Routine management measures for the recreational fisheries include bag limits, size limits, gear restrictions, fish dressing requirements, and time/area closures. These measures can be adjusted inseason to achieve but not exceed OYs. The groundfish fishery is managed with a variety of other regulatory requirements that are not considered routine, and which are found at 50 CFR 660, Subpart G. Regulations outside of this rulemaking include, but are not limited to long-term harvest allocations, recordkeeping and reporting requirements, requirements to carry vessel monitoring system (VMS) transceiver units and observers, license limitation programs, and essential fish habitat (EFH) protection measures.

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires the Council to set harvest specifications and management measures for groundfish at least biennially. This proposed rule would set 2007-2008 harvest specifications and management measures for all of the 90+ FMP-managed groundfish species or species groups, except for Pacific whiting. Pacific whiting harvest specifications will be proposed as a range via this action, with the final specifications for 2007 and 2008 to be set following the March 2007 and March 2008 Council meetings, respectively.

Amendment 16-4, which this action proposes concurrently with the 2007-2008 groundfish specifications and management measures, would modify the FMP to implement revised rebuilding plans for the seven overfished groundfish species bocaccio, canary rockfish, cowcod, darkblotched rockfish, POP, widow rockfish, and yelloweye rockfish consistent with the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and *Natural Resources Defense Council v. NMFS*, 421 F.3d 872 (9th Cir. 2005) [hereinafter *NRDC v. NMFS*.] discussed below. NMFS published a Notice of Availability for Amendment 16–4 on July 28, 2006 (71 FR 42846.) This proposed rule would modify Federal regulations at 50 CFR 660.365 per Amendment 16–4 to specify revised target rebuilding dates and harvest rates for each overfished species.

This preamble describes the new approach taken by NMFS, the Council, and state and tribal partners in light of *NRDC v. NMFS*. As in past years, this preamble also discusses the Council's ABC and OY policies, harvest levels for overfished and all other groundfish species or species groups, fishery-specific management measures, and other issues related to this 2007–2008 management package. Preambles to prior proposed rules on groundfish harvest specifications and management measures have also discussed bycatch accounting and reduction measures. On June 27, 2006, NMFS published a proposed rule to implement Amendment 18 to the FMP on bycatch mitigation (71 FR 36506.) The preamble to that proposed rule discussed NMFS and Council bycatch accounting and mitigation policies, programs, and regulations. Therefore, these issues will only be briefly discussed in this preamble as they pertain to 2007–2008 fisheries.

#### *Ninth Circuit Court of Appeals Ruling*

*NRDC v. NMFS*, 421 F.3d 872 (9th Cir. 2005.) involved a challenge to the 2002 groundfish harvest specifications and management measures, specifically the darkblotched rockfish rebuilding plan. In that case, the Ninth Circuit Court of Appeals held that, pursuant to the Magnuson-Stevens Act, overfished species rebuilding periods must be as “short as possible, taking into account the status and biology of any overfished stock of fish [and] the needs of fishing communities.” The Court also stated, “Congress intended to ensure that overfished species were rebuilt as quickly as possible, but wanted to leave some leeway to avoid disastrous short-term consequences for fishing communities. . . . Section 1854(e)(4)(i) [of the Magnuson-Stevens Act.] then, allows the Agency to set limited quotas that would account for the short-term needs of fishing communities (for example, to allow for some fishing of plentiful species despite the inevitability of bycatch), even though this would mean that the rebuilding

period would take longer than it would under a total fishing ban.” In light of this case, NMFS and the Council are revising all seven of the overfished species rebuilding plans by January 1, 2007, and as described in detail below, have taken a new approach to developing rebuilding alternatives per the court ruling.

#### Rebuild as Quickly as Possible, Taking Into Account the Status and Biology of the Stock

Stock assessments are intended in part to determine the status of each assessed stock relative to its estimated unfished biomass level,  $B_{UNFISHED}$ . For example, when we say that a stock is at  $B_{40}$ , we are saying that the stock's abundance is at a level that is 40 percent of the abundance level we have estimated for  $B_{UNFISHED}$ . Under the FMP, stocks that decline to below 25 percent of estimated  $B_{UNFISHED}$  are declared overfished and must then be managed under rebuilding plans. The Magnuson-Stevens Act requires that overfished stocks be rebuilt to  $B_{MSY}$ , which is the biomass level at which a stock is estimated to be able to maintain its maximum sustainable yield (MSY) over time. The FMP sets a proxy  $B_{MSY}$  level for all groundfish species at  $B_{40}$ ; therefore, an overfished groundfish stock is considered rebuilt once its biomass reaches  $B_{40}$ .

A rebuilding analysis for an overfished species uses the information in its stock assessment to determine  $T_{MIN}$ , the minimum time to rebuild to  $B_{40}$  in the absence of fishing. For each stock, its  $T_{MIN}$  is dependent on a variety of physical and biological factors. The best available scientific information on each stock's life history characteristics (e.g., age of reproductive maturity, relative productivity at different ages and sizes, etc.) and the effects of environmental conditions on its abundance (e.g., relative productivity under interannual and interdecadal climate variability, availability of suitable feed and habitat for different life stages, etc.) is taken into account in its stock assessment and rebuilding analysis. For example, one of the factors considered in the 2005 widow rockfish stock assessment was that widow rockfish tend to be more easily caught in higher abundance during El Nino (anomalously warm and dry) years, possibly affecting how data from El Nino years is used within a multi-year time series of data.  $T_{MIN}$  estimates derived from the rebuilding analyses for the seven overfished species are provided for each species in the section below, “OY Policies and Rebuilding Parameters for Overfished Species.”

Rebuilding analyses predict  $T_{MIN}$  for each overfished species and, in doing so, answer the question of what is “as quickly as possible” for those species. Complete absence of targeted fishing mortality, however, does not necessarily result in the complete absence of human-induced mortality on any species of fish. Federal regulations at 50 CFR 600.310(f)(4)(iii) state, “All fishing mortality must be counted against OY, including that resulting from bycatch, scientific research, and any other fishing activities.” Thus, rebuilding by the  $T_{MIN}$  date would require elimination of extractive scientific fishing, in addition to any target or incidental commercial, recreational, or ceremonial and subsistence fishing that results in overfished species mortality. Eliminating extractive scientific fishing would eliminate a significant portion of the new data that are used to update stock assessments and our understanding of the biological condition of the majority of groundfish stocks. Because West Coast groundfish species are so intermixed, extractive scientific fishing would have to be eliminated for all groundfish (overfished and healthy), and for some non-groundfish species as well. The Council determined that, in order to appropriately take into account the status and biology of overfished stocks, both now and in the future, scientific take of overfished and other groundfish stocks must continue. Scientific fishing needs in 2007 and 2008 for individual overfished species are estimated below in the species-specific footnotes in Tables 1a and 2a of 50 CFR subpart G.

#### Rebuild as Quickly as Possible, Taking Into Account the Needs of Fishing Communities

As discussed above, the Court in *NRDC v. NMFS* stated that overfished species should be rebuilt as quickly as possible, but noted that Congress “wanted to leave some leeway to avoid disastrous short-term consequences for fishing communities.” The Court also noted that the Magnuson-Stevens Act “allows the Agency to set limited quotas that would account for the short-term needs of fishing communities (for example, to allow for some fishing of plentiful species despite the inevitability of bycatch), even though this would mean that the rebuilding period would take longer than it would under a total fishing ban.”

National Standard 8 of the Magnuson-Stevens Act, 16 U.S.C. 1851(a)(8), also requires consideration of fishing communities consistent with the conservation requirements of the Act: “Conservation and management

measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.” (1851(a)(8).) Both National Standard 8 and *NRDC v. NMFS* speak to the difficult and often conflicting short-term and long-term socio-economic and biological considerations in fisheries management, which require sustaining both the long-term productive capacity of marine resources and the ability of fishing communities to harvest those resources.

To address the *NRDC v. NMFS* ruling, the DEIS took a significant new direction in analyzing the socio-economic effects of this action. To guide its consideration of the effects of the action on communities, the Council included this statement in the draft Amendment 16–4, “Fishing Communities need a sustainable fishery that is safe, well managed, and profitable, that provides jobs and incomes, that contributes to the local social fabric, culture, and image of the community, and helps market the community and its services and products.” In its recommendations for overfished species rebuilding plans and for 2007–2008 groundfish specifications and management measures, the Council was clear that it did not expect fishing community needs would be *met* by those plans and measures, due to conservation actions needed for the stocks. Rather, the Council took these needs into account as it analyzed different rebuilding plan and management measures alternatives. In essence, this means that harvest levels and management measures for 2007–2008 are expected to allow fishing businesses and communities to operate at a level that will provide for the continued existence of those fishing businesses and communities and will only allow opportunities for economic growth or profit if they are consistent with the rebuilding policies adopted under Amendment 16–4. In many instances this means that the harvests of healthy and growing stocks will be curtailed because of potential effects on rebuilding species.

Determining how to appropriately take into account the needs of fishing communities while preventing short-term disastrous consequences from fishery regulations was the most challenging aspect of this action, as there is little to no guidance provided

by the Court, within current NOAA guidelines, or available academic literature. NMFS and its partner agencies have been conducting West Coast groundfish stock assessments for over 20 years. The agencies have been collecting fishery-dependent groundfish data since the early 20th century, and the earliest NMFS shelf/slope trawl survey occurred off the West Coast in 1977. With this history of biological scientific effort, it has been standard Council practice to set groundfish harvest levels using stock assessments that evaluate and take into account the status and biology of those stocks. To address the Court’s orders concerning fishing communities, NMFS and its partner agencies had to assess fishing communities for their groundfish harvest needs, just as biological analysts assess the status and biology of the groundfish species.

The DEIS for this action is intended, in part, to assess: the needs of groundfish fishing communities, the dependence of different fishing communities on each overfished species, and the vulnerability of fishing communities to further near-term reductions in groundfish harvest. These analyses were complicated by the fact that different gears and fisheries affect various groundfish species to greater or lesser degrees. For example, slope rockfish such as POP and darkblotched are almost exclusively taken in the trawl fisheries, while yelloweye rockfish is primarily taken in recreational and commercial hook-and-line fisheries. Most fishing communities have a mix of commercial and recreational fishing participation, although community dependence on the different sectors varies. Similarly, some fishing communities are dependent on commercial trawl fisheries, while others have more non-trawl gear fishery participation. To address fishing community heterogeneity, the EIS for this action assesses community dependency on groundfish, on different sectors of the groundfish fishery, and on the fisheries with incidental catch of particular overfished species.

Past EISs for groundfish harvest specifications and management measures have primarily addressed the socio-economic environment of West Coast groundfish fisheries in terms of groundfish landings by weight and ex-vessel revenue over time. This DEIS took a significant new direction in analyzing socio-economic effects of this action. Chapter 7 and Appendix A of the DEIS describe the socio-economic environment, provide economic impact projections of the alternatives, and classify fishing communities in terms of

their ability to withstand short-term negative consequences that could result from declines in annual groundfish revenue. Although the “needs” of fishing communities cannot be quantified because of the lack of data and models, available fisheries and economic demographic information communities can be used to develop indicators of community engagement in fisheries, dependence on groundfish, and community resiliency. These indicators can then be combined to classify those communities or associated counties that are most vulnerable. A community or county is considered “vulnerable” and “most vulnerable” to changes in management measures if in comparison to other communities or counties, it is more engaged in fishing, more dependent on groundfish, and least resilient to negative socio-economic impacts.

Appendix A, section A.4., describes the analysis in more detail. It describes fishing community engagement in fishing generally and dependence on the groundfish fishery particularly, using indicator factors such as employment in fishing as a percentage of total employment in the community; income from fishing as a percentage of total income in the community; number of fishing vessels in the community; number of fishing permits in the community; number of processors/buyers in the community; and fish landings to the community. These factors are then analyzed to determine community resilience to changes in groundfish revenue, their ability to weather short-term disastrous consequences from landings reductions associated with rebuilding overfished species. It is typically assumed that the greater socio-economic and cultural diversity and infrastructure an area has, the more resilient an area will be if a management regulation negatively affects the area. Community resiliency indices included: employment in various industries; unemployment levels; income levels; resident mobility; resident education, skills and training levels; population density (as a proxy for community infrastructure); community isolation; and fisheries specific infrastructure. (Much of the information was drawn from the NOAA Northwest Fisheries Science Center’s Community Profiling Project found at: <http://www.nwfsc.noaa.gov/research/divisions/sd/communityprofiles/index.cfm>).

Taking these two major factors into consideration, community dependency/engagement and community resiliency to change, Appendix A then identified which communities would be most

vulnerable to changes associated with potential short-term disastrous consequences from shortened rebuilding periods. Vulnerable areas were defined in the DEIS as those communities that have relatively low resilience to economic shifts, and are either highly engaged in or highly dependent on groundfish fishing. With regard to engagement in commercial fishing in general, the DEIS identifies 29 cities and 16 counties as vulnerable areas. With regard to dependency on the commercial groundfish fishery in particular, the draft EIS identifies 32 cities and 17 counties as vulnerable areas. The EIS also identified 10 Washington and Oregon communities as vulnerable areas with regard to recreational fishing dependency. California recreational fisheries data is aggregated in a way that makes identifying vulnerability to recreational fisheries change difficult to identify for particular communities. However, analysts were able to identify vulnerability at the county level for California recreational fisheries, showing that San Luis Obispo through Santa Cruz counties and San Diego through Los Angeles counties are most engaged in recreational fishing and dependent on the groundfish recreational fishery.

When the Council took "into account the needs of fishing communities," it had before it economic analysis that showed by community and fishing sector, trends in commercial harvests and ex-vessel revenues and in recreational harvests, trips, and expenditures by sector and community (or proxy county or port group). These variables were translated into estimates of regional, state, and community levels of personal income and employment. The economic impacts of the various rebuilding alternatives were projected based on the bycatch models (used by biologists to illustrate the relationships between overfished and healthy groundfish stocks,) which were expanded to include the relationship of overfished species to the various communities. The Council then reviewed the various alternatives in light of the overall and community economic impacts, the above discussed analysis of "vulnerable" communities, and the alternative rebuilding schedules embedded in the alternatives.

NMFS made its first declaration of overfished species in 1999 (bocaccio, lingcod, POP,) and the declines in allowable groundfish harvest levels and associated revenues are a result of NMFS and Council rebuilding policies. On January 19, 2000, under Section 312 of the Magnuson-Stevens Act, the

Secretary of Commerce (Secretary) declared a commercial resource disaster due to a fisheries resource failure in the West Coast groundfish fishery, paving the way for congressional provision of disaster relief to affected commercial fishers and their communities. This declaration was made on a review of past and projected trends in non-whiting commercial groundfish harvests and revenues, and the potential underlying causes of these trends. (In this and many other long-term analyses, whiting is excluded as it is highly variable species that, unlike traditional groundfish fisheries, was predominantly a foreign fishery that transitioned to a joint venture fishery, and finally a Americanized fishery completely harvested and processed by U.S. entities in 1991.) As shown in Figure 2–13 of the Draft EIS "Trends in ex-vessel revenues from the West Coast groundfish fishery and projected revenues under the final Council-preferred alternative," during the late 1980's and until the late 1990's, non-whiting groundfish fisheries generated annual ex-vessel revenues that largely ranged from \$90 million to \$110 million annually when adjusted for inflation. In 1998, there was a sharp decline to \$64 million, a level that was largely maintained for the next two years. In 2001 and 2002, revenues sharply fell to \$51 million and \$42 million, respectively. Since 2002, ex-vessel revenues have ranged between \$41 million to \$45 million. Implementation of the Council's preferred alternative is expected to generate revenues in 2007 and 2008 at levels slightly less than the 2005 level of \$43 million. (See also Table 7–2c "Total domestic shoreside landings and at-sea deliveries-ex-vessel revenue... "of the DEIS)

In considering the effects of the action on fishing communities, the Council was concerned about the effects of inseason fishery management on fishing communities. At the start of each biennial management cycle, NMFS and the Council set fishery management measures that are expected to achieve as much of the healthy species' OYs as possible without exceeding allowable harvest levels for co-occurring overfished species. These management measures are set using the best scientific information available at that time, but new scientific information inevitably becomes available during each fishing year. Catch data vary in quality and abundance both before and during the season, and some of the most constraining rebuilding species are also caught in fisheries not managed under the groundfish FMP. Managing a

coastwide fishery to ensure that OYs of overfished species are not exceeded is particularly difficult because many of these OYs are low. If new information received during the season reveals that landings are occurring at a faster pace than were initially anticipated, management action would be needed to keep the harvest of healthy stocks and the incidental catch of overfished species at or below their specified OYs. If these inseason adjustments to management measures are dramatic, such as an early closure of a fishery, then the effects of management actions on these communities can be severe.

To prevent major inseason fluctuations in available harvest, Amendment 16–4 and the 2007–2008 harvest levels account for uncertainty in order to minimize the potential need for dramatic inseason measures. In other words, currently available scientific information is used to design management measures that are projected to result in overfished species harvest levels that are somewhat lower than their OYs. This practice provides a buffer to account for both scientific uncertainty and unexpected occurrences and, in general, has helped prevent OYs from being exceeded in past management years. Even with these safeguards, scientific information that becomes available during the 2007–2008 period may reveal that previously set management measures need to be revised inseason. If that is the case, management measures will be appropriately adjusted inseason to keep harvest from exceeding OYs.

Rebuild as Quickly as Possible, Taking into Account the Interactions of Overfished Stocks Within the Marine Environment

In December 2005, NMFS published a final EIS on the designation of groundfish EFH and minimization of adverse fishing effects on EFH. (See: <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/NEPA-Documents/EFH-Final-EIS.cfm>). The final EFH EIS primarily focuses on the interactions of groundfish species with their physical environment. The DEIS for Amendment 16–4 and the 2007–2008 groundfish specifications and management measures expand upon the EFH EIS's analysis to analyze the interactions of groundfish species with each other and with other marine species within the California Current ecosystem. In general, the DEIS concludes that the life histories of most groundfish species, longer-lived and slower-growing with relatively low rates of predation, make the abundance of particular groundfish

species less likely to affect overall productivity within the California Current ecosystem. Pacific whiting is an exception, its high abundance and productivity, as well as its broad distribution, give it influence on ecosystem productivity both as a predator and as prey.

The abundance of site-loyal overfished rockfish species, cowcod and yelloweye rockfish, is likely to affect marine community composition in particular geographic areas, but not the ecosystem as a whole. The abundance of plankton likely affects the health of overfished planktivorous rockfish (POP, darkblotched, canary, and widow,) but plankton abundance is primarily determined by physical environmental influences that control larval survival and distribution into beneficial habitat. The best available scientific information indicates that no one rockfish species, even those species with abundant population levels, has a population large or productive enough to influence overall biological productivity within the California Current ecosystem. As a consequence, the rate of rebuilding for a particular overfished species is also not expected to influence productivity within the California Current ecosystem. Therefore, the Council focused its efforts at crafting appropriate rebuilding plans within the Court's guidance on the factors discussed earlier in this document the status and biology of the stocks, and the needs of fishing communities.

#### Council Decision-Making Process

In September and November 2005, the Council adopted most of the new groundfish stock assessments needed to support fishery management in 2007–2008. Yelloweye rockfish was the only species with a stock assessment delayed for adoption until March 2006. Based on the adopted stock assessments, the Council also adopted initial management recommendations for the 2007–2008 fisheries at its November 2005 meeting. These recommendations included: preliminary ABCs and ranges of OYs for all groundfish species, ranges of alternative allocations of canary and yelloweye rockfish to the commercial and recreational fisheries, and a variety of potential management measures for the 2007–2008 fisheries. Taking into account the status and biology of overfished stocks, the Council adopted preliminary ABCs and ranges of overfished species OYs based on: the time to rebuild if fishing were eliminated beginning in 2007 ( $T_{F=0}$ ), varying probabilities of rebuilding by  $T_{MIN}$  plus one mean generation time for each species, projecting fishing

mortality rates associated with 2005 OYs forward through time, and applying the current FMP harvest rates to the newly assessed biomass levels. Overfished species OY ranges adopted at the Council's November 2005 meeting for analysis were: bocaccio, 0–425 mt; canary rockfish, 0–67 mt; cowcod, 0–11 mt; darkblotched rockfish, 0–456 mt; POP, 0–741 mt; widow rockfish, 0–1,352 mt; yelloweye rockfish, 0–24 mt.

The Council developed each initial range of overfished species OYs using only biological parameters to ask how quickly the stock might rebuild at differing levels of potential future harvest. The initial ranges were not intended to take into account the needs of fishing communities, nor did they account for the interactions of overfished stocks with each other. However, these ranges provided a starting point for more detailed analysis.

Over winter 2005–2006, the Council's advisory bodies met to discuss and analyze the Council's preliminary harvest level ranges. At its March 2006 meeting, the Council adopted a yelloweye rockfish stock assessment, finalizing the set of stock assessments for the 2007–2008 fisheries. At its April 2006 meeting, the Council adopted, for further analysis, preferred ABCs for all groundfish species, and preferred OYs for the non-overfished species. As discussed below in the section on "ABC-Setting Policies," ABC-setting for all species is guided by harvest policies in the FMP. From the low end of the ranges of overfished species OYs that it had adopted in November 2005, the Council also adopted suites of "Preferred Low" and "Preferred High" overfished species OYs at its April 2006 meeting. The Preferred Low OY suite set out potential OYs as: bocaccio, 40 mt; canary rockfish 32 mt; cowcod, 4 mt; darkblotched rockfish, 130 mt; POP, 44 mt; widow rockfish, 120 mt; yelloweye rockfish, 12.6 mt. The Preferred High OY suite set out potential OYs as: bocaccio, 218 mt; canary rockfish, 44 mt; cowcod, 8 mt; darkblotched rockfish, 229 mt; POP, 100 mt; widow rockfish, 368 mt; yelloweye rockfish, harvest level ramp-down strategy (i.e. not an OY based on a constant harvest rate.) In addition to these preliminary OY suites, the Council also adopted draft amendatory language for Amendment 16–4, which modifies the FMP to include the Council's approach for developing rebuilding plans in light of *NRDC v. NMFS*.

For the April 2006 meeting, NMFS and the Council adopted a new, integrated approach in their analyses to develop and evaluate overfished species OY alternatives. The Council has

traditionally been provided with analyses on preferred OYs for each overfished species in isolation from other species. For this action, the analyses not only considered each overfished species OY in isolation, but also considered how different overfished species OYs might affect or constrain other overfished species. By adopting a suite of OYs for overfished species in April 2006, the Council intended to take a realistic look at minimal harvest levels that would rebuild as quickly as possible taking into account the status and biology of the stocks and at least allowing for some extractive scientific take of overfished stocks. Although the Council had not yet fully considered the potential socio-economic effects of the different alternatives on fishing communities, it determined in April that OYs set at zero would not take into account fishing community needs.

At the April Council meeting, in its April 2006 report to the Council, the Council's Groundfish Management Team (GMT) provided the Council with issues to consider when developing the suites of OYs for overfished species in order to take into account the status and biology of the stock, the needs of fishing communities, and the interactions of those species within the marine ecosystem (See April 2006 Agenda Item F.1.c., Supplemental GMT Report.) The GMT suggested that, in taking into account the status and biology of the stock, the Council consider: the different depletion rates of each overfished species relative to their estimated unfished biomasses; the sensitivity of each overfished species' rebuilding trajectory to management decisions that raised or lowered that species' OY; and, the need for extractive scientific research to continue to occur on overfished and co-occurring groundfish species.

The GMT also suggested that, in taking into account the needs of fishing communities, the Council consider: the vulnerability of different fishing communities to reductions in available harvest of different overfished species; the resilience of different fishing communities to changes in community groundfish fishing revenues; the effects that recent past harvest levels have had on fishing communities; and, the uncertainty in pre-season predictions of bycatch rates and the associated need for management flexibility to address that uncertainty without either allowing OYs to be exceeded or causing disastrous immediate consequences for groundfish fishing communities. Finally, the GMT suggested that the Council consider interactions of

overfished species within the marine ecosystem by integrating their considerations of the status and biology of overfished stocks with their considerations of the needs of fishing communities by prioritizing greater protection for the overfished species with rebuilding trajectories most sensitive to changes in OY and to the most vulnerable fishing communities by allowing relatively more incidental take of the less sensitive overfished species. These GMT recommendations, and the advice that the Council received from its other advisory bodies and the public, informed how the Council developed its overfished species OY alternatives at its April 2006 meeting.

In taking the status and biology of the stocks into account via its April preferred alternatives, the Council looked at the sensitivity of each overfished species' rebuilding trajectory to future changes in OY. Rebuilding times were compared with each other in terms of how far each alternative would extend a species' rebuilding period beyond  $T_{F=0}$ , the time at which rebuilding would be estimated to occur were fishing mortality eliminated for that species beginning in 2007. The effects of the alternatives on rebuilding periods were compared to those under a  $T_{F=0}$  scenario, rather than to those under a  $T_{MIN}$  scenario.  $T_{MIN}$  is defined as the shortest time to rebuild if all fishing were eliminated from the start of a species' rebuilding period. For West Coast groundfish species with existing rebuilding plans,  $T_{MIN}$  is used as a reference point to illustrate what might have been possible had all fishing been eliminated from the start of the rebuilding period. Amendment 16-4 does not set new rebuilding period start dates for overfished species; instead, it revises the rebuilding trajectories and target dates that were set in place by Amendments 16-2 and 16-3, per the requirements of *NRDC v. NMFS*. Because the rebuilding period start dates remain in place, comparing rebuilding periods to those that would have occurred under  $T_{MIN}$  scenarios would have required making an untrue assumption that no fishing mortality had occurred for overfished species since the start of the rebuilding periods. For this reason, comparing rebuilding periods to those that would have occurred under the  $T_{F=0}$  provides a more useful estimate of what is rebuilding "as soon as possible."

Some of the overfished stocks are more productive than others, meaning that they are more likely to rebuild to  $B_{MSY}$  at faster rates. Rebuilding times for the less productive species are more sensitive to changes in OY levels. For

example, a 130-mt darkblotched rockfish OY is expected to increase the darkblotched rebuilding period by 4 months beyond  $T_{F=0}$ , while a 229-mt OY is expected to increase that period by 7 months beyond  $T_{F=0}$ . Conversely, a 4-mt cowcod OY is expected to increase the cowcod rebuilding period by 4 years beyond  $T_{F=0}$ , while an 8 mt OY is expected to increase that period by 8 years beyond  $T_{F=0}$ . Species with rebuilding times that are most sensitive to changes in OYs are yelloweye rockfish, and cowcod. These low productivity stocks would take longer to rebuild than the higher productivity stocks, even if fishing mortality were eliminated. The more productive and less sensitive stocks are darkblotched, POP, and widow rockfish. The productivity and sensitivity of bocaccio and canary rockfish is intermediate to these two groups.

To properly take overfished species productivity into account, the Council also had to make initial recommendations on management measures to best match management programs to the species in need of more or less conservative management. In recent years, groundfish management measures have been designed to reduce effort on overfished stocks with low productivity and redirect effort on healthy stocks, with somewhat higher incidental take of those overfished species with higher productivity. Trawl fishing effort is prohibited on the continental shelf, constrained in nearshore waters, and focused on continental slope waters, where the most productive overfished species tend to occur. The less productive species tend to occur on the shelf, with cowcod and yelloweye being caught primarily by hook-and-line gear, and canary and bocaccio being caught in a broad range of fisheries. Thus, at its April 2006 meeting, the Council recommended that suites of management measures be developed for the Preferred High and Low OY alternatives that would maintain the philosophy of constraining fishing opportunities where trawlers might incidentally catch the most sensitive species.

At its June 2006 meeting, the Council considered three management alternatives that packaged overfished species OYs with management measures intended to constrain fishing to those OYs. To ensure adequate analysis of a no-fishing baseline, the Council also considered  $F=0$  scenarios, which represent each species' shortest time to rebuild in the absence of fishing mortality, starting in 2007. Alternative 1, associated with the Preferred Low OY suite, was more restrictive than status

quo and provided the shortest rebuilding times with modest fishing mortality. Under Alternative 1, rebuilding was extended less than five years from the times associated with  $F=0$  for bocaccio, cowcod, darkblotched rockfish, POP, and widow rockfish. Canary and yelloweye rockfish rebuilding periods would have been extended by an estimated 7 and 35 years, respectively, under Alternative 1. Alternative 2 was intermediate to Alternatives 1 and 3, and resulted in overfished species mortality similar to current management measures. Alternative 3, the Preferred High OY, allowed for greater harvest and resulted in longer rebuilding periods than the other alternatives by extending the rebuilding time for bocaccio, darkblotched rockfish, POP and widow rockfish rebuilding periods by five years or less from  $T_{F=0}$ , and extending the cowcod, canary and yelloweye rockfish rebuilding periods by an estimated 8, 10 and 36 years, respectively, from  $T_{F=0}$ .

At the June Council meeting, in its June 2006 report to the Council, the GMT again provided the Council with issues to consider when making its final decision on preferred overfished species OYs in order to take into account the status and biology of the stock, the needs of fishing communities, and the interactions of those species within the marine ecosystem (See June 2006 Agenda Item F.2.c., Supplemental GMT Report.) To take into account the status and biology of overfished stocks, the GMT reiterated its April advice that the Council consider the potential rebuilding trajectories of each overfished species and the effects of varying harvest rates on those trajectories, and the need for extractive scientific research to continue into the future. The GMT provided the Council with a comparison of each overfished species' rebuilding trajectory under the different harvest scenarios and under the  $T_{F=0}$  scenario. Based on that comparison, the GMT reminded the Council that cowcod and yelloweye are the species with rebuilding trajectories most sensitive to changes in OYs, and that bocaccio and canary are moderately sensitive to changes in OY. The GMT identified widow rockfish, darkblotched rockfish and POP as having rebuilding trajectories least sensitive to changes in OY, and most subject to what the GMT called the "rebuilding paradox." The rebuilding paradox occurs as a stock's size gets closer to its rebuilt level,  $B_{MSY}$ . Although the fisheries must continue to avoid a rebuilding stock throughout its rebuilding period, rebuilding stocks that are close to  $B_{MSY}$  are so abundant that



they become increasingly difficult to avoid.

In its June report, the GMT also provided the Council with issues to consider in taking into account the needs of fishing communities. In particular, the GMT discussed the effects of the different action alternatives and the  $T_{F=0}$  alternative in terms of: short term economic impacts when compared to status quo, short term economic impacts compared to historic economic impacts, short term economic impacts compared to the 2000 disaster declaration by the Secretary, and short term economic impacts of each action alternatives when compared to one another. The GMT noted that, under the status quo (2005–2006) fishery, groundfish revenues are lower than revenues generated in 2000, the year of the disaster declaration. In 2000, 2001, and 2002 groundfish ex-vessel revenues were approximately \$62 million, \$52 million, and \$43 million respectively. Recreational angler trips numbered an estimated 1,218,000 in 2000, 927,000 in 2001, and 843,000 in 2002. The GMT reported that each of the action alternatives under Council consideration would result in ex-vessel revenue, recreational angler trips, and income that would be lower than in 2000, when the disaster declaration was made. Finally, the GMT expressed its concern with the lack of management flexibility under the lowest OYs in the action alternatives, anticipating that implementing the lowest OYs would eliminate management flexibility, potentially resulting in more radical inseason management shifts and potentially disastrous consequences for fishing communities.

When making its recommendations for a preferred suite of rebuilding OYs, the Council considered the differences in the biology of the different overfished rockfish stocks and varying rebuilding schedules. The depletion rates of each overfished species and the sensitivity of each species to changes in the management regime were considered. The OY alternatives considered by the Council included allowances for research catch, in order to ensure that future information could be gathered to assess the status and biology of these and other fish stocks.

In addition, the Council considered the needs of the fishing communities within the framework suggested by its GMT, which looked at the short term economic consequences of the different alternatives and whether those alternatives were likely to be immediately disastrous for fishing communities. The Council also considered the uncertainty inherent in

inseason groundfish fisheries management. See inseason discussion, above, under “Rebuild as Quickly as Possible, Taking Into Account the Needs of Fishing Communities.” For example, the Preferred Low OY alternative would have required a variety of fisheries to be either severely constrained or closed by January 1, 2007. In addition, this alternative had little flexibility to respond to management uncertainty and would likely result in inseason fishery closures in response to fishery information received inseason.

In summary, in making its final recommendations for rebuilding OYs in 2007–2008, the Council took into account the status and biology of the stocks by looking for the shortest possible rebuilding periods within a package of management measures that provided the greatest protection for the most sensitive and lowest productivity species. The Council took the needs of fishing communities into account by providing fishing opportunities where such opportunities would have a minimal effect on rebuilding periods for stocks with higher productivity, and by recommending restrictive management measures focused on stocks with the lowest productivity levels. The Council adopted the following optimum yields (OYs) for overfished species in 2007–2008: bocaccio rockfish 218 mt; canary rockfish 44 mt; cowcod 4 mt; darkblotched rockfish 290 mt for 2007 and 330 mt for 2008; Pacific ocean perch 150 mt; widow rockfish 368 mt; and a harvest rate ramp-down strategy for yelloweye rockfish with a 23 mt OY in 2007 and a 20 mt OY in 2008. These recommended OYs allow for extractive scientific research in 2007 and 2008. In order to account for uncertainty in inseason management, the Council’s recommended management measures are projected to result in total catch levels that are lower than the overfished species OYs. As discussed below, the recommended overfished species OYs are estimated to extend rebuilding periods beyond  $T_{F=0}$  by: for bocaccio, 5 years; for canary rockfish, 10 years; for cowcod, 4 years; for darkblotched rockfish, 1 year; for POP, 2 years; for widow rockfish, 2 years; and for yelloweye rockfish, 38 years. These Council-adopted OYs and the associated harvest rates and rebuilding trajectories would be implemented via this action, which implements both the 2007–2008 groundfish harvest specifications and management measures and Amendment 16–4. Amendment 16–4 revises the FMP with new overfished species rebuilding parameters at Section 4.5.

#### ABC-setting Policies

The Council develops annual estimates of the ABC (acceptable biological catch) for major groundfish stocks. The ABC is a biologically based estimate of the amount of fish that may be harvested from the fishery each year without jeopardizing the resource. The ABC may be modified with precautionary adjustments to account for uncertainty. A stock’s OY is its target harvest level, and is usually lowered from its ABC; OY setting policies are explained in a later section of this preamble. When setting the 2007 and 2008 ABCs, the Council maintained a policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve the maximum sustainable yield ( $F_{MSY}$ ). The ABCs for groundfish species or species groups are derived by multiplying the harvest rate proxy by the current estimated biomass. In 2007 and 2008, the following default harvest rate proxies, based on the Council’s Scientific and Statistical Committee (SSC) recommendations, were used:  $F_{40\%}$  for flatfish and Pacific whiting,  $F_{50\%}$  for rockfish (including thornyheads), and  $F_{45\%}$  for other groundfish such as sablefish and lingcod.

A harvest rate of  $F_{40\%}$  can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under natural conditions (if there were no mortality due to fishing), and is therefore a more aggressive harvest rate than  $F_{45\%}$  or  $F_{50\%}$ . The FMP allows default harvest rate proxies to be modified as scientific knowledge improves for a particular species. A fishing mortality or harvest rate can vary, depending on the productivity of a particular species. For fast growing species (those with individuals that mature quickly and produce many young that survive to an age where they are caught in the fishery,) a higher fishing mortality rate may be used, such as  $F_{40\%}$ . Fishing mortality rate policies must account for several complicating factors, including the capacity of mature individuals to produce young over time and the optimal stock size necessary for the highest level of productivity within that stock.

For some groundfish species, there is little or no detailed biological data available on which to base ABCs, and therefore only rudimentary stock assessments have been prepared. For other species, no stock assessments have been prepared and the ABC levels were established on the basis of historical landings. Since 2000, the Council has

applied a more precautionary ABC policy in which the ABCs are first calculated using the rudimentary stock assessments or historic catch levels, and then those ABCs are reduced by 25 percent as a precautionary measure.

#### 2007 and 2008 ABCs For All Groundfish Species

In 2004, NMFS implemented regulations setting a biennial management cycle for groundfish harvest specifications and management measures. Biennial specification were first established for the 2005 and 2006 management cycle. During the first year in a biennial cycle, new stock assessments are prepared and the results of the new assessments are reviewed and adopted for use in a future management cycle. In some cases, the Council may identify the need to refine a stock assessment, and the assessment may not be adopted until later in the first year or early in the second year of the biennial cycle.

A stock assessment is an evaluation of the biological condition of a stock or stock complex and the impacts of fishing on that stock or stock complex. Stock assessments prepared for Pacific Coast groundfish species include current estimates of the abundance, changes in abundance over time, depletion levels relative to an unfished state, fishing mortality estimates, mortality estimates from other causes, and different harvest forecasts including the harvestable amount and the likely effect on the stock abundance. In addition, Pacific Coast groundfish stock assessments identify areas of uncertainty and modeling difficulties.

To estimate stock abundance and population trends, each stock assessment relies on various types and sources of information, both fishery-dependent and fishery-independent. For example, basic fishery dependent data for stock assessments includes the amount of fish caught and the ratio of fish caught to the time spent fishing (catch per unit of effort (CPUE)). In addition to fishery dependent data, fishery independent data for stock assessments are collected during scientific research surveys. Individual sizes of fish and their biological characteristics (e.g., age, maturity, sex) can be collected from both fishery dependent and independent sources. When data are lacking for a particular species, it can result in uncertainty and modeling difficulties for the stock assessment scientists.

West Coast groundfish stock assessments are developed and evaluated through a thorough review process. Stock assessments for each

species are developed in draft by a NMFS or state agency fishery biologist, or team of biologists. Each stock assessment is then reviewed by a Stock Assessment Review (STAR) Panel. STAR panel membership for each species includes NMFS stock assessment scientists other than the scientist(s) who assessed the species in question, scientists from state agencies and/or academic institutions, members of the Council's SSC, and independent peer reviewers chosen from the Center for Independent Experts (See: <http://www.rsmas.miami.edu/groups/cie/>.) Representatives from the Council's GMT and Groundfish Advisory Panel (GAP) also participate in the STAR process. STAR panels review each stock assessment and provide comments back to the stock assessment team, usually suggesting changes or refinements to modeling, methods, or datasets used. The stock assessment team then completes the next draft of the assessment and submits it to the SSC for review. Once it has completed its review of the stock assessments, the SSC reports to the Council on the suitability of each assessment for use in managing the assessed stock.

In preparation for setting new ABC values for 2007 and 2008, stock assessment scientists prepared 23 stock assessments on 22 groundfish stocks. Full stock assessments, those that not only update available biological and fishery information, but also consider the appropriateness of the assessment model and that revise the model as necessary, were prepared for the following species: canary rockfish, cowcod, widow rockfish, yelloweye rockfish, lingcod, English sole, petrale sole, starry flounder, darkblotched rockfish, blackgill rockfish, shortspine thornyhead, longspine thornyhead, sablefish, Dover sole, cabezon, California scorpionfish, gopher rockfish and kelp greenling. Stock assessment updates, those that run new data through an existing model without changing the model, were prepared for: bocaccio, POP, and yellowtail rockfish. Vermilion rockfish was assessed for the first time in 2005. However, there were significant concerns about the reliability of the vermilion rockfish assessment and the Council did not accept the assessment for use in management. Instead, vermilion rockfish remains within the minor rockfish complex, managed with harvest levels based on historic harvests, with precautionary reductions for species with little or no scientific information.

At its September and November 2005 meetings, the Council adopted most of the 2005 groundfish stock assessments

that were used to derive the 2007–2008 harvest specifications and management measures. Council adoption of stock assessments follows the rigorous Stock Assessment Review panel (STAR) process, which culminates in SSC review of the stock assessments and STAR panel reviews of those assessments. Each new stock assessment included a base model as well as alternative states of nature that assume higher or lower stock productivity than the base model. The SSC makes recommendations to the Council on the appropriateness of using the different stock assessments for management, after which the Council considers adoption of the stock assessments, use of the stock assessment for the rebuilding assessments, and recommends ABCs derived from the base model runs of those stock assessments.

Species that had ABCs in 2005 and 2006 continue to have ABCs in 2007 and 2008. However, because of a lack of data, many groundfish species are grouped into species complexes and managed as a group with an ABC for the complex. In 2005, several stocks received more quantitative stock assessments and are being removed from species complexes. New species-specific ABC values for the 2007 and 2008 management cycle would be implemented by this action for: Starry Flounder and English sole, which are being removed from the "other flatfish" complex; California scorpionfish in the Conception area, which is being removed from the "other fish" complex; and gopher rockfish south of 40°10' N. lat., which is being removed from the "other rockfish" complex and added to the "remaining minor rockfish" complex. Although a stock assessment was prepared for kelp greenling in waters off California and Oregon, the Council only adopted the Oregon portion of the assessment because the stock assessment review process had concluded that data available for and modeling of the California kelp greenling sub-stock were inadequate to provide management advice for this species. A species specific ABC is not being established for 2007 and 2008, and kelp greenling will remain within the other fish complex.

For species that did not have new stock assessments prepared for the 2007 and 2008 cycle, the Council considered a single ABC derived from the base model of the most recent stock assessment or continued to use the results of rudimentary stock assessments or historical landings data. Species or species complexes without new stock assessments include: Pacific cod, arrowtooth flounder, shortbelly

rockfish, chilipepper rockfish, splitnose rockfish, black rockfish, minor rockfish, bank rockfish, blackgill rockfish, other flatfish, other rockfish, and other fish. Species that are not overfished and which had new stock assessments or stock assessment updates prepared and adopted for use in setting harvest specifications by the Council include: sablefish, Cabezon (California), California Scorpionfish, Dover sole, English sole, petrale sole, starry flounder, yellowtail rockfish, shortspine thornyhead, longspine thornyhead, kelp greenling (Oregon), and blackgill rockfish. Specific information on the ABC values for the species without new stock assessments, and for those species that are not overfished and which have new stock assessments or assessment updates, are provided in the footnotes to Table 1a. and Table 2a.

As mentioned above, petrale sole had a new stock assessment in 2005. When it adopted ABCs for all groundfish species, the Council recommended a 2007 petrale sole ABC of 2,917 mt, based on a table of all species' ABCs provided by the Council's GMT. Following the Council's June 2006 meeting, NMFS discovered that the 2,917 mt 2007 petrale sole ABC the Council had adopted had been incorrectly calculated from the stock assessment. The Council should have specified an ABC of 3,025 mt for 2007, which is the sum of the northern ABC of 1,397 mt and the southern ABC of 1,628 mt. Instead, the 2007 ABC of 2,917 mt chosen by the Council in June 2006 was incorrectly calculated by summing the stock's northern OY of 1,289 mt and the southern ABC of 1,628 mt. The 2008 petrale sole ABC of 2,919 mt had been correctly calculated prior to Council adoption. This action proposes a 2007 petrale sole ABC of 3,025 in Table 1a. The Council plans to review this issue at its September 11–15, 2006 meeting in Foster City, California, to ensure that this correction is made in the Council forum. In the preamble to the final rule for this action, NMFS will review the Council's September 2006 recommendation on the petrale sole and finalize the appropriate ABC based on the stock assessment, the Council's deliberations, and any comments received from the public.

A new stock assessment was prepared for lingcod in 2005. The 2005 lingcod stock assessment estimates that the coastwide lingcod stock in 2005 is at 64 percent of its unfished biomass level, with the northern component of the stock (north of Cape Mendocino, CA) at 87 percent of its unfished biomass level and the southern component of the stock at 27 percent of its unfished

biomass level. Lingcod is managed as a single coastwide stock; therefore, the stock is considered to be rebuilt because the coastwide biomass is above the MSY level, 40 percent of the stock's unfished biomass. The SSC endorsed the 2005 lingcod stock assessment as the best available science, and the Council adopted the assessment for use in establishing the 2007 and 2008 management measures. Based on the recommendations of the SSC and the Council, NMFS announced on February 17, 2006 that the lingcod stock off the U.S. West Coast was rebuilt (71 FR 8489).

All seven overfished species had new stock assessments or stock assessment updates: bocaccio, canary rockfish, cowcod, darkblotched rockfish, POP, widow rockfish, and yelloweye rockfish. The stock assessments for overfished species are detailed below.

A bocaccio stock assessment update and a rebuilding analysis were prepared in 2005 for the stock south of Cape Mendocino, CA (40° 10' N. lat.); the last full assessment was conducted in 2003. The 2005 stock assessment update used the 2003 length-based stock synthesis model with input data extending back to 1951. The update followed the methodology and assumptions of the 2003 bocaccio assessment as closely as possible with the main difference from the previous assessment being the addition and revision of recent data. Although the update included the three-model approach from the 2003 assessment (see the 2005–2006 proposed rule preamble, (69 FR 56550, September 21, 2004)), the STATc model was considered as the base model and was the focus of this 2005 update, with limited consideration given to the STARb1 and STARb2 models. The SSC endorsed the updated bocaccio stock assessment as being the best available science that could be used as the basis for the Council's recommendations.

As a result of the assessment update, the bocaccio stock in the Monterey and Conception areas was estimated to be at 10.7 percent of its unfished biomass in 2005 and was projected to continue on an increasing trend if the 2006 exploitation rate of 0.0498 were to remain in place. The ABC of 602 mt for 2007 and 618 mt for 2008 ABC were based on the STATc base model with an  $F_{50\% F_{MSY}}$  proxy.

A new coastwide canary rockfish stock assessment and updated rebuilding analysis were completed in 2005. NMFS used a stock synthesis model for the assessment, which is an integrated length-age structured model. Data through 2004 were used to revise and update the assessment model

Primary changes to the model included: addition of the 2004 trawl survey and catch data through 2004, recalculation of all historical fishery catch and size/age composition data, extension of the model time series back to 1916, calibration of ageing method, conversion from an age-based selectivity to size-based selectivity, and a modeling change to the Stock Synthesis 2 model coded (AD Model Builder) for faster execution and integration of powerful variance estimation procedures.

The results of the new assessment estimated that the canary rockfish stock was at 9.4 percent (see rebuilding analysis) of its unfished biomass coastwide in 2005. The 2005 stock assessment estimated that the canary rockfish spawning stock biomass was at its lowest level in 2000, but has been increasing since that time and is projected to continue increasing. Canary rockfish recruitment has shown a steady decline over the last 50 years. Recent recruitments have generally been low, with 1998 producing the largest estimated year-class of recruitment in the last decade.

Several alternative model configurations were investigated during the stock assessment process to best understand the patterns and information in the canary rockfish data. These model configurations included variations in specification of age versus length-based selectivity, incorporating changes in ageing criteria and re-estimating growth parameters to reflect these changes, allowing female selectivity to differ from male selectivity, and other factors. It was found that allowing female length-selectivity to differ from male length-selectivity provided a somewhat better statistical fit to the fishery age and length composition data and this configuration was selected as the base model. During its review of the stock assessment, the SSC raised several technical questions, including: the high value for survey catchability ( $q$ ), the low spawner-recruit relationship being assumed ( $\sigma_r$ ), and if juvenile rockfish survey data should be included. The SSC concluded that the parametric variance around a single base model underestimated the overall uncertainty in the canary rockfish assessment. After considerable deliberation, the SSC recommended no major changes to the base model, and the SSC concluded that the Base and alternate models were equally likely and they supported a statistically based blend of the two models as the basis for the rebuilding analysis. The SSC recommended further investigations into the identified technical issues.

The SSC agreed with the principal conclusions of the canary stock assessment and endorsed the assessment as the best scientific data available for management decisions. The canary ABCs of 172 mt for 2007 and 179 mt for 2008 are derived from the base model with an  $F_{50\%} F_{MSY}$  proxy.

A new stock assessment and a new rebuilding analysis for cowcod in the Conception area were prepared in 2005. The Conception area (U.S. waters south of 36°N. lat.) is where cowcod are most abundant, where adult habitat is most common and where historical catches were highest. Although larvae may spread across larger distances, it is assumed that the adults do not move beyond the stock boundary.

The cowcod stock assessment is based on catch data from commercial and recreational fisheries, an index of relative abundance (CPUE) from Commercial Passenger Fishing Vessel logbook data, and a single visual transect survey estimate made from a submersible vessel in the Western Cowcod Conservation Area in 2002. The assessment is affected by the lack consistent data of sufficient quality. Catches since 2001 have been very low (< 0.5 mt) due to management constraints on fisheries targeting co-occurring species. A time series of relative abundance after 2000 is not currently available. Development of a quantitative measure of relative abundance is necessary to monitor changes in the cowcod population.

Both the steepness of the stock recruit relationship and the natural mortality rate are influential to the assessment; the cowcod stock assessment used assumed values. The cowcod stock assessment consists of 3 models that differ in the assumed steepness ( $h$ ) of the Stock-Recruit relationship. The model that assumed the stock recruit relationship as  $h=0.5$  was considered the base model because it has the highest probability of being true, although the actual value of  $h$  is not known. The SSC endorsed the assessment as the best scientific data available for management decisions.

Cowcod was estimated to be between 14 and 21 percent of its unfished biomass in 2005 and is believed to be increasing. The ABC in the area south of 36° N. lat., the Conception area, is 17 mt for 2007 and 2008. The ABC is based on the 2005 stock assessment base model and a  $F_{50\%} F_{MSY}$  proxy. The ABC for the Monterey area (19 mt) continues to be based on average landings from 1993–1997.

Darkblotched rockfish was assessed coastwide in 2005 and its rebuilding analysis was updated with the new

assessment information. The new assessment incorporated a number of significant changes, including: the use of a stock synthesis model, extending the modeling period back in time to 1928 as compared to 1963 in the previous model, estimating stock growth parameters within the model, eliminating all age composition data except for shelf trawl survey data from 2004, and using a delta-GLM (generalized linear model) for estimates of abundance from slope survey data. The results of this stock assessment were primarily influenced by data from four fishery independent surveys: the Alaska Fishery Science Center's triennial shelf, POP, and slope trawl surveys, and the Northwest Fishery Science Center's slope trawl surveys.

The major sources of uncertainty in this stock assessment were: the assumed natural mortality rate, the age to length relationship, indistinct survey indices and length compositions resulting from a few large survey catches with larger than average fish, steepness of the spawner-recruit curve, and the lack of species specific historical landings prior to 1978. Uncertainty in the model results focused on the examination of alternative natural mortality values. The primary source of this conflict was the Alaska Fisheries Science Center slope survey, where the abundance index fit best when natural mortality equaled 0.05, but the lengths fit best when it equaled 0.10. Length data from the fishery, shelf and Northwest Fisheries Science Center slope survey indices and length compositions all fit best for natural mortality values of the 0.07–0.08 range. The STAR panel determined that the confidence intervals produced within the models underestimated uncertainty. They determined uncertainty could be bracketed by assuming a natural mortality value of 0.07 in the base model. Because darkblotched rockfish is a long-lived species that is difficult to age due to frequent natural check marks in the otoliths, the range on natural mortality was broadened to qualitatively reflect this additional uncertainty. The SSC endorsed the stock assessment base model as the best scientific data available for management decisions.

The last full assessment was conducted in 2000 and estimated the stock to be at 22 percent of its unfished biomass in 2000. The result of the new assessment estimates that darkblotched rockfish was at 16 percent of its unfished biomass in 2005, and was notably lower in 2000 (8 percent) than had been estimated in the previous assessment. However, the assessment indicates that the spawning output has

more than doubled since 1999 resulting in rapid rebuilding of the stock due to the strong numbers of fish spawned in 1999 and 2000 maturing and entering the fishery. This strong recruitment combined with low exploitation rates in recent years has resulted in more rapid rebuilding than expected in the 2000 assessment. The ABC is projected to be 456 mt in 2007 and 487 mt in 2008. The ABCs are projected from the 2005 base stock assessment model with an  $F_{MSY}$  proxy of  $F_{50\%}$ .

POP stock assessment and rebuilding analysis updates were prepared in 2005 for the U.S. portion of the Vancouver area and Columbia area (U.S. waters north of 43° N. lat.) This assessment is an update and uses the same model as in the 2003 assessment, a forward projection age-structured model. As a stock assessment update, the model code was unchanged, but the following new data which extended the model time series were incorporated into the model: catch through 2004, fishery length and weight compositions from 2003 and 2004, the 2004 slope survey biomass estimate, the slope survey age composition data for 2001, 2003 and 2004, the 2004 triennial shelf survey biomass estimate, and the triennial shelf survey age composition data from 1995 and 2004.

A number of sources of uncertainty are explicitly addressed in the assessment. For example, allowance is made for uncertainty in natural mortality, the parameters of the stock-recruitment relationship, and the survey catchability coefficients. However, sensitivity analyses based upon alternative model structures and data set choices suggested that the overall uncertainty may be greater than that predicted by a single model specification, as was the case in the 2003 assessment. There are also other sources of uncertainty that are not included in the current model. The SSC endorsed the assessment update as the best scientific data available for management decisions.

The updated assessment estimated the stock to be at 23.4 percent of its unfished biomass in 2005. Recent decades have provided rather poor recruitment when compared with the 1950s and 1960s, although the 1999 and 2000 year classes (2002 and 2003 recruitment years) appear to be larger those seen since the early 1970s. From 1965 to 1998 recruitment was relatively stable and showed recruits/spawning output as an increasing trend over time. The situation is now somewhat more complicated because there was not an obvious increasing trend in recruits/spawning output for either the 2003 or

2005 assessments, nor are the recruitments completely stable. Despite this, the low exploitation rate shown in the assessment (1 percent) since 2000, has allowed the stock to rebuild slowly. Since that time, the POP stock has increased from 20.9 percent of the unfished biomass to 23.4 percent. The POP ABC of 900 mt for 2007 and 911 mt for 2008 were projected from the 2005 stock assessment base model with an  $F_{MSY}$  proxy of  $F_{50\%}$ .

A new coastwide stock assessment and rebuilding analysis were completed for widow rockfish in 2005. Like the 2003 assessment, an age-based population model was used with updated landings data, additional age composition data, and revised abundance indices. These changes included: the addition of bottom trawl survey indices from 1977 to 2004, a depletion rate computed in the same way as in the 2003 rebuilding analysis, an estimated power coefficient for the midwater juvenile survey rather than a fixed value, a value for recruitment steepness based on past knowledge of the stock was included in the likelihood functions, and effective sample sizes for age composition data were used. Of the four alternative models that were used to measure uncertainty in the stock assessment, one was selected as the base model. The results of the 2005 base model stock assessment estimated that the widow rockfish stock was at 31.1 percent of its unfished biomass in 2004. In retrospect, the new assessment shows that the stock biomass may not have declined below the overfished species threshold of 25 percent of its unfished biomass as was estimated in previous assessments.

Similar to other rockfish species, the biomass of widow rockfish has decreased steadily since the early 1980s and recruitment during early 1990s is estimated to have been considerably smaller than before the mid 1970s. The reason for the lower recruitment during the period could be due to lower spawning stock biomass, but it could also be due to environmental conditions. There is evidence that recruitment of many rockfish species since 1999 has been higher than 1990s average recruitment. This evidence is also supported by the most recent juvenile survey and age composition data.

The lack of a reliable abundance index for widow rockfish is a major source of uncertainty in the assessment results. The primary source of information on trends in abundance of widow rockfish is fishery dependent information from the Oregon bottom trawl logbook data. No Oregon bottom

trawl logbook data after 1999 can be used in the assessment because the catch rates were very low due to trip limits and other management regulations. Triennial survey indices were used in the assessment as an additional abundance index. At this time, there is no fishery independent survey conducted specifically for mid-water species such as widow rockfish. Because widow rockfish is a mid-water species, the use of bottom trawl survey data may not be representative of the population and is a source of uncertainty in the assessment model. Additional areas of uncertainty include: the estimated value used for natural mortality, the estimates of stock-recruitment relationships, the appropriate use of the Santa Cruz juvenile survey data where survey indices are highly variable, and the relationship of the Canadian stock to the U.S. stock. Rebuilding analyses rely on estimates of past stock-recruitment relationships to predict future stock-recruitment relationships that are then used to project stock growth rates and rebuilding trajectories. Therefore, uncertainty in the estimates of stock-recruitment relationships may lead to greater uncertainties in a rebuilding analysis and its ability to predict future stock recruitment rates.

The SSC endorsed the assessment update as the best scientific data available for management decisions. The ABCs of 5,334 mt for 2007 and 5,144 mt for 2008 are derived from the base model with the  $F_{50\%}$   $F_{MSY}$  proxy.

In September 2005, the Council adopted a new assessment of yelloweye rockfish for use in 2007–2008 management decision-making. However, in November, the Council decided to explore a re-assessment of yelloweye rockfish before the March 2006 Council meeting. Various technical issues compelled the Council to consider re-doing the yelloweye assessment, including an investigation of new data sources particularly the International Pacific Halibut Commission's (IPHC's) fishery independent survey. The STAR Panel reviewing the original assessment was not afforded the time to consider new data sources or new approaches. The Council judged this shortcoming too important to defer until the next assessment cycle.

The March 2006 assessment used a stock synthesis model and re-evaluated all of the available coastwide catch and effort information and reformulated all of the indices of abundance. Yelloweye rockfish populations were treated in two different ways in the assessment model, as a single coastwide stock and as separate and distinct sub-populations of

each of the three states. Model changes include: the addition of abundance data from the IPHC's fishery independent survey, a detailed examination of recreational catch per unit of effort, historical data back to 1923, change in selectivity curve for growth parameters, and a reduction in natural mortality rate.

The yelloweye rockfish stock assessment was relatively data poor. Both the current and 2002 yelloweye rockfish stock assessment have been tuned to a recreational catch per unit of effort index and lack fishery independent trend information. Because yelloweye rockfish are found in rocky habitat and are not as vulnerable to trawl gear as other rockfish, the bottom trawl survey data is of limited use in assessing the population. Standardized fishery independent sampling is designed so that changes in sampled indices of the population reflect changes in the population being measured, rather than changes in management and sampling methodology. Fishery catch per unit of effort data can be vulnerable to changes in behavior of the fishery (area of operation, gear, target species, etc.) rather than changes in the population. For yelloweye rockfish, the model's ability to assess the resource is limited by the lack of size and age composition data and the lack of fishery independent survey data. The SSC believes that for future assessments to be fruitful, new trend indices, particularly for waters off California and Oregon, are needed.

Yelloweye rockfish is vulnerable to localized depletion because of its sedentary nature. Although considerable progress was made in developing a plausible model for each of the states, adequate data were not available to support such an approach. The SSC encouraged further development of area-specific models, and ultimately SSC endorsed the coastwide assessment and recommended its use for management decisions. The results of the coastwide assessment estimated that yelloweye rockfish is at 17.7 percent of its unfished biomass coastwide in 2006 and that the stock is lagging behind the original rebuilding schedule. The coastwide ABCs of 23 mt for 2007 and 20 for 2008 were derived from the revised base model stock assessment with an  $F_{MSY}$  proxy of  $F_{50\%}$ .

The 2007 and 2008 ABCs are based on the best scientific information available to the Council at its November 2005 and April 2006 meetings. Stock assessment documents and related reports were made available to the public prior to the Council's April 2006 meeting and can be obtained from the Council office.

Additional information on the groundfish stocks can be found in the EIS prepared for this action and in documents that were available at the April and June 2006 Council meetings (see **ADDRESSES**).

#### OY-setting Policies

The Council recommends annual harvest levels, which are OYs, for the species or species groups that it manages. The Magnuson-Stevens Act requires the FMP to prevent overfishing while achieving, on a continuing basis, the OY from each fishery. Overfishing is defined in the National Standards Guidelines (50 CFR part 600, subpart D) as exceeding the fishing mortality rate (F) needed to produce MSY on a continuing basis.

A biennial management cycle, adopted under Amendment 17 to the FMP, is being used to establish the 2007 and 2008 harvest specifications and management measures. At the beginning of the biennial management cycle, two one-year ABCs and OYs will be adopted for each species or species complex the Council proposes to manage. The annual OYs will be applied in the same manner as has been done in previous years. If an OY is not achieved or is exceeded in the first year, the underage or overage will not be transferred to the following year, as such a transfer could result in severe fishing and management problems in the second year. Overages or underages are accounted for in subsequent stock assessments, which are populated with historical total catch and other relevant data.

The 2007 and 2008 OYs for species other than those managed with overfished species rebuilding plans are set at levels that are expected to prevent overfishing, equal to or less than their ABCs. For overfished species, the OYs are set at levels that allow the overfished species to rebuild as quickly as possible, taking into account the status and biology of the stock, the needs of fishing communities, and the interaction of the stock within the marine ecosystem. The specific OYs being adopted for overfished species are described below in "OY Policies and Rebuilding Parameters for Overfished Species."

The Council used the FMP's "40-10" policy to set OYs for species not managed with overfished species rebuilding plans, a policy designed to prevent those species from becoming overfished. If the stock biomass is larger than the biomass needed to produce MSY ( $B_{MSY}$ ), the OY may be set equal to or less than ABC. The Council uses 40 percent as a default proxy for  $B_{MSY}$ , also referred to as  $B_{40\%}$ . A stock with a

current biomass between 25 percent of the unfished level and  $B_{MSY}$  (the precautionary threshold) is said to be in the "precautionary zone." The Council's 40-10 policy reduces the fishing mortality rate when a stock is at or below its precautionary threshold. The further the stock is below the precautionary threshold, the greater the reduction in OY relative to the ABC, so that the slope of this line assumes that, at  $B_{10\%}$ , the OY would be set at zero. This is, in effect, a default rebuilding policy for precautionary zone stocks that will foster quicker return to the  $B_{MSY}$  level than would fishing at the ABC level. Stocks below  $B_{25\%}$  have OYs set with species-specific rebuilding plans, designed to meet the rebuilding requirements of the Magnuson-Stevens Act. For further information on the 40-10 policy see the FMP at Section 5.3.

After considering appropriate analysis, the Council may recommend setting the OY higher than what the default OY harvest policy specifies and as long as the OY: does not exceed the ABC (which is set at  $F_{MSY}$ ), complies with the requirements of the Magnuson-Stevens Act, and is consistent with the National Standard Guidelines. On a case-by-case basis, additional precaution may be added as is warranted by uncertainty in the data or by higher risks of being overfished. If a stock falls below 25 percent of its unfished biomass ( $B_{25\%}$ ) and is declared overfished, the Magnuson-Stevens Act requires the Council to develop a rebuilding plan within one year from the declaration date.

In addition, the Council has the discretion to make additional OY adjustments for stocks with only rudimentary stock assessments. For such stocks, the Council's policy is to set the OY at 75 percent of the ABC. For stocks that have not been quantitatively assessed and where the ABC is based on historical data, the OY policy is to set the OY at 50 percent of the ABC. For further information, see the preamble discussion of the Annual Specification and Management Measures published on January 11, 2001 (66 FR 2338).

#### 2007 and 2008 OYs For Healthy and Precautionary Zone Species

The species that had OYs in 2005 and 2006 continue to have OYs in 2007 and 2008. As stated above, the FMP provides the Council's guidance on setting harvest specifications for groundfish at a variety of stock status levels. In November 2005, the Council reviewed the list of groundfish stocks that needed species or species group harvest levels set for 2007-2008 to determine which of those species or species complexes

either had no new information on its status as of the 2005 stock assessments, or fell clearly into one of the FMP management categories with already-articulated harvest strategy guidance. For each species or species groups falling into one or both of those categories, the Council did not consider a broad set of harvest level alternatives, but only considered a single combination of ABC/OY harvest levels for 2007-2008. These species included: Pacific cod, shortbelly rockfish, splitnose rockfish south, yellowtail rockfish north, black rockfish, cabezon South of 42 deg. N. lat., English sole, arrowtooth flounder, other flatfish, other fish. In April 2006, the Council recommended adoption of the single ABC/OYs combination values for these species. Specific information on the OYs recommended for adoption by the Council, and the information of how the OYs were derived can be found in the footnotes to Table 1a. and Table 2a.

Species for which the Council considered alternative OYs include: lingcod, sablefish, chilipepper, shortspine thornyhead, longspine thornyhead, minor rockfish north and south, California scorpionfish, Dover sole, petrale sole, and starry flounder. Lingcod is currently estimated to be above 40 percent of unfished biomass on a coastwide basis; however, the southern portion of the stock (south of the CA/OR border at 42° N. lat.) is estimated to be just below 25 percent of its unfished biomass. The OYs were divided north and south of the CA/OR border to facilitate better state-based management in nearshore waters. The coastwide lingcod OY under Alternative 1 of 6,280 mt (5,428 mt for the northern portion of the stock and 852 mt for the southern portion of the stock) was calculated by setting the OY equal to the coastwide ABC, as lingcod is a healthy stock. The coastwide lingcod OY under Alternative 2, 6,088 mt (5,428 mt for the northern portion of the stock and 660 mt for the southern portion of the stock) is the sum of separate northern and southern lingcod substock OYs with the southern OY having a 40-10 adjustment, because the southern substock is estimated to be at 27 percent of its unfished biomass. In addition to the first two alternatives, CDFG brought forward a recommendation to maintain the 2006 OY of 612 mt for the southern portion of the stock. The final OY adopted of 6,040 mt was based on the CDFG recommendation of 612 mt for the southern portion of the stock and 5,428 mt for the northern portion of the stock. The final OY is intermediate to the first two alternatives and is expected to

allow the southern portion of the stock to continue increasing in biomass.

A coastwide sablefish stock assessment was prepared in 2005. The coastwide sablefish biomass was estimated to be at 35.2 percent of its unfished biomass in 2005. Projections indicate that the biomass is increasing and will be near 42 percent by 2008. Alternative 1, 4,574 mt was calculated by applying the 40–10 adjustment to the ABC derived from the low stock/production model in the 2005 sablefish assessment and OY Alternative 2, 5,934 mt, was calculated by applying the 40–10 adjustment using the assessment's base case model. Each coastwide OY alternative was also divided north and south of 36° N. lat. using the status quo proportions from 2006. Alternative methods for apportioning the OY were not considered because the STAR Panel recommended calculating coastwide biomass without including Conception area survey data. The Council recommended adopting the Alternative 2 OY, 5,934 mt, for 2007 and 2008, which is substantially less than the 2006 OY of 7,634 mt.

There is no new stock assessment from which to base new harvest specifications for chilipepper rockfish. Chilipepper rockfish is a healthy stock, with its biomass estimated to be above  $B_{40\%}$ . Two OY alternatives were considered because chilipepper rockfish co-occur with bocaccio, an overfished species. Alternative 1 OY is the status quo OY of 2,000 mt, which is a reduction from the ABC determined in the 1998 assessment. The OY adjustment is to constrain mortality on co-occurring bocaccio. The Alternative 2 OY, 2,700 is set equal to the ABC projections in the 1998 assessment. The Council considered the OY alternatives and recommended maintaining a chilipepper rockfish OY of 2,000 mt, which provides the precautionary adjustment for bocaccio.

Shortspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2007. The shortspine thornyhead OY alternatives considered by the Council provide for area-specific OYs north and south of Pt. Conception. The OY under Alternative 1 includes an OY for the area south of Pt. Conception (421 mt) on the base case stock assessment scenario from the 2005 stock assessment, which indicated that 34 percent of the coastwide biomass is in this area, and with a 50 percent reduction to account for the paucity of survey data south of Pt. Conception. The Council recommended making a 50–percent reduction because the SSC had concluded that the assessment was only

marginally sufficient to estimate resource status given the short duration and density of survey data south of Pt. Conception.

The shortspine thornyhead OY under Alternative 1 for the area north of Pt. Conception (1,240 mt) was from the base case stock assessment indicating 66 percent of the coastwide biomass is in this area, reduced by a 25 percent precautionary deduction from the ABC. The Council recommended making the 25–percent reduction because the SSC had concluded that the assessment was marginally sufficient to estimate resource status. The Alternative 2 OY for the areas north and south of 34° 27' N. lat. were based on the same biomass estimates from the 2005 stock assessment base case model, but with no precautionary reduction. Under Alternative 2, the OY alternative for the area south of Pt. Conception (841 mt) was based on an estimate that 34 percent coastwide biomass is in this area, and the OY alternative for the northern portion (1,634 mt) is based on an estimate of the remaining 66 percent of the coastwide biomass.

Specifying an OY for the area south of Pt. Conception is expected to distribute harvest opportunities proportional to the relative abundance of the resource. The precautionary OYs specified in Alternative 1 were not considered to be constraining relative to recent catches. In light of the data-poor nature of this assessment, the Council recommended the adoption of the more precautionary Alternative 1.

Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 69 percent of its unfished biomass in 2007. The two longspine thornyhead OY alternatives provide for area-specific OYs north and south of Pt. Conception. Area-specific OYs are intended to distribute harvest opportunities in proportion to the relative abundance of the resource. Alternative 1, 2,696 mt, was based on the assumption of a constant density of the stock throughout the Conception area with the proportion of the stock area north and south of Pt. Conception having a 25 percent precautionary reduction. The second alternative, 3,930 mt, was based on a constant density throughout the Conception area and no precautionary adjustment. Because longspine thornyhead is considered to be a healthy stock, the OY can be set equal to the ABC as was done under Alternative 2. The precautionary OYs specified in Alternative 1 are not constraining relative to recent catches. In light of the data-poor nature of this assessment, the Council recommended Alternative 1.

In 2005 the Council approved new assessments for two species managed within the minor rockfish south complex. The Council recommended that California scorpionfish be removed from this complex and be managed with a separate OY, while gopher rockfish remain within the complex and the OY be adjusted to reflect new information from this stock assessment. Gopher rockfish are part of the Minor Nearshore Rockfish South portion of this complex. Gopher rockfish co-occur with both shallow and deeper nearshore species and cannot be cleanly targeted. As a result, raising the gopher rockfish portion of the minor nearshore rockfish south OY to the level derived from the stock assessment could result in additional harvest of other data-poor stocks within the complex, rather than just harvests of gopher rockfish.

The minor rockfish south complex is comprised of three depth-associated rockfish assemblages: minor nearshore, minor shelf, and minor slope. Four OY alternatives considered by the Council for minor rockfish south included: Alternative 1, 1,753 mt, in which the OY includes the current contribution for gopher rockfish (48.5 mt); Alternative 2, 1,855 mt, which was determined by removing the current contribution for gopher rockfish (48.5 mt) from the OY and then increasing the OY by 50 percent of the new gopher ABC/OY of 302 mt (based on the 2007–2008 average ABC/OY; 2007 = 340 mt, 2008 = 264 mt); Alternative 3, 1,898 mt, which was determined by removing the current contribution for gopher rockfish (48.5 mt) from the OY and then increasing the OY by 75 percent of the new gopher ABC/OY of 302 mt (based on the 2007–2008 average ABC/OY; 2007 = 340 mt, 2008 = 264 mt); and Alternative 4, 2,006 mt, which was determined by removing the current contribution for gopher rockfish (48.5 mt) from the OY and then increasing the OY by the new gopher ABC/OY of 302 mt (based on the 2007–2008 average ABC/OY; 2007 = 340 mt, 2008 = 264 mt). The Council recommended 1,904 mt, the preferred OY alternative, which was intermediate to Alternatives 3 and 4 and included the new gopher rockfish contribution. The Council recommended dividing that 1,904 mt OY into the three major depth assemblages for the minor rockfish south OY: 564 mt attributed to minor nearshore species, 714 mt attributed to the minor shelf, and 626 mt to the minor slope species. The minor nearshore rockfish contribution was the ABC contribution based on 2001–2002 landings, reduced by 50 percent as a precautionary measure; the

contributions from the other depth assemblages remain unchanged.

California scorpionfish south of 34° 27' N. lat. was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The California scorpionfish assessment used a recreational catch data stream based upon Commercial Passenger Fishing Vessel (CPFV) logbook data expanded to total recreational catch using a proportion of CPFV to total recreational catch (based upon Marine Recreational Fisheries Statistics Survey catch history). The Council's SSC approved this assessment, with the caveat that the ABC/OY from this assessment could only be related to recreational catch calculated in the same manner as this catch stream. Consequently, an alternative ABC/OY was generated by modifying the original ABC/OY from the assessment so that it could be compared and tracked using California Recreational Fisheries Survey (CRFS) catch estimates.

Because the stock is above  $B_{40\%}$  coastwide, the OY could be set equal to the ABC. Both the original stock assessment and the modified stock assessment were used to develop the ABC/OY alternatives for California scorpionfish. Alternative 1, 137 mt, was an average of the 2007 and 2008 ABC/OYs as modified for comparison against CRFS estimates. Alternative 2, 219 mt, was an average of the 2007 and 2008 ABC/OYs based on CPFV logbook data taken directly from the new assessment. The Council selected an OY of 175 mt, which is an intermediate value between Alternatives 1 and 2.

Dover sole north of 34° 27' N. lat. was assessed in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and is projected to be increasing. The OY alternatives specified for analysis for Dover sole stock are 16,500 mt under Alternative 1 and 28,482 mt under Alternative 2. The first OY alternative is equal to the equilibrium MSY from the 2005 stock assessment; the second alternative is set equal to the ABC because the stock is above  $B_{40\%}$  coastwide. The Council recommended OY Alternative 1, 16,500 mt, which was derived from the equilibrium MSY at  $F_{40\%}$  in the base model. The OY of 16,500 mt, which is less than the ABC, is the MSY harvest level and is considerably larger than the coastwide catches in any recent years.

A petrale sole stock assessment was prepared in 2004. In 2005, the petrale sole stock coastwide was estimated to be at 32 percent of its unfished biomass (34 percent in the northern assessment area and 29 percent of its unfished biomass

in the southern assessment area). The petrale sole biomass is believed to be increasing. Three OY alternatives for petrale sole (coastwide) were analyzed for Council decision: 1,921 mt under Alternative 1, 2,499 mt under Alternative 2, and 2,883 mt under Alternative 3. The coastwide OY of 1,921 mt under Alternative 1 was based on the low spawning stock biomass model from the new stock assessment. The Coastwide OY of 2,499 mt under Alternative 2 was derived from the base model with a 40–10 adjustment for the northern and southern substock with an additional 25 percent reduction in the OYs for the southern stock due to assessment uncertainty. The coastwide OY under Alternative 3 of 2,883 mt, was derived from the base case stock assessment model with the 40–10 adjustment for both the northern and southern substock.

Each of the coastwide OYs were also subdivided by INPFC regions (Columbia and US-Vancouver areas and Eureka, Monterey, and Conception areas) and by latitude (north and south of 40° 10' N. lat.) for consideration of regional management. The Council recommended the adoption of the Alternative 2 coastwide OY of 2,499 mt. Although the Council considered regional management designed to achieve the OY specification, stratifying the OY north and south of 40° 10' N. lat. was expected to result in a decrease in bottom trawl ex-vessel revenues of over \$3 million, but could be higher or lower depending on the alternative chosen. The Council did not endorse regional management of petrale sole.

Starry flounder was assessed for the first time in 2005. The SSC reviewed the new stock assessment and recommended the stock assessment for management decision-making. For the first time, starry flounder is proposed to be removed from the "other flatfish" category and managed as a separate species with its own ABC and OY values. The Council requested the following two OY alternatives be analyzed for starry flounder: 890 mt and 1,186 mt. OY Alternative 1 (890 mt) is based on a 25 percent reduction of the combined 2007 and 2008 area OYs from the base model in the stock assessment. The Council recommended a precautionary adjustment of 25 percent because it is a relatively data poor stock. OY Alternative 2 (1,186 mt) was based on the combined area OYs from the base model in the stock assessment. The Council considered the alternative OYs and recommended an OY of 890 mt, which includes the precautionary adjustment of 25 percent for data poor stocks.

At its April meeting, the Council adopted a tentative black rockfish sharing framework for 2007–2008 that would carry forward the 2005–2006 black rockfish catch sharing recommendation of 58 percent to Oregon and 42 percent to California within the southern OY. The Council further recommended specifying those values as harvest guidelines in the Federal regulations for the respective states. These percentages result in an Oregon harvest guideline of 419 mt (recreational and commercial harvest guidelines of 286.6–350.2 mt and 90.5–110.7 mt respectively) and a California harvest guideline of 303 mt. Much of the harvest of black rockfish occurs in state waters and the states actively manage these fisheries. The States of California and Oregon have factored in precautionary approaches in managing to these black rockfish targets.

For the waters off Oregon, the recreational fishery catch estimate and commercial harvest guideline for black rockfish are being presented as a range because the Oregon State rulemaking process does not coincide with the Council's management measures development process. The Oregon Fish and Wildlife Commission will make recommendations on in-state allocation issues in December 2006, too late for the proposed rule comment period for this action. The Oregon Fish and Wildlife Commission is scheduled to meet on December 8, 2006, at the Oregon Department of Fish and Wildlife (ODFW) office in Salem. The schedule of meetings, the process for providing written or oral testimony, as well as the agenda and meeting materials for the upcoming meeting, are available online at the following ODFW website address: [www.dfw.state.or.us/agency/commission](http://www.dfw.state.or.us/agency/commission). Information on the Oregon recommendation can be obtained from the following web site in early December: [www.dfw.state.or.us/agency/commission/minutes/](http://www.dfw.state.or.us/agency/commission/minutes/).

#### OY Policies and Rebuilding Parameters for Overfished Species

Earlier, this notice discussed the Council's decision making process and how that process focused the Council's decision on a suite of inter-related OYs for overfished species. As discussed above, the overfished species OYs constrain fishing for all co-occurring groundfish species and for some non-groundfish species as well, making the suite of overfished species OYs the cornerstone of the entire groundfish harvest specifications and management measures package. As also discussed above, adopting a suite of interrelated overfished species OYs allowed the



Council to recommend a management package that best took into account the status and biology of those stocks and the needs of fishing communities by emphasizing protection for the species most sensitive to changes in OY harvest levels and for communities most vulnerable to shifts in groundfish fishing income.

The results of the most recent round of stock assessments for overfished species were, in general, more optimistic than the prior round of assessments. The exception to this is yelloweye rockfish, which was substantially more pessimistic. Yelloweye rockfish have a life history that illustrates the classic challenge of rebuilding overfished West Coast rockfish stocks they are slow to mature, have low productivity, and can live in excess of 100 years. Given their low productivity, small changes in yelloweye rockfish harvest levels can result in large changes to the associated constant harvest rates. The Council recognized the need to restrict the fisheries based on the new yelloweye rockfish assessment, but also took into account the potentially widespread negative effects of an immediate reduction in OY and recommended an OY ramp-down strategy over a 5-year period. The ramp-down strategy provides time to collect much-needed additional data that could better inform new management measures for greater yelloweye rockfish protection, and reduces the immediate adverse impacts to fishing communities while altering the rebuilding period by less than one year.

The DEIS analyzes the effects of a 12–12.6 mt yelloweye rockfish OY in 2007, estimating that multiple fishing sectors and communities would be negatively affected by that OY level, and affected to large degree. The DEIS estimates that recreational fishing effort for groundfish and Pacific halibut off Washington would decrease by 30 percent under the 12–mt yelloweye rockfish alternative. Off Oregon, it is estimated that recreational fishing effort for groundfish and Pacific halibut would decrease by 32 percent, and recreational fishing effort for groundfish off California would decrease by over 33 percent. Commercial fixed gear vessels that homeport along the northern Washington coast and Puget Sound would likely experience a complete closure of traditional fishing grounds for sablefish. Some of these vessels could choose to move further south along the coast and homeport in different locations in order to access other fishing grounds; however, this would have repercussions to those communities

where fixed gear vessels currently homeport, and many of these communities are described as being resource-dependent. Analysis of commercial management measures designed to achieve a suite of OYs for all overfished species and which included the 12 mt yelloweye rockfish OY showed that ex-vessel revenue would be reduced by nearly 40 percent. However, this is likely an overestimate of the reduction in commercial fisheries if only yelloweye rockfish were to be reduced to 12 mt and other overfished species were to remain at status quo levels. By contrast, the EIS estimates that the OY ramp-down strategy would have effects in 2007 on the recreational fisheries ranging from near status quo to 22 percent reduction in angler effort, and on the commercial fisheries ranging from near status quo to 13 percent reduction in revenues.

The yelloweye rockfish OY ramp-down strategy is a departure from the past practice of setting constant harvest rates that are intended to carry through time to the rebuilt dates. The ramped down yelloweye rockfish OYs for 2007–2010 begin with 23 mt in 2007 and continue to 20 mt in 2008, ultimately reaching 13.5 mt in 2011. Beginning in 2011, the yelloweye rockfish rebuilding plan would revert to a constant harvest rate of  $F = 0.0101$  through to the rebuilt date of 2083.5. By contrast, an initial 2007 OY based on this harvest rate would result in an OY of 12.6 mt and a rebuilt date of 2083. As points of reference, the 2006 yelloweye rockfish OY is 27 mt, with expected total catch currently estimated at 21.1 mt.

The Council recommended separate harvest guidelines for yelloweye rockfish for the recreational fisheries that are divided at the Oregon/California border (42° N. lat.). The yelloweye rockfish harvest guideline for the area north of 42° N. lat. is 6.8 mt in 2007 and 2008, and the harvest guideline for the area south of 42° N. lat. is 2.1 mt in 2007 and 2008 with a residual amount of 1.5 mt that will be set aside and, if needed, will have a priority on being made available to the recreational fishery.

Canary rockfish and bocaccio are more productive than yelloweye rockfish and cowcod, but less productive than POP, darkblotched rockfish, and widow rockfish. The Council recommended adopting OYs for canary and bocaccio that are relatively close to preseason catch predictions with room to accommodate inseason deviations from pre-season catch predictions. Doing so would have a relatively small impact on the rebuilding times for these species, but would accommodate management

flexibility, reduce the need for inseason adjustments to management, and result in greater stability to the management regime. The Council considered management measures for both species that would result in preseason catch projections that are slightly less than the recommended OY.

Canary's wide geographic distribution and catchability in all fisheries makes it one of the most constraining stocks when setting 2007–2008 management. The commercial trawl preseason bycatch rate projections have been off by a factor of 75–100 percent as compared to inseason estimates in recent years. This has required severe management adjustments inseason to keep canary mortality within the OY. West Coast Groundfish Observer Program (WCGOP) data for fixed gear is fairly sparse, and there is very little observer data for open access and recreational fisheries. Therefore, the Council recommended a 44 mt OY (the Preferred High OY) and management measures that would result in preseason catch projections that are slightly less than the Preferred High OY. The Council recommended separate harvest guidelines for canary rockfish for the recreational fisheries that are divided at the Oregon/California border (42° N. lat.). The canary rockfish recreational harvest guideline for the area north of 42° N. lat. is 8.2 mt in 2007 and 2008, and the recreational harvest guideline for the area south of 42° N. lat. is 9.0 mt in 2007 and 2008.

The Council's recommended OY for bocaccio was 218 mt, however the projected catch is much lower. The bocaccio stock assessment demonstrates that recruitment is highly variable and anecdotal evidence suggests there may be a strong incoming year-class. Past experience indicates that young bocaccio are difficult to avoid for most fisheries and, should this strong year class become evident, incidental encounter rates would be expected to increase. Additionally, the commercial trawl preseason bycatch rate projections for bocaccio have been off by a significant amount (100–200 percent) as compared to inseason estimates in recent years, and fixed gear WCGOP data, especially for the area south of 40°10'N. lat., is fairly sparse. As with canary rockfish, revising catch projections with new information inseason has required severe management adjustments inseason to keep bocaccio mortality within the OY. Therefore, the Council recommended management measures that would result in preseason catch projections that are significantly less (e.g., about 15–20 mt) than the OY to cover this uncertainty.

Cowcod is an unproductive stock, similar to yelloweye rockfish; however, its most recent assessment shows this stock is less depleted than previously thought. Because of the more optimistic stock assessment result, the Council did not recommend a dramatic decrease in the OY, but rather status quo management with an OY of 4 mt. Continued use of closed areas as a management tool is expected to appropriately keep cowcod catch below its OY.

POP, darkblotched rockfish, and widow rockfish are less depleted and more productive than the other three overfished species. The commercial trawl preseason bycatch rate projections for POP have been off by as much as 100 percent as compared to inseason estimates in recent years. Having the POP preseason bycatch rate projections adjusted by new data received inseason has resulted in less dramatic corrective inseason adjustments to constrain POP harvest, mainly because POP harvest has been consistently below its OY due to measures that constrain incidental catch of co-occurring darkblotched rockfish. Like darkblotched, POP is rarely caught by fixed gear and recreational fisheries. However, the time estimated for POP to reach its rebuilt level is relatively short, so there will be increased incidental encounter rates for POP in 2007 and 2008. The OYs analyzed for POP in 2007 and 2008 (44 mt and 100 mt) were significantly reduced from the 2006 OY level of 447 mt. These reduced OYs were not the result of the recent stock assessment or rebuilding plan, but were proposed from recent catch levels in the commercial slope fisheries, which are more significantly constrained by darkblotched rebuilding levels. After weighing the effects of a higher OY on POP's rebuilding time against the effects on fishing communities of more management flexibility, the Council recommended a POP OY of 150 mt. The Council anticipated that this OY, which was higher than the Preferred High OY, would be adequate to cover the rebuilding paradox of a potentially significant increased incidental encounter rate. (See earlier discussion on the Council's decision-making process for an explanation of the rebuilding paradox.)

For widow rockfish, the commercial trawl preseason bycatch rate projections have been off by as much as 100 percent as compared to inseason estimates in recent years. Widow rockfish is primarily incidentally taken in the whiting fishery, which has is constrained by a widow rockfish bycatch limit. Thus, constraining widow

rockfish incidental catch inseason to account for revisions to preseason bycatch rate projections has primarily resulted in whiting fishery participants having to shift their fishing areas to better avoid widow rockfish. Precision in widow rockfish catch estimation methodology has greatly improved over the past year, however, especially for the trawl fishery. Widow rockfish occur infrequently in fixed gear and recreational fisheries. The time estimated for widow rockfish to reach its rebuilt level is relatively short, so there would likely be increased incidental encounter rates for widow rockfish in 2007 and 2008. The Council recommended management measures that would result in preseason catch projections that are slightly less than the Preferred High OY of 368 mt.

In the recent past, the commercial trawl preseason bycatch rate projections for darkblotched rockfish have been off by as much as 250 percent as compared to inseason estimates. As with bocaccio and canary rockfish, revising bycatch rate projections with new information inseason has required severe management adjustments inseason to keep darkblotched rockfish mortality within the OY. Slope fishing opportunities have been largely closed in the past several winters in order to constrain darkblotched rockfish incidental catch, following the receipt of new inseason data that revised preseason bycatch rate projections. Darkblotched rockfish is rarely caught by fixed gear and recreational fisheries.

While precision in catch estimation methodology has increased over the past year, inseason data indicates that actual catches are still about 50 percent higher than what was projected preseason for 2006. Additionally, the time estimated for darkblotched rockfish to reach its rebuilt level is relatively short, and strong year classes from 1999 and 2000 are now entering the fishery. Between 2000 and 2005, both the biomass and the spawning output of darkblotched rockfish roughly doubled. The biomass is expected to increase by an additional 40 percent from current levels by 2010, with spawning output doubling again in that period, at which point the stock is expected to be rebuilt. This rapid darkblotched rockfish stock increase means that there would likely be increased encounter rates for darkblotched rockfish in 2007 and 2008 (i.e., the rebuilding paradox that occurs as the stock approaches target biomass levels, where catch rates increase even though fishing effort remains the same or decreases.)

The Council considered including a relatively high amount of OY to cover

the rebuilding paradox catch projection modeling uncertainty. As a potential consequence of variable and increasing encounter rates, darkblotched rockfish bycatch may cause early closure of commercial slope fisheries targeting co-occurring healthy stocks. The Council repeatedly heard testimony from industry on the importance of winter petrale and DTS (Dover sole, thornyhead, sablefish) fisheries in maintaining a permanent work force, and avoiding loss of markets to other supply sources which, once lost, can be difficult to regain. Concern over the potential loss of these fisheries, and recognition that an increase in the 2007 and 2008 OYs would make little difference in when darkblotched would be rebuilt, led the Council to recommend OYs for darkblotched rockfish of 290 mt in 2007 and 330 mt in 2008.

For each approved overfished species rebuilding plan, Amendment 16-4 will specify the following parameters in the FMP: estimates of unfished biomass ( $B_0$ ) and target biomass ( $B_{MSY}$ ), the year the stock would be rebuilt in the absence of fishing ( $T_{MIN}$ ), the year the stock would be rebuilt if all fishing mortality were to cease beginning in 2007 ( $T_{F=0}$ ), the year the stock would be rebuilt if the maximum time period permissible under National Standard Guidelines were applied ( $T_{MAX}$ ), the target year in which the stock would be rebuilt under the adopted rebuilding plan ( $T_{target}$  also referred to as the median time to rebuild), the spawning potential ratio ( $SPR = \text{spawning per recruit at the current population level relative to that at the stock's unfished condition}$ ) and/or the harvest control rule (F). Other relevant rebuilding information will also be included in the FMP. The estimated rebuilding parameters will serve as management benchmarks in the FMP and the FMP will not be amended if the values change after new stock assessments are completed, as is likely to happen. Regulations at 50 CFR 660.365 that would implement Amendment 16-4 update rebuilding plan parameters, the target rebuilding date and the harvest control rule, from the most recent round of stock assessments and in accordance with Council recommendations for Amendment 16-4. Future updates that may be needed to these two parameters would be implemented via the Federal notice-and-comment rulemaking process.

The OY alternatives analyzed in this EIS were based on harvest rates estimated from the rebuilding simulation program and were calculated using an instantaneous rate of fishing

mortality (F or the harvest control rule), which may be converted to a Spawning Potential Ratio or SPR. This value is being provided so the specific fishing mortality rates can be more easily compared to one another and to standardize the basis of rebuilding calculations. Given fishery selectivity patterns and basic life history parameters, there is a direct inverse relationship between the harvest control rule and SPR. When there is no fishing, each new female recruit is expected to achieve 100 percent of its spawning potential. As fishing intensity increases, expected lifetime reproduction declines due to this added source of mortality. Conversion of the harvest control rule into the equivalent SPR has the benefit of standardizing for differences in growth, maturity, fecundity, natural mortality, and fishery selectivity patterns and, as a consequence, the SSC recommended that the SPR value be used routinely.

Rebuilding parameters being defined in regulation include the harvest control rule and the target time to rebuild. If, after a new stock assessment, the Council and NMFS conclude that the parameters defined in regulation should be revised, the revision will be proposed through the Federal rulemaking process, and the updated values codified in the Federal regulation. Any changes to the values in regulation will be fully supported by a corresponding analysis and updated through the Federal rulemaking process, which would include opportunity for public notice and comment.

An approved rebuilding plan will be implemented through setting OYs and establishing management measures necessary to maintain the fishing mortality within the OYs to achieve objectives related to rebuilding requirements. The adopted OYs and management measures being implemented through Federal regulation are summarized below. Management measures adopted for 2007 and 2008 are expected to keep the incidental catch of overfished species within the adopted OYs. Management measures designed to rebuild overfished species, or to prevent species from becoming overfished, may restrict the harvest of relatively healthy stocks that are harvested with overfished species. As a result of the constraining management measures imposed to rebuild overfished species, a number of the OYs for healthy stocks may not be achieved in 2007 or 2008.

#### POP

Date declared overfished: March 3, 1999

Areas affected: Vancouver and Columbia

Status of stock: Following the 2005 assessment, the stock was believed to be at 23.4 percent of unfished biomass level in 2005

SB<sub>0</sub>: 37,838 units of spawning output  
SB<sub>MSY</sub>: 15,135 units of spawning output

T<sub>MIN</sub>: 2015

T<sub>F=0</sub>: 2015

T<sub>MAX</sub>: 2043

Target (median) year to rebuild: 2017

SPR harvest rate: 86.4 percent

Harvest control rule: F=0.011

ABC: 900 mt in 2007, 911 mt in 2008

OY: 150 mt in 2007 and 2008

Biology of the stock: POP occur in the western north Pacific south to Honshu Japan, southern Bering Sea, and the eastern north Pacific south to Baja California. POP are found on the upper continental slope (slope), 109–150 fm (200–275 m) during the summer and somewhat deeper 164–246 fm (300–450 m) during the winter. Adults sometimes aggregate up to 16 fm (29 m) above hard-bottom features and may then disperse and rise into the water column at night.

POP are livebearers. Most larvae are released February through May. The maximum age of POP has been determined to be 70 to 90 years. The mean generation time is 28 years. POP recruitment into the population occurs when the stock is at 3 years of age. Age of maturity and size varies with locality. POP reach 90 percent of their maximum size by age 20 years. Average size at age of mature females is greater than males.

From 1965 to 1998, recruitment was relatively stable and showed recruits/spawning output as an increasing trend over time. The situation is now slightly more complicated because there was not an obvious increasing trend in recruits/spawning output for either the 2003 or 2005 assessments, nor are the recruitments completely stable.

Management measures for 2007 and 2008: POP tend to occur in similar depths as darkblotched rockfish, although they have a more northern geographic distribution. Adult POP are often caught with other upper slope groundfish such as Dover sole, thornyheads, sablefish, and darkblotched, rougheye, and sharpchin rockfish. North of 40°10' N. lat., POP are caught in similar fisheries as darkblotched rockfish. POP are rarely caught in the recreational fisheries. Management measures for 2007 and 2008 that are intended to limit the bycatch of POP and keep fishing mortality within the OY include (1) RCAs to restrict fishing in areas where overfished species are found and (2) cumulative trip limits.

Because POP co-occur with darkblotched rockfish, measures to reduce the incidental catch of darkblotched rockfish benefit POP. These measures include seaward trawl RCA boundaries that are established to keep fishing effort in deeper water where POP are less abundant, and cumulative limits for POP and minor slope rockfish that are intended to discourage targeting while allowing low levels of incidental catch to be landed. As needed, trip limits for other co-occurring species may be adjusted to reduce POP bycatch.

#### Darkblotched Rockfish

Date declared overfished: January 11, 2001 (66 FR 2338)

Areas affected: Coastwide  
Status of the stock: Following the 2005 stock assessment the coastwide stock was believed to be at 16 percent of its unfished biomass level.

SB<sub>0</sub>: 25,361 mt

SB<sub>MSY</sub>: 10,144 mt

T<sub>MIN</sub>: 2009

T<sub>F=0</sub>: 2010

T<sub>MAX</sub>: 2033

ABC: 456 mt in 2007, 487 mt in 2008

OY: 290 mt in 2007, 330 mt in 2008

Target (median) year to rebuild: 2011

SPR harvest rate: 64.1 percent for

2007 and 60.7 percent for 2008  
Harvest control rule: F=0.029 for 2007 and F=0.030 for 2008

Biology of the stock: Darkblotched rockfish occur from Tanaga Island (Aleutian Islands) and Bering Sea to near Catalina Island, California. They are most abundant from Oregon to British Columbia. Darkblotched rockfish occur on the outer shelf and slope, mainly north of Point Reyes (38° N. lat). Most adult darkblotched rockfish are associated with hard substrates on the lower shelf and upper slope at depths between 77 and 200 fm (140 and 365 m).

Like many *Sebastes* species, darkblotched rockfish show sexually dimorphic growth, in that females grow faster than and reach larger sizes than males. Darkblotched rockfish migrate to deeper waters with increasing size and age. Diurnal migration, raising off-bottom at night, is also a likely behavior of darkblotched rockfish.

In general, darkblotched rockfish mate from August to December, eggs are fertilized from October through March, and larvae are released from November through April. Fecundity increases with fish size. Size-at-age estimates vary widely. Fish landed in California generally had smaller size-at-age than fish landed in the two northern states (Oregon-Washington). Size-at-age in the 2003–2004 survey data did not, however, change significantly with latitude.

Management measures in 2007 and 2008: Because of their deeper distribution, darkblotched rockfish are caught almost exclusively by commercial vessels. Most landings have been made by bottom trawl vessels targeting flatfish on the shelf, and rockfish and the DTS species on the slope. Even once the darkblotched rockfish population is rebuilt to  $B_{MSY}$ , its population size will still be small relative to the larger complex of slope rockfish species it commonly co-occurs with. Having an overfished species rebuilding plan has required, and the detailed stock assessments have allowed, darkblotched ABCs and OYs to be established separately from the rest of the minor slope rockfish complex since 2001. In continued recognition of its status as a minor, but increasingly healthy, stock within a larger stock complex, darkblotched rockfish continues to be managed within the minor slope rockfish trip limit. Management measures intended to limit bycatch of darkblotched rockfish and keep fishing mortality within the OY specified for 2004 include (1) RCAs and (2) cumulative trip limits.

The boundaries of the RCAs vary by season and fishing sector and may be modified in response to new information about geographical and seasonal distribution of bycatch. The seaward boundary of the trawl RCA was set at a depth that was likely to keep fishing effort in deeper waters and away from areas where the bycatch of darkblotched rockfish was highest. During the winter months, modifications to the line allow for the harvest of flatfish while minimizing the impacts on darkblotched rockfish.

Cumulative limits for slope rockfish north of 40°10' N. lat. are intended to accommodate incidental take of darkblotched rockfish. These slope rockfish limits are intended to allow vessels to retain slope rockfish taken as bycatch in the DTS (Dover sole, thornyhead, sablefish) fishery. Cumulative limits for splitnose rockfish, a co-occurring species between 40°10' N. lat. and 38° N. lat., are constrained by darkblotched rockfish. As needed, trip limits for other co-occurring species may be adjusted to reduce darkblotched rockfish bycatch.

Incidental catch of darkblotched rockfish will continue to be allowed during the primary season for whiting, but will be constrained by bycatch limits that require closure of the commercial fisheries when reached. For 2007 and 2008, the darkblotched rockfish bycatch limit is 25 mt for the commercial whiting fisheries. A final 2007 and 2008 whiting ABC and OY

will be adopted at the Council's March meetings in those years, and the bycatch limits may be reconsidered at that time and adjusted inseason.

#### Canary Rockfish

Date declared overfished: January 4, 2000 (65 FR 221)

Affected area: Coastwide  
Status of the stock: 9.4 percent of its unfished biomass level in 2005.

$B_0$ : 34,798 mt

$B_{MSY}$ : 15,584 mt

$T_{MIN}$ : 2048

$T_{F=0}$ : 2053

$T_{MAX}$ : 2071

Target (median) year to rebuild: 2063

SPR harvest rate: 88.7 percent

Harvest control rule:  $F=0.018$

ABC: 172 mt in 2007, 179 mt in 2008

OY: 44 mt in 2007 and 2008

Biology of the stock: Canary rockfish are a continental shelf (shelf) species ranging from the western Gulf of Alaska to northern Baja California and are most abundant from British Columbia to central California. Juveniles settle in nearshore waters after a several month pelagic stage. Adults range from depths of 25–475 fm (46–868 m). Most adults are caught off the middle and lower shelf at depths between 44 fm and 109 fm (80 and 200 m). Larger fish tend to be found in deeper waters. Canary rockfish are usually associated with areas of high relief such as pinnacles, but also occur over flat rock or mud and boulder bottoms. They are usually found near the bottom. A tagging study showed that they can migrate up to 700 km (435 miles).

The maximum age of canary rockfish is 84 years. Mature females may have higher natural mortality rate than males. Females tend to be larger than males of the same age. Female canary rockfish reach 90 percent of their expected maximum size at 15 years. Canary rockfish are live bearers. Parturition occurs from September through March peaking December-January. Little is known about ecological relationships between canary rockfish and other organisms.

Management measures in 2007 and 2008: Unavoidable incidental catches of canary rockfish occur in trawl, fixed gear, open access, and recreational fisheries targeting groundfish, as well as commercial and recreational fisheries targeting species other than groundfish. Canary is one of the most constraining stocks in 2007–2008 management. Adult canary rockfish are often caught with bocaccio, sharpchin, yelloweye, and yellowtail rockfishes, and lingcod. Researchers have also observed canary rockfish associated with silvergray, and widow rockfish. Management measures

intended to limit bycatch of canary rockfish include RCAs and cumulative trip limits to constrain the fishery coastwide. Canary's wide geographic distribution and catchability in all fisheries makes it difficult to manage with species-specific RCAs, like yelloweye rockfish and cowcod.

Bottom trawling is prohibited in the trawl RCA, which covers depths where canary rockfish have been most frequently caught. Cumulative limits are structured to discourage targeting of shelf species while allowing very low levels of incidental take to be landed. Because vessels fishing with trawl gear shoreward of the trawl RCA are more likely to encounter canary rockfish than those fishing seaward of the RCA, differential trip limits have been used for large footrope, small footrope and selective flatfish trawl gear. To reduce incidental take of canary rockfish in the area north of 40°10' N. lat. vessels fishing shoreward of the RCAs are required to use selective flatfish trawl gear. By allowing higher limits for large and small footrope gear in areas seaward of the RCAs and prohibiting its use in nearshore areas, there is an incentive for vessels to fish in deeper waters, beyond the range of canary rockfish.

Incidental catch of canary rockfish will continue to be allowed during the primary season for whiting, but will be constrained by bycatch limits that require closure of the commercial fisheries when reached. For 2007 and 2008 the canary rockfish bycatch limit is 4.7 mt. A final 2007 and 2008 Whiting ABC and OY will be adopted at the Council's March meeting and the bycatch limits may be reconsidered at that time and adjusted inseason.

The non-trawl limited entry fisheries will be constrained by RCAs coastwide that are intended to reduce the catch of canary rockfish. Ridgeback prawn trawl vessels fishing in waters off the state of California will continue to be required to have and use finfish excluder devices that are intended to reduce the catch of overfished species including canary rockfish.

Recreational fisheries are managed through bag limits, size limits and seasons. As necessary, seasons can be shortened and bag limits reduced to stay within the OYs. The retention of canary rockfish is prohibited in the recreational fisheries.

#### Bocaccio

Date declared overfished: March 3, 1999

Areas affected: Monterey and Conception

Status of stock: 10.7 percent of its unfished biomass in 2005

Bo: 13,402 Billion eggs in 2005  
 B<sub>MSY</sub>: 5,361 Billion eggs in 2005  
 T<sub>MIN</sub>: 2018  
 T<sub>F=0</sub>: 2021  
 T<sub>MAX</sub>: 2032  
 Target (median) year to rebuild: 2026  
 SPR Harvest rate: 77.7 percent  
 Harvest control rule: F=0.034  
 ABC: 602 mt in 2007, 618 mt in 2008  
 OY: 218 mt in 2007 and 2008

Biology of the stock: Bocaccio is a rockfish species that ranges from Kodiak Island, Alaska south to central Baja California. Bocaccio are historically most abundant in waters off central and southern California. Juveniles settle in nearshore waters after a several month pelagic stage. Adults range from depths of 6.5–261 fm (12–478 m). Most adults are caught off the middle and lower shelf at depths between 27 fm and 137 fm (50 and 250 m). Larger fish tend to be deeper. Bocaccio are found in a wide variety of habitats, often on or near bottom features but sometimes over muddy bottoms. While usually found near the bottom they also occur as much as 16.4 fm (30 m) off bottom. Tagging studies have shown that young fish move up to 148 km (92 miles).

Maximum age of bocaccio was determined to be at least 40 and perhaps more than 50 years. Bocaccio are live bearers. Parturition occurs from October through July peaking January-February off California. Little is known about ecological relationships between bocaccio and other organisms.

Management measures for 2007 and 2008: Bocaccio have historically been taken by commercial trawl and fixed gear vessels and in the recreational fisheries. Adult bocaccio are often caught with chilipepper rockfish and have been observed schooling with speckled, vermilion, widow, and yellowtail rockfish. South of 40°10' N. lat. the bottom trawl, limited entry fixed gear, and open access fishing opportunities in the depths where bocaccio are most commonly encountered have been reduced though the use of RCAs. To accommodate incidental catch of shelf species, very small limits are allowed to be retained with large footrope and midwater trawl gear, but bocaccio is prohibited with small footrope trawl gear.

Chilipepper rockfish limits for limited entry large footrope and mid-water trawl gear are being established for the area south of 40°10' N. lat. and may be reduced inseason if incidental catch of bocaccio is greater than pre-season projections. The Chilipepper rockfish limits are conservative and not expected to result in the bocaccio OY being exceeded.

Ridgeback prawn trawl vessels fishing in waters off the State of California will continue to be required to have and use fin fish excluder devices that are intended to reduce the catch of overfished species including bocaccio.

Bocaccio are vulnerable to commercial non-trawl gears and to recreational fishing gear. To accommodate incidental catch of bocaccio in commercial fixed gear fisheries, very small limits are allowed to be retained. California recreational fisheries will constrain incidental bocaccio catch with recreational fishery bag limits.

#### Cowcod

Date declared overfished: January 4, 2000

Areas affected: Point Conception to the U.S.- Mexico boundary.

Status of stock: between 14 and 21 percent of unfished biomass in 2005

B<sub>0</sub>: 3,045 mt

B<sub>MSY</sub>: 1,218 mt

T<sub>MIN</sub>: 2035

T<sub>F=0</sub>: 2039

T<sub>MAX</sub>: 2074

Target (median) year to rebuild: 2039

SPR harvest rate: 90 percent

Harvest control rule: F=0.004

ABC: 17 mt south of 36° N. lat. and 19 mt between of 36 N. lat. and 40° 30' N. lat. in both 2007 and 2008.

OY: 4 mt in 2007 and 2008

Biology of the stock: Cowcod are found at 11–200 fm (75 366 m) depths. Cowcod range from central Oregon to central Baja California and Guadalupe Island. However, they are rare off Oregon and Northern California. It has long been argued that smaller cowcod are found at the shallow end of the depth range. Recent submersible work, however, indicates that cowcod size distribution may be more associated with sea floor structure than depth.

As with other species of Sebastes, fertilization is internal and females give birth to first-feeding stage planktonic larvae during the winter. Peak abundance of cowcod larvae is January through April, with some larvae present from November through August. In Monterey Bay, juveniles recruit to fine sand and clay sediments at depths of 22–56 fm (40 100 m) during the months of March September. Adults are found at depths of 50–280 fm (90 500 m) usually on high relief rocky bottom.

Management measures in 2007 and 2008: All directed cowcod fishing opportunities have been eliminated since 2001. Retention of cowcod will continue to be prohibited for all commercial and recreational fisheries. To prevent incidental cowcod harvest, two Cowcod Conservation Areas (CCAs)

(the Eastern CCA and the Western CCA) in the Southern California Bight were delineated to encompass key cowcod habitat areas and known areas of high catches. The CCAs were codified into regulation on November 4, 2003 (68 FR 62374). Fishing for groundfish is prohibited within the CCAs, except that minor nearshore rockfish, California scorpionfish, cabezon, lingcod, and greenling may be taken from waters where the bottom depth is less than 20 fm (36.9 m). Recent catches have been <1 mt, and indicate that management has been effective at reducing landings unless there has been significant unreported fishing mortality.

The boundaries of the Western CCA for limited entry fixed gear and open access non-trawl fisheries are proposed to be modified by this action. The current western CCA would be segmented into several smaller areas and fishing in waters greater than 175 fm (323 m) in depth would be allowed. Adult cowcod are believed to be less abundant in depths greater than 175 fm (323 m).

#### Widow Rockfish

Date declared overfished: January 11, 2001

Areas affected: Coastwide

Status of stock: 31.1 percent of its unfished biomass in 2004

B<sub>0</sub>: 49,678 million eggs

B<sub>MSY</sub>: 19,871 million eggs

T<sub>MIN</sub>: 2013

T<sub>F=0</sub>: 2013

T<sub>MAX</sub>: 2033

Target (median) year to rebuild: 2015

SPR harvest rate: 95 percent

Harvest control rule: F=0.008

ABC: 5,334 mt in 2007, 5,144 mt in 2008

OY: 368 in 2007 and 2008

Biology of the stock: Occur from near Kodiak Island, Alaska to Bahia de Todos Santos, Baja California. They are most abundant off northern Oregon and southern Washington and are one of the most abundant West Coast rockfish. Young of the year recruit to shallow nearshore waters after spending up to 5 months as pelagic larvae and juveniles in offshore waters. Adults range from bottom depths of 13 fm to 300 fm (24 m to 549 m). Most adults occur near the shelf break at bottom depths between 77 fm to 115 fm (140 m to 210 m). Adults are semi-pelagic and their behavior is dynamic.

Large concentrations of widow rockfish form at night and disperse at dawn, an atypical pattern for rockfish. Widow rockfish tend to be more easily caught in higher abundance during El Nino (anomalously warm and dry) years. Maximum age of widow rockfish

is 59 years. Size and age of maturity varies with locality. Females attain a larger size compared to males and fish from the northern part of the range tend to be larger at age compared to those in the south. Widow rockfish are live bearers and most larvae are released January through March. Little is known about ecological relationships between widow rockfish and other organisms.

Management measures in 2007 and 2008: Historically, widow rockfish were caught with yellowtail rockfish in waters off Washington, while California and Oregon fishers often made large pure catches of widow rockfish from mid-water schools. Current commercial limits for widow rockfish are intended to accommodate incidental catch and do not provide an incentive for directed fishing. Therefore, the midwater trawl fisheries for yellowtail rockfish, a co-occurring species with widow rockfish, are also being constrained.

Because bottom trawl opportunities for more constraining shelf rockfish species continue to be extremely limited, RCA management measures to restrict fishing on the shelf is expected to be beneficial to the recovery of widow rockfish. Non-trawl fisheries have little incidental catch of widow rockfish.

Incidental catch of widow rockfish will continue to be allowed during the primary season for whiting, but will be constrained by bycatch limits that require closure of the commercial fisheries when reached. For 2007 and 2008 the widow rockfish bycatch limit is 200 mt. Final 2007 and 2008 Whiting ABC and OY will be adopted at the Council's March meeting and the bycatch limits may be reconsidered at that time and adjusted inseason.

### Yelloweye Rockfish

Date declared overfished: January 11, 2002

Areas affected: Coastwide

Status of stock: 17.7 percent of its unfished biomass in 2006

$B_0$ : 3,322 mt

$B_{MSY}$ : 1,328 mt

$T_{MIN}$ : 2046

$TF=0$ : 2048

$T_{MAX}$ : 2096

Target (median) year to rebuild: 2084

SPR rate: 55.4 percent in 2007 and 60.8 percent in 2008

Harvest control rule: 0.015 in 2007 and 0.013 in 2008

Biology of the stock: Yelloweye rockfish range from Umnak Island, Aleutian Islands to Ensenada, northern Baja California. They are most abundant from southeastern Alaska to central California. Yelloweye rockfish can be characterized as relatively low in

abundance, extremely long-lived (aged up to 120 years), late maturing, and slow growing. Juveniles have been found at depths greater than 8 fm (15 m) in areas of high bottom relief. Adults range to depths of 300 fm (549 m). Most adults are caught off the middle and lower shelf at depths between 50 fm and 98 fm (91 m and 180 m). Adult yelloweye rockfish tend to be solitary and are usually associated with areas of high relief with refuges such as caves and crevices, but also occur on mud adjacent to rock structures. They are usually found on or near the bottom.

The affinity for hard bottom suggests that yelloweye rockfish may form stable local populations that, when recognized, could be treated as independent stocks. Evaluation of stock boundaries is reliant upon life history traits associated with a population or sub-population. Data for delineation of stock boundaries for yelloweye rockfish off the West Coast are limited.

Maximum age of yelloweye rockfish is 115 years. Parturition occurs from March through September and peak May-June. Yelloweye are carnivorous feeding primarily on other rockfishes, herring, sand lance, crab and shrimp. Little is known about the ecological relationships between yelloweye rockfish and other organisms. Researchers have observed adult yelloweye rockfish associated with bocaccio, cowcod, greenspotted, and tiger rockfish.

Management measures in 2007 and 2008: Yelloweye rockfish inhabit areas typically inaccessible to trawl gear. In the coastal trawl fishery, incidental catch occurs during the harvest of other target fisheries operating at the fringes of yelloweye rockfish habitat. Yelloweye rockfish is particularly vulnerable to hook-and-line gear. Since the 1970's, yelloweye rockfish has been subjected to a periodic target fishery for both commercial hook-and-line and sport fisheries. Current yelloweye rockfish harvest is incidental and occurs in tribal and non-tribal hook and line fisheries, and in recreational fisheries.

North of 40°10' N. lat., Yelloweye Rockfish Conservation areas (YRCAs) will continue to be used to reduce yelloweye rockfish catch in the commercial fixed gear, open access, and recreational fisheries. Off Washington, recreational fishing for groundfish and halibut will continue to be prohibited inside the YRCAs and limited entry fixed gear and open access fishing in the "C" shaped YRCA off Washington will continue to be designated as an area to avoid. New YRCAs off the coast of Washington are being defined in Federal regulation at § 660.390. The new North

Coast Commercial YRCA would restrict commercial limited entry and open access, the new Salmon Troll YRCA would restrict salmon troll fishing, and a new recreational YRCA off the southern coast of Washington would prohibit all recreational fishing for groundfish and halibut. A new recreational YRCA is also being defined for Stonewall banks off Oregon.

### Overfishing

The Magnuson-Stevens Act defines "overfishing" as "a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis." Under the FMP, ABCs for all species are set at the  $F_{MSY}$  level, the level that, for a particular year, is intended to produce maximum sustainable yield for that species on a continuing basis. None of the 2007–2008 ABCs is set higher than  $F_{MSY}$  or its proxy, none of the OYs is set higher than the corresponding ABCs, and the management measures in this proposed rule are designed to keep harvest levels within specified OYs.

When evaluating whether overfishing has occurred for any species under the FMP, NMFS compares that species' estimated total catch (landed catch + discard) in a particular year to its ABC for that year. Overfishing is difficult to detect inseason for many groundfish, particularly for minor rockfish species, because most species are not individually identified on landing. Species compositions, based on proportions encountered in samples of landings and extrapolated observer data, are applied during the year. However, final results are not available until after the end of the year.

In the preamble to the proposed rule for the 2005–2006 groundfish specifications and management measures, NMFS discussed overfishing that had occurred in 2003. NMFS has completed its analysis of 2004 groundfish total catch, but will not be able to complete its analysis of 2005 groundfish total catch until after observer program data become available in autumn 2006. Therefore, this proposed rule discusses both overfishing estimated to have occurred in 2004 and preliminary indicators of whether overfishing occurred on any species in 2005. When new data are available, NMFS updates estimates of whether overfishing has occurred as part of the agency's report to Congress on the "Status of U.S. Fisheries" (See <http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm#congress05>.)

NMFS estimates that overfishing occurred on darkblotched rockfish during the 2004 fishing season, since the total catch of darkblotched rockfish exceeded its ABC of 240 mt by 1.6 mt. In 2004, the darkblotched rockfish OY was also 240 mt. For canary rockfish, NMFS estimates that while the 2004 total catch of canary rockfish of 58 mt was below its ABC of 243 mt, that level of catch exceeded the OY of 47.3 mt. While the canary rockfish OY was exceeded, overfishing did not occur because total catch was below the canary rockfish ABC. For all remaining groundfish species or species groups, NMFS estimates that total catch was below both ABCs and OYs. Both canary and darkblotched rockfish are overfished. NMFS has taken action to prevent the fisheries from exceeding the ABCs and OYs for these species in 2006 and does not expect that harvest exceedances in 2004 will jeopardize the rebuilding progress for either species.

Darkblotched rockfish are taken almost exclusively in the limited entry trawl continental slope fishery. The 2004 exceedance of the darkblotched rockfish ABC/OY is so slight that it is difficult to assess what particular action might have allowed overfishing to occur. As discussed earlier, darkblotched rockfish are rebuilding at a rapid rate and are expected to be fully rebuilt by 2011. As the darkblotched rockfish population nears the  $B_{MSY}$  level, it becomes increasingly more difficult to craft management measures that constrain the fisheries to appropriately avoid darkblotched rockfish. Data from the 2006 trawl fisheries are showing higher darkblotched rockfish encounter rates than NMFS had estimated from prior years' observer data. At the Council's recommendation, NMFS took action on July 1, 2006 to constrain the fisheries to stay within the 2006 darkblotched rockfish OY (71 FR 37839, July 3, 2006.) Proposed management measures for 2007–2008 are intended to keep the fisheries within the darkblotched OYs for those years, but NMFS anticipates again evaluating the fisheries inseason to determine whether even more constraining measures are needed to minimize darkblotched rockfish bycatch through the end of its rebuilding period.

Canary rockfish are taken in all fisheries coastwide, making management to prevent incidental canary catch one of the more challenging requirements of groundfish management. As mentioned above, the estimated 2004 canary rockfish total catch is 10.7 mt above its 2004 OY. Of the catch from the post-season catch estimate that was apparently not

anticipated pre-season 7.3 mt of the 10.7 mt exceedance was taken in research and exempted fishing permit (EFP) fisheries. Portions of the remaining 3.4 mt exceedance, in amounts of less than 1 mt, were taken in most of the coastwide fishing sectors. The Oregon recreational fishery was the exception to these exceedances, since it is estimated to have finished 2004 with a 3.9–mt catch, 2 mt below that anticipated for that fishery at the start of 2004 (See EIS for 2004 groundfish harvest specifications and management measures.)

In its EIS on the 2005–2006 groundfish specifications and management measures, the Council more closely examined anticipated research catch in those years and adjusted overfished species research set asides appropriately. The 2004 arrowtooth trawl EFP took 2.5 mt of the unanticipated EFP canary rockfish catch; that EFP was not renewed for 2005 or 2006. While these measures were appropriately precautionary, they could not fully address the question of how to facilitate the collection of best available scientific data while minimizing overfished species mortality in research activities.

NMFS must support and conduct scientific activity on canary and other rockfish, and it would be unrealistic to expect this research to be entirely non-extractive. Important data on rockfish habitat and behavior are being collected via non-extractive methods, such as underwater remotely-operated-vehicles. However, methods like these are expensive and site-specific, gathering a great deal of data specific to small sites. The collection of fisheries independent data for coastwide stock assessments, particularly for broadly distributed schooling species like canary rockfish, requires extractive scientific fishing to occur over as much of the range of managed species as possible. If NMFS were to operate its continental shelf/slope survey with the intent of avoiding overfished rockfish, the data from that survey would lose its scientific value. The Council's preferred alternative for 2007–2008 anticipates 3 mt of canary rockfish being taken in scientific research activities each year. Consistent with Council policy and Federal regulations at 50 CFR 600.310 (f)(4)(iii), that 3 mt of anticipated research catch is deducted from the canary rockfish OY. Research catch levels are monitored inseason. Should research take of canary rockfish in either year be predicted, based on information received inseason, to exceed 3 mt, commercial and recreational fisheries will be constrained to ensure that the overall

canary rockfish take remains below the OY.

Preliminary data from the 2005 fisheries show that the catch of petrale sole exceeded its 2005 ABC. This is the only species for which it is now evident that overfishing occurred in 2005. NMFS will not have complete observer data on the 2005 fisheries until autumn 2006, at which time NMFS will be better able to analyze total groundfish catch to determine whether overfishing occurred on any other species. Petrale sole is almost exclusively taken in the groundfish trawl fishery. The Council addressed higher than expected 2005 petrale sole catch levels at its September and November 2005 meetings. Data available at the September Council meeting indicated that the fisheries were approaching the petrale sole ABC/OY of 2,762 mt, which led the Council to recommend and NMFS to implement a closure of the winter petrale sole fisheries (See 70 FR 50866, October 5, 2005). Data available at the November Council meeting indicated that the petrale sole ABC/OY had been exceeded and that further action was needed to minimize potential incidental petrale sole mortality through the end of the year. Thus, the Council recommended and NMFS implemented management measures to further constrain the November-December continental slope fisheries to constrain petrale sole bycatch (70 FR 72385, December 5, 2005.)

#### *2007–2008 Fishery Management Measures*

As discussed earlier in this document, groundfish fishery management measures for 2007–2008 are intended to facilitate the rebuilding of overfished species as quickly as possible, taking into account the status and biology of the stocks and the needs of fishing communities. Within the constraints of protecting overfished species, the Council's management measure recommendations are intended to allow fishery participants as much access to healthy stocks as possible. In 2007 and beyond, fishing communities will have to forego much of the available harvestable surplus of healthy groundfish stocks that co-occur with overfished species so that overfished species may be rebuilt as quickly as possible. Management measures intended to address the rebuilding needs of specific overfished species are discussed earlier in this document, in the species-specific sections of "OY Policies and Rebuilding Parameters for Overfished Species."

The types of management measures in this proposed rule do not vary

significantly from those used in recent years to reduce the incidental catch of overfished species while allowing some harvest of co-occurring healthy stocks. Management measures are intended allow overfished species to rebuild by reducing their catch in times and areas where they most frequently occur, to minimize bycatch with gear and fishing area restrictions, and to distribute groundfish harvest throughout the year to maintain groundfish fishing opportunities and markets. The fisheries management regime tends to be most constrained by protective measures for canary rockfish coastwide, yelloweye rockfish north of 40° 10' N. lat., and bocaccio south of 40° 10' N. lat. Trawl fisheries are additionally constrained by measures to prevent bycatch of POP, darkblotched, and widow rockfish.

Groundfish management measures that will continue to be used in 2007–2008 include: trip and bag limits, size limits, differential trip limits by gear type, season openings and closures, large-scale area closures such as the RCAs, gear restrictions, and bycatch limits. In addition to the fishery-specific management measures addressed below, the Council recommended that NMFS work with the states to include in this proposed rule any revisions to RCA boundary lines needed to ensure that: the lines better approximate the depth contours they are intended to represent; open fishing areas to allow petrale sole targeting are as consistent as possible between petrale-modified depth contour lines; and the lines that may intersect with EFH conservation area polygons are as compatible as possible with the boundaries of those areas. In addition, the Council recommended extending the 180–fm (329–m) line south of 42° N. lat., and recommended extending the 250–fm (458–m) line, including petrale areas, south of 38° N. lat., making both of these lines available coastwide. New RCA lines proposed via this action include: 10–fm (18–m) off Washington; 20–fm (37–m) off Washington and Oregon; 25–fm (46–m) off Washington and Oregon, which will replace the 27–fm (49–m) line; 180–fm (329–m) south of 42° N. lat., modified to allow fishing in petrale sole areas; 250–fm (458–m) lines around San Clemente Island, Santa Catalina Island, Lasuen Knoll, and San Diego Rise; 250–fm (458–m) line, including petrale areas, south of 38° N. lat., making both of these lines available coastwide. To implement this Council recommendation, this proposed rule would make changes to the RCA boundary line regulations at 50 CFR 660.390 through 660.394.

The management measures proposed in this rule are only part of the overall

management strategy for West Coast groundfish. On May 11, 2006, NMFS published a final rule to implement management measures to protect groundfish EFH under Amendment 19 to the FMP, including 51 new EFH conservation areas (71 FR 27408.) On June 27, 2006, NMFS published a proposed rule to implement bycatch mitigation measures in the groundfish fisheries under Amendment 18 to the FMP including, among other measures, the requirement that management take into account the co-occurrence ratios of overfished stocks with more abundant target stocks (71 FR 36506.) On September 7, 2006, NMFS approved Amendment 18; this proposed rule to implement Amendment 16–4 and the 2007–2008 groundfish specifications and management measures complies with the FMP as revised through Amendments 18 and 19. NMFS will continue to require vessels to carry and operate VMS units to monitor fishing locations, and to carry observers when requested by NMFS. NMFS and the states will again be conducting stock assessments over the next two years, which will inform the 2009–2010 specifications and management measures process and provide a gauge for rebuilding progress.

Federal regulations for the West Coast groundfish fishery are found in 50 CFR, subpart G, §§ 660.301 through 660.399. Definitions for terms used in groundfish regulations are at § 660.302. Prohibitions are at § 660.306. Amendment 16–4 would implement revised overfished species rebuilding parameters at § 660.365. Routine and automatic fishery management measures, as identified at § 660.370 and implemented in §§ 660.370 through 660.385 and in Tables 3–5 of subpart G, will continue to be available for revision through the inseason management process. Management measures specific to the black rockfish fisheries are found at § 660.371. Management measures for the nontrawl sablefish fisheries are found at § 660.372, although daily/weekly sablefish limits are found in Tables 4 and 5 (North) and Tables 4 and 5 (South) of subpart G. Management measures for the primary Pacific whiting season are found at § 660.373, although trip limits for vessels operating outside of the primary season are found in Tables 3 (North) and (South) of subpart G. Coordinates for all of the closed areas affecting the groundfish fisheries, including the EFH conservation areas, are found in §§ 660.390 through 660.399.

#### Limited Entry Trawl Fishery Management Measures

Although the types of management measures proposed for the limited entry trawl fishery in 2007–2008 are similar to those implemented for 2005–2006, the closed areas and landings limits are more restrictive than in the past biennium. More restrictive management measures are intended to respond to the need for more rapid rebuilding of overfished species, and harvest reductions resulting from new petrale sole and sablefish stock assessments. NMFS's bycatch model for the limited entry trawl fishery does not differ significantly from that used in setting the 2005–2006 fishery management measures, except that new and more recent observer data has been incorporated into that model.

As in past years, trawl fisheries continue to be managed with differing RCAs and trip limits north and south of 40°10' N. lat. North of 40°10' N. lat., the shoreward boundary of the Trawl RCA is primarily based on the need to reduce canary rockfish bycatch, although its location is also expected to reduce incidental take of other, northern overfished shelf species such as widow and yelloweye rockfish. Most adult canary rockfish are caught off the middle and lower continental shelf at depths between 44–109 fm (80–200 m,) which means that vessels operating shoreward of the RCA are more likely to encounter canary rockfish than those operating seaward of the RCA. This proposed rule would implement a 75–fm (137–m) shoreward boundary line for the Trawl RCA throughout the year, except in the summer months of July–August. To reduce incidental take of canary rockfish shoreward of the RCA, vessels operating shoreward of the RCA in the area north of 40°10' N. lat. are required to use selective flatfish trawl gear. The Council considered moving the shoreward boundary of the RCA even closer to the shore than 75–fm (137–m), but determined that moving trawl operations farther inshore could disturb sensitive Dungeness crab habitat and could result in increased salmon bycatch in the trawl fishery.

The seaward boundary proposed for the trawl RCA north of 40°10' N. lat. is primarily designed to reduce bycatch of northern slope overfished species, POP and darkblotched rockfish, both of which are nearing their rebuilt status. Harvestable concentrations of darkblotched rockfish is sometimes found as far south as 38° N. lat., which necessitates a more conservative seaward Trawl RCA boundary line for the area between 40°10' - 38° N. lat. than



for south of 38° N. lat. North of 40°10' N. lat., the seaward boundary of the Trawl RCA is at a line that approximates 250–fm (458–m) in January–April and November–December (modified for petrale sole fishing in winter months) and at a line that approximates 200 fm (366 m) in May–October.

South of 40°10' N. lat., the trawl RCA boundaries are most affected by the need to reduce incidental catch of bocaccio and canary rockfish, both of which are shelf species. The focus on shelf protection in the south means that the southern trawl RCA is narrower than that in the north, which covers both shelf and slope habitat. South of 40°10' N. lat., the trawl RCA is primarily proposed to be between 100 fm (183 m) and 150 fm (274m.) with an extension of the seaward trawl RCA boundary to a petrale-modified 200–fm (368.6–m) line in winter months (January–February and November–December) between 38° and 40°10' N. lat. South of 34°27' N. lat., the trawl RCA around islands is proposed to be between the shoreline and 150 fm (274 m).

In addition to closures between RCA boundary lines, trawl fishery participants are also subject to several groundfish closed areas other than those intended for EFH conservation areas. The following closed areas apply to trawl vessels in addition to RCAs and EFH conservation areas (§ 660.390): a Cordell Banks Closed Area; closed areas around the Farallon Islands off San Francisco and San Mateo Counties, CA; and the Eastern and Western Cowcod Conservation Areas (CCAs) in the Southern California Bight. None of the boundaries of these closed areas are proposed to be changed for trawl fishery participants in 2007 and beyond.

As discussed earlier in this document, NMFS initial estimates indicate that petrale sole was subject to overfishing in 2005. In 2006, the Council recommended more conservative measures and more responsive inseason management mechanisms to constrain petrale sole catch below its 2006 OY. Petrale sole limits proposed via this action for 2007–2008 are more conservative than those initially implemented for 2005–2006. This more conservative approach reflects both the lower ABC and OY resulting from the new petrale sole stock assessment and the Council's desire to constrain the fishery at the beginning of the year to prevent petrale sole overfishing and to allow a fall fishery to occur.

As discussed earlier in this document, the new 2005 sablefish stock assessment resulted in lower sablefish ABCs and OYs for 2007 and 2008. This lower harvestable surplus of sablefish has

resulted in lower sablefish trip limits for most fisheries.

As mentioned above, the Council recommended continuing to require the use of selective flatfish trawl gear in waters shoreward of the trawl RCA north of 40°10' N. lat. California Department of Fish and Game (CDFG) had wished to explore the effectiveness of selective flatfish trawl gear at rockfish exclusion south of 40°10' N. lat., but did not get appropriate EFP participation to determine its usefulness in the southern flatfish trawl fisheries. When ODFW had conducted experiments on selective flatfish trawl gear use via EFP, that agency had multiple EFP participants targeting a standard mix of nearshore flatfish and using trawl nets that were newly configured in shape, yet similar in mesh size and mesh material to nets used historically in that fishery. (See the proposed rule to implement the 2005–2006 groundfish specifications and management measures for more information on implementing the selective flatfish trawl gear north of 40°10' N. lat., (69 FR 77012, December 23, 2004).

When CDFG called for participants in an EFP to study selective flatfish trawl gear use south of 40°10' N. lat., the only consistent respondent was a vessel owner who has historically fished with Scottish (demersal) seine gear. Similar to bottom trawl gear, demersal seine gear is a type of towed demersal net gear that uses lighter-weight mesh and a different fishing technique from that used by the majority of participants in the coastwide trawl fleet. This particular EFP participant has for many years used his limited entry trawl permit to fish with demersal seine gear for Pacific sanddabs and other flatfish off north-central California. His gear complied with the Federal definition for limited entry trawl gear at the time of the limited entry permit program implementation, and continues to comply with the current definition. Thus, although his gear is different from that used by other trawlers, his vessel is appropriately licensed to fish in the limited entry fishery and his gear is appropriately designed to fit within the constraints of the gear requirements for that fishery. The end result of this vessel's participation in the EFP was that CDFG had results from a 3-year EFP showing that demersal seine gear has lower bycatch rates for non-target species than conventional trawl gear.

Since the results from CDFG's EFP spoke to the effectiveness of demersal seine gear used off north-central California, and not to the effectiveness of selective flatfish trawl gear used south of 40°10' N. lat., the Council did

not recommend requiring only selective flatfish gear be used shoreward of the RCA south of 40°10' N. lat. However, the Council did make regulatory recommendations to recognize the effectiveness of demersal seine gear at maintaining low bycatch rates for non-target (overfished and otherwise) species. This proposed rule would exempt vessels using demersal seine gear between 38° and 36° N. lat. from trawl RCA closures shoreward of 100 fm (183 m). In other words, if the southern trawl RCA's shoreward boundary were extended shoreward of 100 fm (183 m), limited entry permitted vessels using demersal seine gear would continue to be able to fish out to the boundary line approximating the 100–fm (183–m) depth contour. This proposed rule also proposes a southern trawl RCA shoreward boundary of 100 fm (183 m) throughout 2007–2008. Therefore, the demersal seine gear exemption would only be used if that shoreward boundary line were moved farther inshore through inseason action in 2007 or 2008.

On March 1, 2006, NMFS implemented a final rule that, among other regulations, set trip limits for spiny dogfish and Pacific cod (71 FR 8489, February 17, 2006.) Prior to this rulemaking, neither of these species had been managed with species-specific trip limits as routine management measures. Trip limits are needed for these species both to prevent overharvest of spiny dogfish and Pacific cod, and to constrain targeting on these species to prevent overharvest of co-occurring overfished species. For 2007–2008, this proposed rule would begin the management cycle with trip limits for spiny dogfish and Pacific cod that reflect the availability of these species to the different gear sectors at different times of the year.

Per the Council's recommendations, NMFS implemented overfished species bycatch limits for the non-tribal whiting fishery in 2005–2006. For 2007–2008, the Council recommended again setting bycatch limits for canary, darkblotched and widow rockfish taken incidentally in the non-tribal whiting fishery. This proposed rule would implement the following annual bycatch limits for 2007–2008: canary rockfish, 4.7 mt; darkblotched rockfish, 25 mt; widow rockfish, 200 mt. The Council expects to review these limits in March 2007 and March 2008, when it sets final whiting harvest levels for each of those years, and may make recommendations to revise those limits then. As in 2005–2006, NMFS anticipates setting the 2007 and 2008 Pacific whiting OYs such that the whiting harvest levels continue to be

constrained by the availability of overfished species.

In 2005, NMFS implemented an Ocean Salmon Conservation Zone (OSCZ) during the primary whiting season, to apply to all sectors of the commercial whiting fishery (70 FR 51682, August 31, 2005.) In that year, incidental rates catch of Chinook salmon were relatively high, and the OSCZ moved whiting fishing offshore of a boundary line approximating the 100-fm (183-m) depth contour. Incidental catch rates of Chinook salmon tend to be higher in the nearshore area. Because the 2005 incidental catch of Chinook salmon had exceeded an 11,000-fish threshold, NMFS reinitiated Endangered Species Act (ESA) section 7 consultation on the groundfish fishery in winter 2005–2006. The supplemental biological opinion concluded that, although the 2005 catch of Chinook had been high, continued operation of the groundfish fisheries under the FMP would not jeopardize the recovery of salmon stocks listed as threatened or endangered under the ESA. The supplemental biological opinion also recommended that, as a longer-term management measure, the OSCZ be implemented via Federal regulation as a management measure available for inseason implementation, as needed to constrain salmon bycatch in the whiting fishery. For the 2006 whiting fishery, NMFS included the potential inseason use of an OSCZ in the EFP for participants in the shore-based whiting sector, but did not have a regulatory mechanism for applying the OSCZ to vessels participating in the catcher/processor or mothership sectors. Incidental catch of Chinook salmon has been low in the 2006 whiting fishery, 2,754 fish are estimated to have been taken as of August 7, 2006. As part of the 2007–2008 groundfish management measures, the Council considered implementing the OSCZ as a potential inseason management tool for the whiting fishery. The OSCZ is evaluated in the DEIS, and the GMT recommended that this measure be adopted as part of the Council's management measures recommendations to NMFS. However, among the many details the Council finalized with the Amendment 16–4 and 2007–2008 groundfish management package, NMFS and the Council neglected to ensure that the OSCZ was part of the Council's final management recommendations. NMFS and Council staff discovered this oversight following the June 2006 Council meeting. Because the OSCZ has been evaluated in the DEIS and, until the last moment of the Council's final decision had been part of

the Council's developing management package, NMFS is including the OSCZ as part of this proposed action. The Council plans to review this issue at its September 11–15, 2006 meeting in Foster City, California, to ensure that this management tool is specifically addressed in the Council forum. In the preamble to the final rule for this action, NMFS will review the Council's September 2006 recommendation on the OSCZ and finalize the appropriate action based on the biological opinion, the Council's deliberations, and any comments received from the public.

The Council's GMT reviewed current groundfish trawl regulations as part of its effort to draft recommendations to the Council on the 2007–2008 fishery. In its review, the GMT found that trawl chafing gear regulations that had formerly been in place for midwater trawl gear had been inadvertently removed from Federal gear regulations. Based on the GMT's review, the Council recommended that NMFS revise gear regulations to ensure that chafing gear requirements are reinstated for midwater trawl gear and maintained for small footrope trawl gear. Groundfish trawl nets are regulated to minimum mesh sizes to ensure that juvenile fish may escape through the trawl mesh. Depending on how chafing gear is configured on a trawl net, it can have the effect of reducing the mesh size and result in increased small fish bycatch.

Management measures for the limited entry trawl fishery, including gear requirements, are found at § 660.381, with management measures specific to the primary Pacific whiting season found at § 660.373. Trawl trip limits are found in Table 3 (North) and Table 3 (South) of Subpart G of Part 660.

#### Limited Entry Fixed Gear and Open Access Non-trawl Fishery Management Measures

Management measures for the limited entry fixed gear and open access non-trawl fisheries tend to be similar because the majority of participants in both fisheries use hook-and-line gear. Like the trawl fishery, the non-trawl fisheries will be most constrained coastwide by measures to reduce incidental catch of canary rockfish. North of 40°10' N. lat., non-trawl fisheries will be even more constrained by measures to reduce incidental catch of yelloweye rockfish. Yelloweye is particularly vulnerable to hook-and-line gear. South of 40°10' N. lat., management measures to reduce incidental catch of bocaccio augment those constraining canary rockfish catch. Similar to the trawl fishery, non-trawl management measures account for

the lower available sablefish, as reflected in the lower 2007–2008 primary season tier limits. Petrale sole is rarely taken in non-trawl fisheries, thus the more conservative petrale sole harvest regime that this proposed rule applies to the trawl fisheries does not affect the non-trawl fisheries. NMFS's bycatch model for the non-trawl fisheries does not differ significantly from that used in setting the 2005–2006 fishery management measures, except that new and more recent observer data has been incorporated into that model.

The non-trawl RCA boundaries proposed for 2007–2008 are the same as those implemented for the non-trawl fisheries in 2005–2006, except for the shoreward boundary between 40°10' and 34°27' N. lat. Between 46°16' N. lat. and the U.S. border with Canada, the non-trawl RCA is proposed to be between the shoreline and a boundary line approximating the 100-fm (183-m) depth contour. Between 40°10' N. lat. and 46°16' N. lat., the non-trawl RCA is proposed to be between boundary lines approximating the 30-fm (55-m) and 100-fm (183-m) depth contours. Between 34°27' N. lat. and 40°10' N. lat., the non-trawl RCA is proposed to be between boundary lines approximating the 30-fm (55-m) and 150-fm (274-m) depth contours. Between 34°27' N. lat. and the U.S. border with Mexico, including waters around islands, the non-trawl RCA is proposed to be between boundary lines approximating the 60-fm (110-m) and 150-fm (274-m) depth contours.

Like trawl fishery participants, non-trawl vessels are also subject to several groundfish closed areas other than those within the RCA boundary lines and those intended for EFH conservation. The following closed areas apply to non-trawl vessels and have not been proposed for modification in 2007 and beyond (§ 660.390): a Cordell Banks Closed Area; closed areas around the Farallon Islands off San Francisco and San Mateo Counties, CA; the Eastern CCA.

For 2007 and beyond, this proposed rule would add two new commercial YRCAs north of 40°10' N. lat. to Federal regulations at § 660.390. Both of the new commercial YRCAs are off the northern Washington coast. The new North Coast Commercial YRCA would apply to the commercial limited entry and open access non-trawl groundfish fisheries. The new Salmon Troll YRCA would apply just to salmon troll fishery participants. These areas are intended to reduce incidental take of yelloweye rockfish in areas where yelloweye are known to congregate and where they may be vulnerable to hook-and-line

gear. The Salmon Troll YRCA is found in groundfish regulation at § 660.383 and § 660.390, and in the Pacific Coast salmon regulations at § 660.405.

For 2007 and beyond, this proposed rule would allow fishing in some areas within the Western CCA by limited entry fixed gear and open access nontrawl vessels carrying and using VMS units under Federal groundfish regulations at § 660.312 with a position reporting rate set at 15 minute intervals. This revision would create 5 discrete new closed areas within the current Western CCA, referred to as the 175–fm (320–m) CCAs, leaving much of the current Western CCA open to fishing in waters greater than 175 fm (320 m) in depth. The Council's intent with this recommendation was to allow southern California fishers' access to more abundant slope rockfish species found within waters currently closed to fishing. Cowcod retention has been prohibited since 2001, but prior to that prohibition, cowcod had historically been taken in depths from 11–200 fm (75–366 m).

The nontrawl fisheries have little to no incidental catch of POP, darkblotched, or widow rockfish. The effects of these fisheries on bocaccio, canary, cowcod, and yelloweye rockfish are constrained as much as possible by the non-trawl RCA, described above, and by the YRCAs and CCAs. Trip limits proposed for the nontrawl fisheries in 2007–2008 are similar to those that applied to these fisheries in 2005–2006. The open access sablefish limit is more conservative than the limited entry limit, recognizing that the open access fleet can expand to an unknown number of participants. Tier limits for the limited entry sablefish-authorized fleet are lower than in 2005–2006, reflecting the lower sablefish harvest specifications: Tier 1, 48,500 lb (21,999 kg); Tier 2, 22,000 lb (9,979 kg); Tier 3, 12,500 lb (5,670 kg). Similar to the limited entry trawl fishery, landings of spiny dogfish and Pacific cod taken in the non-trawl fisheries will be subject to trip limits throughout the 2007–2008 management cycle. This proposed rule would also lower the lingcod size limit for non-trawl commercial fisheries north of 42° N. lat. (Oregon/California border) from 24 inches (61 cm) to 22 inches (56 cm). In addition, trip limits for minor nearshore and black rockfish south of 40°10' N. lat. were increased above 2005–2006 levels. These species were harvested well below their harvest targets in 2005–2006 and these fisheries are constrained in their effects on overfished species by prohibitions against fishing within the non-trawl RCA. Therefore, the Council

recommended maintaining the boundaries of the non-trawl RCA, while increasing trip limits for healthier stocks taken in the non-trawl fisheries. The Council also recommended opening fishing for lingcod in the month of November, in recognition of lingcod's new status as a healthy and rebuilt stock.

Management measures for the limited entry fixed gear fishery, including gear requirements, are found at § 660.382, with management measures specific to the primary sablefish season found at § 660.372. Limited entry fixed gear trip limits are found in Table 4 (North) and Table 4 (South) of Subpart G of part 660. Management measures for the open access fishery, including gear requirements, are found at § 660.383. Open access trip limits are found in Table 5 (North) and Table 5 (South) of subpart G of Part 660.

#### Open Access Non-Groundfish Trawl Gear Fisheries Management Measures

Open access non-groundfish trawl gear (used to harvest ridgeback prawns, California halibut, sea cucumbers, and pink shrimp) is managed with "per trip" limits, cumulative trip limits, and area closures. Trip limits are similar to those in 2005–2006. The species-specific open access limits apply but vessels may not exceed overall groundfish limits. As in past years, the pink shrimp fishery is subject to species-specific limits that are different from other open access limits for lingcod and sablefish. Also as in past years, thornyheads may not be taken or retained in the open access fisheries north of 34°27' N. lat.

Trawling with open access non-groundfish gear for pink shrimp will be permitted within the trawl RCA; however, the states require pink shrimp trawlers to use finfish excluder devices to reduce their groundfish bycatch, particularly to prevent bycatch mortality for canary and other rockfishes. Trawling for ridgeback prawns, California halibut, and sea cucumber is subject to the same RCA area closures as the limited entry trawl fishery, except that ridgeback prawn trawling will be permitted out to a boundary line approximating the 100–fm (183-m) depth contour if and when the inshore boundary line of the trawl RCA is moved shallower than 100 fm (183 m). The Council revised this RCA restriction based on the GMT's review of overfished species bycatch rates in the ridgeback prawn trawl fishery, which found overfished species bycatch to be low shoreward of 100 fm (183 m.) RCA restrictions off California are particularly intended to reduce bycatch and bycatch mortality for southern and

coastwide overfished species such as bocaccio, cowcod, canary rockfish, and lingcod. The CCA boundaries are not proposed to be changed for open access non-groundfish trawl vessels. Management measures for the open access fisheries, including gear requirements, are found at § 660.383. Trip limits are found in Table 5 (North) and Table 5 (South) of subpart G of part 660.

#### Recreational Fisheries Management Measures

Recreational fisheries management measures are designed to constrain catch of overfished and nearshore species while also allowing favorable fishing seasons. Overfished species that tend to be vulnerable to recreational fisheries are bocaccio, cowcod, canary, and yelloweye rockfish. Because sport fisheries are more concentrated in nearshore waters, the 2007–2008 recreational fishery management measures are also intended to constrain catch of nearshore species such as black rockfish and cabezon. These protections are particularly important for fisheries off California, where the bulk of West Coast recreational fishing occurs. Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, area closures, and size limits to best fit the requirements to rebuild overfished species found in their regions, and the needs and constraints of their particular recreational fisheries.

Off Washington, recreational fishing for groundfish and halibut will continue to be prohibited inside the North Coast Recreational YRCA, a C-shaped closed area off the northern Washington coast. The Council also adopted an additional WDFW-recommended YRCA for recreational fisheries off the southern coast of Washington, the South Coast Recreational YRCA, which would also be closed to all recreational fishing for groundfish and halibut. Coordinates for both of these YRCAs are defined at 50 CFR 660.390. The RCA for recreational fishing off Washington will be the same as in 2006; recreational fishing for groundfish will be prohibited offshore of the 30–fm (55–m) depth contour. The groundfish bag limit off Washington will remain the same as in 2005–2006: 15 aggregate bottomfish bag limit; 10 rockfish sub-limit with no retention of canary or yelloweye rockfish; 2 lingcod sub-limit, with the lingcod minimum size reduced from 24 inches (61.4 cm) to 22 inches (56 cm). The lingcod seasons in 2007 and 2008 will be similar to those in 2005–2006, beginning in mid-March and ending in mid-October,

although the season north of 48°10' N. lat. will not begin until mid-April. As in the commercial non-trawl fisheries, the lingcod size limit for the Washington recreational fishery is reduced from 24 inches (61 cm) to 22 inches (56 cm). Retention of yelloweye and canary rockfish is prohibited in the Washington recreational fishery.

Off Oregon, recreational fishing for groundfish will be depth-restricted April through September, when the fishery will be closed offshore of a boundary line approximating the 40-fm (73-m) depth contour. Recreational fisheries participation is heaviest during these months and this closure is intended to move the groundfish fisheries inshore of the continental shelf to reduce incidental catch of canary and yelloweye rockfish. The Council also adopted a new YRCA off Oregon at ODFW's recommendation, the Stonewall Bank YRCA. This is the same Stonewall Bank YRCA currently in place for the recreational Pacific halibut fishery off Oregon (71 FR 10850, March 3, 2006.) In addition, EFH Conservation Areas, listed at § 660.306, also apply to recreational fisheries using bottom contact gear off Oregon. The Oregon recreational fishery marine fish bag limit will be reduced from 10 to 8 fish in aggregate. As in waters off Washington, retention of yelloweye and canary rockfish continues to be prohibited. The lingcod bag limit will remain at 2 fish per day, and the size limit will decrease as off Washington from 24 inches (61 cm) to 22 inches (56 cm).

For 2007–2008, recreational fisheries off California will continue to be managed as four separate regions: the Oregon/California border to 40°10' N. lat.; 40°10' N. lat. to 37°11' N. lat.; 37°11' N. lat. to 34°27' N. lat., and; 34°27' N. lat. to the U.S./Mexico border. California updated its recreational fisheries catch model with data from the California Recreational Fisheries Survey (CRFS) to make recommendations to the Council for the 2007–2008 fisheries. Season and area closures differ between California regions to better prevent incidental catch of overfished species according to where those species occur and where fishing effort is strongest. The California-wide combined bag limit for the Rockfish-Cabezon-Greenling (RCG) complex would continue to be 10 fish per day. Bag limits are only available when seasons are open. RCG sub-bag limits will also remain the same, except that the sub-bag limit for kelp greenling increases from 1 fish to 2 fish. Fishing for lingcod will be closed in the winter months to prevent catch of lingcod during its spawning and nesting

season. Unlike Oregon and Washington, the lingcod size limit will remain at 24 inches (61 cm) for sport fisheries off California.

Between the Oregon/California border (42° N. lat.) and 40°10' N. lat., the recreational fishery will be open May–December (May–November for lingcod) in waters shallower than a boundary approximating the 30-fm (55-m) depth contour. Between 40°10' N. lat. and 37°11' N. lat., the recreational fishery will be open June–November, in waters shallower than a boundary approximating the 30-fm (55-m) depth contour. These northern California waters seasons and area closures are intended to reduce catch of canary rockfish, as well as to limit the catch of black rockfish and other nearshore rockfish species.

Between 37°11' N. lat. and 34°27' N. lat., the fishery will be open May–December (April–November for lingcod) in waters shallower than a boundary line approximating the 40-fm (73-m) depth contour. In this area, fishing for California scorpionfish will be open from January–February in waters shallower than a boundary line approximating the 40-fm (73-m) depth contour, and from March–December in waters shallower than a boundary line approximating the 60-fm (110-m) depth contour. South of 34°27' N. lat. to the U.S. border with Mexico, the fishery will be open from March through December in waters shallower than a boundary line approximating the 60-fm (110-m) depth contour. These time and area closures are intended to reduce catch of bocaccio and of canary rockfish in the southern edge of its range. Cowcod catch in the area south of 34°27' N. lat. continues to be constrained by the CCAs, which are closed throughout the year to recreational fishing for groundfish. This proposed rule does not propose to modify the fishing restrictions within the CCAs for the recreational fisheries. In addition, EFH Conservation Areas, listed at § 660.306, apply to recreational fisheries using bottom contact gear off California.

Management measures for recreational fisheries off all three West Coast states are found at § 660.384.

#### Washington Coastal Tribal Fisheries Management Measures

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that

pass through the tribes' usual and accustomed fishing areas (described at 50 CFR 660.324).

For those species with tribal allocations, the tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal fisheries for sablefish, black rockfish, and whiting are separate fisheries and are not governed by the limited entry or open access regulations or allocations. The tribes regulate these fisheries so as to not exceed their allocations.

The tribal harvest guideline for black rockfish is the same in 2007 and 2008 as it was in 2005 and 2006. Also similar to past years, the tribal sablefish allocation is 10 percent of the total catch OY north of 36° N. lat., less 1.9 percent for estimated discard mortality. For both 2007 and 2008, the tribal sablefish allocation is 572.3 mt, less 1.9 percent for discard mortality, or 561.4 mt.

From 1999 through 2006, the tribal whiting allocation has been based on a methodology originally proposed by the Makah Tribe in 1998. The methodology is an abundance-based sliding scale that determines the tribal allocation based on the overall U.S. OY, up to a maximum 17.5 percent tribal harvest ceiling at OY levels below 145,000 mt. The tribes have proposed using the same methodology in 2007 and 2008. NMFS has determined that this methodology is consistent with the Magnuson-Stevens Act, and uses the best available science to determine the appropriate allocation of whiting to the tribes. Therefore, the allocation will be calculated based on that methodology once the final whiting OY is determined. No other tribes have proposed to harvest whiting in 2007 or 2008.

The tribes do not have formal allocation for Pacific cod; however, the Council recommended adopting a tribal proposal for tribal Pacific cod harvest guidelines in 2007 and 2008. The tribes and the Council made this recommendation as part of the Council's efforts to more closely manage Pacific cod and spiny dogfish in all of the commercial fisheries. In both 2007 and 2008, the tribes will be subject to an annual 400 mt Pacific cod harvest guideline. Spiny dogfish taken in tribal fisheries will be managed via trip limits, described below.

For some species, on which the tribes have a modest harvest, no specific allocation has been determined. Rather than try to reserve specific allocations for the tribes, NMFS is establishing trip limits recommended by the tribes and the Council to accommodate tribal fisheries. For lingcod, all tribal fisheries

are restricted to 600–lb (272–kg) per day and 1,800–lb (816–kg) per week, except for in the treaty salmon troll fishery, which would be limited to 1,000–lb (454–kg) per day and 4,000–lb (1,814 kg) per week. Tribal fisheries will be managed to a 50 mt lingcod harvest guideline in 2007 and 2008, although tribal fisheries may take as much as 100 mt if they determine that they are able to fish in times and areas where additional lingcod harvest does not result in increased take of canary rockfish above the level the tribes have projected will be taken in 2007 and 2008.

For rockfish species, the 2007–2008 tribal hook-and-line and non-whiting trawl fisheries will operate under trip and cumulative limits, and will be required by tribal regulations to fully retain all overfished and marketable rockfish species. Tribal fisheries will operate under a 300–lb (136–kg) per trip limit each for canary rockfish, and the minor rockfish species groups (nearshore, shelf, and slope), and under a 100–lb (45–kg) per trip limit for yelloweye rockfish. Longspine and shortspine thornyheads will be restricted to the non-tribal limited entry trip limits for these species. Tribal fishing regulations, as recommended by the tribes and the Council and adopted by NMFS, are in Federal regulations at 50 CFR 660.385.

#### Federal and State Jurisdiction

The management measures herein, as well as Federal regulations at 50 CFR part 660, subpart G, govern groundfish fishing vessels of the United States in the U.S. EEZ from 3–200 nautical miles offshore of the coasts of Washington, Oregon, and California. The States of Washington, Oregon, and California retain jurisdiction in state waters from 0–3 nautical miles offshore. This is true even though boundaries of some fishing areas cross between Federal and state waters. Under their own legal authorities, the states generally conform their state regulations to the Federal management measures, so measures that apply to Federal and state waters are the same. This is not true in every case, however, and fishers are advised to consult both state and Federal regulations if they intend to fish in both state and Federal waters.

Groundfish stocks are distributed throughout Federal and State waters. Therefore, the Federal harvest limits (OYs) include fish taken in both Federal and State waters, as do vessel trip limits for individual groundfish species. Other Federal management measures related to federally-regulated groundfish fishing also apply to landings and other

shoreside activities in Washington, Oregon and California.

#### Housekeeping Measures

NMFS is proposing to revise definitions in § 660.302 to either clarify those definitions or cross-reference to other Federal regulations, to update names of various NMFS offices, to arrange the definitions in a more logical order, and to improve the clarity and/or grammar of the definition language. Definitions for the following terms are proposed to be clarified, added, or updated via this rulemaking: Allocation; At-sea processing; BMSY; Catch, take, harvest; Commercial harvest guideline or commercial quota; Fishing; Fishing gear; Fishing vessel; Groundfish; Groundfish Conservation Area or GCA; Limited entry fishery; Limited entry permit; North-South management area; Observer Program Office; Office of Law Enforcement; Maximum Sustainable Yield or MSY; Operator; Processing or to process; Regional Administrator; Round weight; Scientific research activity; Secretary; Sell or sale; Shoreside processing; Trip, and; Vessel of the United States or U.S. vessel.

NMFS is also proposing to correct and update the prohibitions in § 660.306 as a housekeeping measure within this action. Changes to the prohibitions section other than those discussed earlier in the preamble to this proposed rule are intended to improve the grammar and comprehensibility of the regulatory language. Housekeeping changes to the prohibitions do not change the intent or effect of those prohibitions. In addition, any references to “shoreside” when referring to whiting sectors or to processing would be changed to “shore-based” for consistency throughout the regulations. Any references to the years 2005 or 2006 are removed. In the tribal management measures section, § 660.385, species names are added to the beginning of each paragraph for ease of use, if not already there. In sections § 660.381 through § 660.384, references to EFHCAs are added where appropriate.

#### Classification

At this time, NMFS has not determined whether Amendment 16–4 and the 2007–2008 groundfish harvest specifications and management measures, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

A DEIS was prepared for Amendment 16–4 and the 2007–2008 groundfish harvest specifications and management measures. The DEIS includes an RIR and an IRFA. The Environmental Protection Agency published a notice of availability for the draft EIS on July 28, 2006 (71 FR 42846.) A copy of the DEIS is available online at <http://www.pcouncil.org/>.

The Council considered two sets of alternatives for 2007–2008 groundfish management, the first set of alternatives addressed the selection of ABCs and OYs and the second set of alternatives provided a range of management measures based on the initial range of OYs considered. The Council narrowed the range of ABC/OY alternatives by eliminating the no harvest alternative and by eliminating the harvest alternatives at the higher end of the range. Then the Council set “preferred high OY” and “preferred low OY” suites from the low end of the initial range of ABCs/OYs, so that management measures could be considered from the lower overall harvest perspective.

The range of management measure alternatives intended to keep total catch at the low end of the initial ABC/OY alternatives are considered here, since these were the alternatives the Council evaluated for their effects on small entities. Management measure alternatives included: the no action alternative, which would have implemented the 2005–2006 regime for 2007–2008; Alternative 1, which was intended to keep catch most aligned with the preferred low OY values; Alternative 2, which was intended to keep catch intermediary to the range of preferred low-high OY values; Alternative 3, which was intended to keep catch most aligned with this preferred high OY values; and the Council’s preferred alternative, which set management measures intended to achieve rebuilding species’ OYs between Alternatives 2 and 3 for bocaccio, at Alternative 3 for cowcod, and above Alternative 3 for canary, darkblotched, POP, widow and yelloweye rockfish. All of the alternatives included management measures intended to constrain target fisheries for healthy stocks so as to minimize the effects of the fisheries on rebuilding stocks, with Alternatives 1–3 and the preferred alternative applying more stringent management measures than those in effect for the fishery in 2005–2006.

Each of the alternatives analyzed by the Council was expected to have different overall effects on the economy. Among other factors, the DEIS for this action reviewed alternatives for

expected increases or decreases in revenue and income from 2006 levels. Alternative 1 was expected to decrease annual income, as compared to the no action alternative, from combined recreational angler expenditures and commercial fisheries landings by \$75.2 million, and decrease the number of coastwide fisheries-related jobs by 3,226 jobs. Alternative 2 was expected to decrease annual income, as compared to the no action alternative, from combined recreational angler expenditures and commercial fisheries landings by \$34.1 million, and decrease the number of coastwide fisheries-related jobs by 1,446 jobs. Alternative 3 was expected to increase annual income, as compared to the no action alternative, from combined recreational angler expenditures and commercial fisheries landings by \$1.8 million, and increase the number of coastwide fisheries-related jobs by 41 jobs. The Council's preferred alternative was expected to have a range of annual income effects, depending on the level of Pacific whiting OYs chosen in 2007 and 2008, from decreasing annual income by \$37.2 million at the low whiting OY to increasing annual income by \$0.6 million, as compared to the no action alternative, from combined recreational angler expenditures and commercial fisheries landings. The Council's preferred alternative was expected to have a range of annual employment effects, depending on the level of Pacific whiting OYs chosen in 2007 and 2008, from decreasing employment by 1,699 jobs at the low whiting OY to decreasing employment by 7 jobs at the high whiting OY. The Council's preferred alternative is primarily designed to meet the overfished species rebuilding requirement of the Magnuson-Stevens Act to rebuild overfished species as quickly as possible, taking into account the status and biology of the stocks and the needs of fishing communities.

The Council's final preferred alternative was developed through a new and integrated approach of analyzing alternative suites of rebuilding harvest levels and rebuilding trajectories for all of the overfished species. This approach allowed the Council to develop a management package that focused the greatest protection on the most sensitive overfished species and the most vulnerable fishing communities, in order to meet the Magnuson-Stevens Act requirement to rebuild as quickly as possible, taking into account the status and biology of the overfished stocks and the needs of fishing communities. For

non-overfished species, the effects of this action will be that they will be harvested in 2007–2008 at or below MSY harvest levels. Harvests of most non-overfished species will not achieve their MSY levels, primarily because their harvest will be constrained to achieve faster rebuilding of co-occurring overfished species.

The economic effect of this action is that many fishery sectors are expected to achieve social and economic benefits that are similar to status quo levels. However, some sectors are more or less severely affected by management measures to rebuild overfished species. Although the yelloweye rebuilding period is longer than the status quo  $T_{TARGET}$ , the OYs for 2007 and 2008 are lower than in past years. These lower yelloweye OYs will negatively affect northern hook-and-line fisheries, particularly the recreational fisheries. Southern recreational fisheries, however, will benefit from bocaccio's more rapid rebuilding progress to date. The increase in the Dover sole OY and the expected stable whiting OY will stabilize the effects of this action on the trawl fisheries. The decrease in the sablefish OY will negatively affect all of the commercial fisheries. On a coastwide basis, the commercial ex-vessel revenues for the major directed groundfish sectors are estimated to be approximately \$67.5 million, and the number of recreational bottomfish trips is estimated to be 571,742. These figures are 98 percent of 2005 exvessel revenues, and 105 percent of 2005 recreational angler trips.

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

NMFS and the Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A copy of this analysis is available from the Council (see **ADDRESSES**). A summary of the analysis follows.

NMFS estimates that implementation of this action will affect about 2,600 small entities. These entities are associated with those vessels that either target groundfish or harvest groundfish as bycatch. Consequently, these are the vessels, other than catcher-processors, that participate in the limited entry portion of the fishery, the open access fishery, the charterboat fleet, and the tribal fleets. Catcher-processors also operate in the Alaska pollock fishery,

and all are entities associated with larger companies such as Trident and American Seafoods. Therefore, NMFS does not consider catcher-processors to be small entities.

As of July 2006, there were 403 limited entry permits for the West Coast groundfish fishery, including: 179 endorsed for trawl (174 trawl only, 4 trawl and longline, and 1 trawl and trap-pot); 198 endorsed for longline (193 longline only, 4 longline and trap-pot, and 4 trawl and longline); 32 endorsed for trap-pot (27 trap-pot only, 4 longline and trap-pot, and 1 trawl and trap-pot). Of the longline and trap-pot permits, 164 are sablefish endorsed. Of these endorsements 126 are "stacked" on 50 vessels, in accordance with Federal regulations at 50 CFR 660.335. Eight of the trawl limited entry permits are used or owned by catcher-processor companies associated with the whiting fishery. The remaining 395 entities are considered small businesses based on a review of sector revenues and average revenues per entity. The open access or nearshore fleet, depending on the year and level of participation, is estimated to be about 1,300 to 1,600 vessels. All of the open access fishery participants are considered small entities. The tribal fleet is comprised of 53 vessels, and the Charterboat fleet includes 525 vessels that are also assumed to be small entities. All of these small entities would be affected by this action.

The final Council-preferred alternative represents the Council's efforts to address directions provided by the court that emphasized the need to rebuild stocks in as short a time as possible, taking into account: (1) the status and biology of the stocks, (2) the needs of fishing communities, and (3) interactions of depleted stocks within the marine ecosystem. When the Council was taking into account the "needs of fishing communities" it was also simultaneously taking into account the "needs of small businesses," since fishing communities rely on small businesses as a source of economic income and activity. In particular, as discussed in the IRFA, the inclusion of the yelloweye rockfish "ramp down" strategy and creation of additional YRCAs is a means of trying to mitigate impacts of this proposed rule on small entities. (It should also be noted that the development of the final Council-preferred alternative reflects a process that includes the provision of the numerous public comments by fishermen and other small business representatives. It also reflects recommendations made by the Council's Groundfish Advisory Panel—a committee composed of 20 commercial,

recreational, and conservation representatives, almost all of which are associated with small business interests.)

Rather than abruptly shifting West Coast fisheries from a 2006 OY of 27 mt to a 12–12.6 mt OY, the yelloweye OY ramp-down strategy commits the Council to adopting gradually declining OY levels. The 2007–2008 OYs are 23 mt, 20 mt, and the 2009–2010 OYs are anticipated to be 17 mt, and 14 mt, respectively under the ramp-down strategy. Under a 12 or 12.16 mt Optimum Yield, there would be a projected 40 percent decline in ex-vessel revenues and about a 30 percent decline in recreational fisheries angler trips and expenditures. However many argue that the recreational fisheries impact is larger, since fishing seasons would be shortened, which would have the additional impact of fewer tourists being drawn to communities during times when fishing closures are in place. The communities most vulnerable to reductions in yelloweye catch are remote northern coast towns with small year-round populations and a strong revenue dependence on seasonal tourism influxes. This means that economic impacts would be larger than indicated by just examining changes in angler trips. Because yelloweye rockfish are harvested in almost all West Coast groundfish and non-groundfish fisheries, the economic impact of a zero harvest OY is projected to result in a loss of at least \$100 million in ex-vessel revenues and approximately 1.2 million recreational angler trips. The yelloweye ramp-down OY results in economic impacts to recreational fisheries that range from near status quo, to reductions in angler effort of approximately 22 percent in 2007 compared to 2005 levels. Similarly, commercial ex-vessel revenues would range from near status quo to reductions of 13 percent. Beyond 2007, the effects are less clear; however, it is expected that the economic implications will be less severe than with an OY of 12 mt or 12.6 mt. It is estimated that these impacts will be in place until 2084, or 36 years longer than  $T_{MIN}$ .

Through adopting the ramp-down approach that includes expanded YRCAs off Oregon and Washington, the Council was able to consider the trade-off between rebuilding periods (need to rebuild as fast as possible) and effects on communities (taking into account the needs of fishing communities) and small businesses, supported by additional management measures to assure the OY is not exceeded (which in turn would affect the majority of communities and

small businesses because of the yelloweye OY's broadly distributed effects.) In comparison to the 12 mt OY Alternative, the ramp-down approach extends the rebuilding period by 6 years from 2078 to 2084, allows the current fishing sectors to continue, and prevents major closures of fisheries and the associated harm to communities and their small businesses.

There are no additional projected reporting, record-keeping, and other compliance requirements of the proposed rule not already envisioned within the scope of current requirements. References to collections-of-information made in this action are intended to properly cite those collections in Federal regulations, and not to alter their effect in any way.

No Federal rules have been identified that duplicate, overlap, or conflict with this action.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal ESA section 7 consultation in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999 Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new WCGOP data became available, allowing NMFS

to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook Evolutionarily Significant Units (ESUs) most likely affected by the whiting fishery have generally improved in status since the 1999 ESA section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior “no jeopardy” conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state “the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.” The tribal management

measures in this proposed rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the tribal management measures, which was passed by the Council. Those management measures, which were developed and proposed by the tribes, are included in this proposed rule.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian fisheries.

Dated: September 13, 2006.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

**PART 660—FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, the definitions for “At-sea processing,” “Office for Law Enforcement,” and “Shoreside processing” are removed, the definitions for “Allocation,” “Catch, take, harvest,” “Commercial harvest guideline or commercial quota,” “Fishing,” “Fishing gear,” paragraph (11)(ii) for “Midwater (pelagic or off-bottom) trawl,” “Fishing vessel,” “Groundfish,” paragraph (8) for “Flatfish” and paragraph 9 for “other fish,” “Groundfish Conservation Area or GCA,” “Limited entry fishery,” “Limited entry permit,” “North-South management area,” “Observer Program Office,” “Operator,” “Processing or to process,” “Regional Administrator,” “Round weight,” “Scientific research activity,” “Secretary,” “Sell or sale,” “Trip,” and “Vessel of the United States or U.S. vessel” are revised, and the definitions for “B<sub>MSY</sub>,” “Maximum Sustainable Yield or MSY,” and “Office of Law Enforcement,” are added in alphabetical order to read as follows:

**§ 660.302 Definitions.**

\* \* \* \* \*  
*Allocation.* (See § 600.10).  
 \* \* \* \* \*

B<sub>msy</sub> means the biomass level that produces maximum sustainable yield (MSY), as stated in the PCGFMP at Section 4.2.  
 \* \* \* \* \*

*Catch, take, harvest.* (See § 600.10).  
 \* \* \* \* \*

*Commercial harvest guideline or commercial quota* means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty

Indian tribes, projected research catch, recreational fisheries set-asides or harvest guidelines, deductions for fishing mortality in non-groundfish fisheries, as necessary, and set-asides for compensation fishing under § 660.350. Limited entry and open access allocations are derived from the commercial harvest guideline or quota.  
 \* \* \* \* \*

*Fishing.* (See § 600.10).  
 \* \* \* \* \*

*Fishing gear* \* \* \*  
 (11) \* \* \*

(ii) *Midwater (pelagic or off-bottom) trawl.* A trawl in which the otter boards and footrope of the net remain above the seabed. It includes pair trawls if fished in midwater. A midwater trawl has no rollers or bobbins on any part of the net or its component wires, ropes, and chains. For additional midwater trawl gear requirements and restrictions, see § 660.381(b).  
 \* \* \* \* \*

*Fishing vessel.* (See § 600.10).  
 \* \* \* \* \*

*Groundfish* \* \* \*

(8) *Flatfish:* arrowtooth flounder (arrowtooth turbot), *Atheresthes stomias*; butter sole, *Isopsetta isolepis*; curlfin sole, *Pleuronichthys decurrens*; Dover sole, *Microstomus pacificus*; English sole, *Parophrys vetulus*; flathead sole, *Hippoglossoides elassodon*; Pacific sanddab, *Citharichthys sordidus*; petrale sole, *Eopsetta jordani*; rex sole, *Glyptocephalus zachirus*; rock sole, *Lepidopsetta bilineata*; sand sole, *Psettichthys melanostictus*; starry flounder, *Platichthys stellatus*. Where regulations of this subpart refer to landings limits for “other flatfish,” those limits apply to all flatfish cumulatively taken except for those flatfish species specifically listed in Tables 1 2 of this subpart. (i.e., “other flatfish” includes butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.)

(9) “Other fish”: Where regulations of this subpart refer to landings limits for “other fish,” those limits apply to all groundfish listed here in paragraphs (1)-(8) except for the following: those groundfish species specifically listed in Tables 1 2 of this subpart with an ABC for that area (generally north and/or south of 40°10’ N. lat.); and Pacific cod and spiny dogfish coastwide. (i.e., “other fish” may include all sharks (except spiny dogfish), skates, ratfish, morids, grenadiers, and kelp greenling listed in this section, as well as cabezon in the north.)  
 \* \* \* \* \*

*Groundfish Conservation Area or GCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. GCAs are created and enforced for the purpose of contributing to the rebuilding of overfished West Coast groundfish species. Regulations at § 660.390 define coordinates for these polygonal GCAs: Yelloweye Rockfish Conservation Areas, Cowcod Conservation Areas, waters encircling the Farallon Islands, and waters encircling the Cordell Banks. GCAs also include Rockfish Conservation Areas or RCAs, which are areas closed to fishing by particular gear types, bounded by lines approximating particular depth contours. RCA boundaries may and do change seasonally according to the different conservation needs of the different overfished species. Regulations at §§ 660.390 through 660.394 define RCA boundary lines with latitude/longitude coordinates; regulations at Tables 3–5 of Part 660 set RCA seasonal boundaries. Fishing prohibitions associated with GCAs are in addition to those associated with Essential Fish Habitat Conservation Areas, regulations which are provided at § 660.306 and §§ 660.396 through 660.399.  
 \* \* \* \* \*

*Limited entry fishery* means the fishery composed of vessels registered for use with limited entry permits.  
 \* \* \* \* \*

*Limited entry permit* means the Federal permit required to participate in the limited entry fishery, and includes any gear, size, or species endorsements affixed to the permit.  
 \* \* \* \* \*

*Maximum Sustainable Yield or MSY.* (See § 600.310).  
 \* \* \* \* \*

*North-South management area* means the management areas defined in paragraph (1) of this definition, or defined and bounded by one or more of the commonly used geographic coordinates set out in paragraph (2) of this definition for the purposes of implementing different management measures in separate geographic areas of the U.S. West Coast. \* \* \*  
 \* \* \* \* \*

*Observer Program or Observer Program Office* means the West Coast Groundfish Observer Program (WCGOP) Office of the Northwest Fishery Science Center, National Marine Fisheries Service, Seattle, Washington.

*Office of Law Enforcement (OLE)* refers to the National Marine Fisheries



Service, Office of Law Enforcement, Northwest Division.

\* \* \* \* \*
Operator. (See § 600.10).

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

(1) At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shore-based or on the water.

(2) Shore-based processing or processing in the shore-based sector means processing that takes place at a facility that is permanently fixed to land.

\* \* \* \* \*
Regional Administrator means the Administrator, Northwest Region, NMFS.

Round weight. (See § 600.10). Round weight does not include ice, water, or slime.

Scientific research activity. (See § 600.10).

Secretary. (See § 600.10).
Sell or sale. (See § 600.10).

\* \* \* \* \*
Trip. (See § 600.10).

Vessel of the United States or U.S. vessel. (See § 600.10).

3. In § 660.303, paragraphs (d)(5)(i)(A)(1) and (d)(5)(i)(G)(1) are added and paragraphs (d)(5)(i)(A)(2) and (d)(5)(i)(G)(2) are added and reserved to read as follows:

§ 660.303 Reporting and recordkeeping.

- (d) \* \* \*
(5) \* \* \*
(i) \* \* \*
(A) \* \* \*

(1) Limited entry fixed gear- Cowcod Conservation Areas [For this declaration, NMFS OLE must be contacted during business hours Monday through Friday between 0800 and 1600 Pacific Standard Time],

(2) [Reserved]

(G) \* \* \*

(1) Non-trawl gear used to take groundfish- Cowcod Conservation Areas

[For this declaration, NMFS OLE must be contacted during business hours Monday through Friday between 0800 and 1600 Pacific Standard Time],

(2) [Reserved]

4. In § 660.306, paragraphs (a)(2), (a)(9), (c)(1) introductory text, (c)(2), (f)(1)(i), (f)(2), (f)(3), (g)(1), (h)(1), and (h)(2) are revised to read as follows:

§ 660.306 Prohibitions.

(2) Retain any prohibited species (defined in § 660.302 and restricted in § 660.370(e)) caught by means of fishing gear authorized under this subpart, unless authorized by part 600 or part 300 of this chapter. Prohibited species must be returned to the sea as soon as practicable with a minimum of injury when caught and brought on board.

(9) When requested or required by an authorized officer, refuse to present fishing gear for inspection, refuse to present fish subject to such persons control for inspections; or interfere with a fishing gear or marine animal or plant life inspection.

(1) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board, unless the vessel is registered for use with a valid limited entry permit with a trawl gear endorsement, with the following exception.

(2) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed, except that a vessel may carry on board limited entry groundfish trawl gear as provided in paragraph (c)(1) of this section.

(i) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under §§ 660.324 or 660.385;

(2) During times or in areas where at-sea processing is prohibited, take and retain or receive whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under §§ 660.324. or 660.385.

(3) Participate in the mothership or shore-based sector as a catcher vessel

that does not process fish, if that vessel operates in the same calendar year as a catcher/processor in the whiting fishery, according to § 660.373(h)(2).

(1) If a limited entry permit is registered for use with a vessel, fail to carry that permit onboard the vessel registered for use with the permit. A photocopy of the permit may not substitute for the original permit itself.

(1) Fish in a conservation area with: any trawl gear, including non-trawl gear used to take pink shrimp, ridgeback prawns, and south of Pt. Arena, CA, California halibut and sea cucumber; with trawl gear from a tribal vessel; or with any gear from a vessel registered to a groundfish limited entry permit. An exception to this prohibition is provided if the vessel owner or operator has a valid declaration confirmation code or receipt for fishing in a conservation area, as specified at § 660.303(d)(5).

(2) Operate any vessel registered to a limited entry permit with a trawl endorsement and trawl gear on board in any Trawl Rockfish Conservation Area, Cowcod Conservation Area, or Essential Fish Habitat Conservation Area. Exceptions to this prohibition are provided if: the vessel is in continuous transit, with all groundfish trawl gear stowed in accordance with § 660.381(d)(4), or if the vessel operation is otherwise authorized in the groundfish management measures published at § 660.381(d)(4).

5. In § 660.314, paragraphs (f)(2)(i)(A)(1)(i) through (iii) and (f)(2)(i)(A)(3) and (4) are revised to read as follows:

§ 660.314 Groundfish observer program.

- (i) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,
(ii) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or
(iii) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(3) May not serve as observers on any vessel or at any shore-based or floating stationary processing facility owned or operated by a person who previously employed the observers.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, shore-based processor, or stationary floating processor while employed by an observer provider.

\* \* \* \* \*

6. In § 660.320, paragraphs (a)(2) and (f) are revised to read as follows:

**§ 660.320 Allocations.**

\* \* \* \* \*

(a) \* \* \*

(2) *Open access allocation.* The allocation for the open access fishery is derived by applying the open access allocation percentage to the annual harvest guideline or quota after subtracting any recreational fishery estimates or tribal allocations. For management areas where quotas or harvest guidelines for a stock are not fully utilized, no separate allocation will be established for the open access fishery until it is projected that the allowable catch for a species will be reached.

(f) *Recreational fisheries.* Recreational fishing for groundfish is outside the scope of, and not affected by, the regulations governing limited entry and open access fisheries. Certain amounts of groundfish may be specifically allocated to the recreational fishery, and will be estimated prior to dividing the commercial allocation between the commercial limited entry and open access fisheries.

7. In § 660.322, paragraph (e) is revised to read as follows:

**§ 660.322 Sablefish allocations.**

\* \* \* \* \*

(e) *Ratios between tiers for sablefish-endorsement limited entry permits.* The Regional Administrator will biennially or annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in § 660.372.

8. In § 660.323, paragraphs (a)(2), (b) introductory text, (b)(3), (b)(4), (d), and (e) are revised to read as follows:

**§ 660.323 Pacific whiting allocations, allocation attainment, and inseason allocation reapportionment.**

\* \* \* \* \*

(a) \* \* \*

(2) The non-tribal commercial harvest guideline for whiting is allocated among three sectors, as follows: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shore-based sector. No more than 5 percent of the shore-based allocation may be taken and retained south of 42° N. lat. before the start of the primary whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in tables 1a and 2a of this subpart.

\* \* \* \* \*

(b) *Reaching an allocation.* If the whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached, the following action(s) for the applicable sector(s) may be taken as provided under paragraph (e) of this section and will remain in effect until additional amounts are made available the next calendar year or under paragraph (c) of this section.

\* \* \* \* \*

(3) *Shore-based sector coastwide.* Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shore-based sector except as authorized under a trip limit specified under § 660.370(c).

(4) *Shore-based south of 42° N. lat.* If 5 percent of the shore-based allocation for whiting is taken and retained south of 42° N. lat. before the primary season for the shore-based sector begins north of 42° N. lat., then a trip limit specified under § 660.370(c) may be implemented south of 42° N. lat. until the northern primary season begins, at which time the southern primary season would resume.

\* \* \* \* \*

(d) *Estimates.* Estimates of the amount of whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shore-based processors by the end of the calendar year will be based on the best information available to the Regional Administrator from state catch and landings data, the testimony received at Council meetings, and/or other relevant information.

(e) *Announcements.* The Regional Administrator will announce in the **Federal Register** when a harvest guideline, commercial harvest guideline, or an allocation of whiting is reached, or is projected to be reached,

specifying the appropriate action being taken under paragraph (b) of this section. The Regional Administrator will announce in the **Federal Register** any reapportionment of surplus whiting to others sectors on September 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of surplus whiting may be made effective immediately by actual notice to fishers and processors, by e-mail, internet ([www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm](http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm)), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter.

\* \* \* \* \*

9. In § 660.324, paragraphs (c) (1) through (4), (g), (h), and (j) are revised to read as follows:

**§ 660.324 Pacific Coast treaty Indian fisheries.**

\* \* \* \* \*

(c) \* \* \*

(1) Makah-That portion of the FMA north of 48°02.25' N. lat. (Norwegian Memorial) and east of 125°44' W. long.

(2) Quileute-That portion of the FMA between 48°07.60' N. lat. (Sand Point) and 47°31.70' N. lat. (Queets River) and east of 125°44' W. long.

(3) Hoh-That portion of the FMA between 47°54.30' N. lat. (Quillayute River) and 47°21' N. lat. (Quinault River) and east of 125°44' W. long.

(4) Quinault-That portion of the FMA between 47°40.10' N. lat. (Destruction Island) and 46°53.30' N. lat. (Point Chehalis) and east of 125°44' W. long.

\* \* \* \* \*

(g) Fishing under this section and § 660.385 by a member of a Pacific Coast treaty Indian tribe within their usual and accustomed fishing area is not subject to the provisions of other sections of this subpart.

(h) Any member of a Pacific Coast treaty Indian tribe must comply with this section and § 660.385, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in paragraph (d) of this section.

\* \* \* \* \*

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear

will be established biennially for two subsequent one-year periods for the areas between the U.S.-Canadian border and Cape Alava (48°09.50' N. lat.) and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38.17' N. lat.), in accordance with the procedures for implementing harvest specifications and management measures. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section §§ 660.321 and 660.385, and not to the restrictions in other sections of this part.

10. Section § 660.365 is revised to read as follows:

**§ 660.365 Overfished species rebuilding plans.**

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial OYs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock. The harvest control rule is expressed as a "Spawning Potential Ratio" or "SPR" harvest rate.

(a) *Bocaccio*. The target year for rebuilding the southern bocaccio stock to B<sub>MSY</sub> is 2026. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual SPR harvest rate of 77.7 percent.

(b) *Canary rockfish*. The target year for rebuilding the canary rockfish stock to B<sub>MSY</sub> is 2063. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

(c) *Cowcod*. The target year for rebuilding the cowcod stock south of Point Conception to B<sub>MSY</sub> is 2039. The harvest control rule to be used to rebuild the cowcod stock is an annual SPR harvest rate of 90.0 percent.

(d) *Darkblotched rockfish*. The target year for rebuilding the darkblotched rockfish stock to B<sub>MSY</sub> is 2011. The harvest control rule to be used to rebuild the darkblotched rockfish stock is an annual SPR harvest rate of 64.1 percent in 2007 and 60.7 percent beginning in 2008.

(e) *Pacific ocean perch (POP)*. The target year for rebuilding the POP stock to B<sub>MSY</sub> is 2017. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(f) *Widow rockfish*. The target year for rebuilding the widow rockfish stock to B<sub>MSY</sub> is 2015. The harvest control rule to be used to rebuild the widow rockfish stock is an annual SPR harvest rate of 95.0 percent.

(g) *Yelloweye rockfish*. The target year for rebuilding the yelloweye rockfish stock to B<sub>MSY</sub> is 2084. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate is 55.4 in 2007 and 60.8 in 2008. Yelloweye rockfish is subject to a ramp-down strategy where the harvest level will be reduced from current levels until 2011. Beginning in 2011, yelloweye rockfish will be subject to a constant harvest rate strategy with a constant SPR harvest rate of 71.9 percent.

11. In § 660.370, paragraphs (c)(1)(iii), and (h)(5)(iv)(C) are added, and paragraphs (d), (h)(5)(i) introductory text, (h)(5)(iv)(A) and (B), (h)(6) introductory text, (h)(8)(iv)(A) and (B), (h)(8)(v) and (vi) are revised to read as follows:

**§ 660.370 Specifications and management measures.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) *Type of limited entry trawl gear on board*. Limits on the type of limited entry trawl gear on board a vessel may be imposed on a biennial or more frequent basis. Requirements and restrictions on limited entry trawl gear type are found at § 660.381.

\* \* \* \* \*

(d) *Automatic actions*. Automatic management actions may be initiated by the NMFS Regional Administrator without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the Federal Register making the action effective if good cause exists under the APA to waive notice and comment. Automatic actions are used in the Pacific whiting fishery to close the fishery or reinstate trip limits when a whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached; or to reapportion unused allocation to other sectors of the fishery. An automatic action is also used in the Pacific whiting fishery to implement the Ocean Salmon Conservation Zone, described at 660.373(c)(3), when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

\* \* \* \* \*

(h) \* \* \*

(5) \* \* \*

(i) *Size limits and length measurement*. Unless otherwise specified, size limits in the commercial

and recreational groundfish fisheries apply to the "total length," which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish. No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed. Washington state regulations require all fish with a size limit landed into Washington to be landed with the head on.

\* \* \* \* \*

(iv) \* \* \*

(A) North of 42° N. lat., for lingcod with the head removed, the minimum size limit is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(B) South of 42° N. lat., for lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(C) The weight conversion factor for headed and gutted lingcod is 1.5. The conversion factor for lingcod that has only been gutted with the head on is 1.1.

(6) *Sorting*. Under § 660.306(a)(7), it is unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, OY, or quota applied." The States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state fish tickets. This provision applies to both the limited entry and open access fisheries. The following species must be sorted:

\* \* \* \* \*

(8) \* \* \*

(iv) \* \* \*

(A) If a vessel takes and retains minor slope rockfish north of 40°10' N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10' N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10' N. lat.

\* \* \* \* \*

(B) If a vessel takes and retains minor slope rockfish south of 40°10' N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10' N. lat., even if POP were a part of the landings

from minor slope rockfish taken and retained south of 40°10' N. lat.

\* \* \* \* \*

(v) “*DTS complex*.” There are often differential trawl trip limits for the “DTS complex” north and south of latitudinal management lines. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the four species in the “DTS complex.”

(vi) *Flatfish complex*. There are often differential trip limits for the flatfish complex (butter, curlfin, English, flathead, petrale, rex, rock, and sand soles, Pacific sanddab, and starry flounder) north and south of latitudinal management lines. Vessels operating in the limited entry trawl fishery are subject to the crossover provisions in this paragraph when making landings that include any one of the species in the flatfish complex.

12. In § 660.372, paragraphs (b)(1) and (b)(3)(i) is revised to read as follows:

**§ 660.372 Fixed gear sablefish fishery management.**

\* \* \* \* \*

(b) \* \* \*

(1) *Season dates*. North of 36° N. lat., the primary sablefish season for the limited entry, fixed gear, sablefish-endorsement vessels begins at 12 noon l.t. on April 1 and ends at 12 noon l.t. on October 31, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.370(c).

\* \* \* \* \*

(3) \* \* \*

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to participate in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel. If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other

than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under paragraph (c) of this section. The following annual limits are in effect: Tier 1 at 48,500 lb (21,999 kg), Tier 2 at 22,000 lb (9,979 kg), and Tier 3 at 12,500 lb (5,670 kg).

\* \* \* \* \*

13. In § 660.373, paragraphs (a), (b)(1)(iii) introductory text, (b)(2), (b)(3) introductory text, (b)(4), (c)(1), (c)(2), and (d)(1) are revised and paragraph (c)(3) is added to read as follows:

**§ 660.373 Pacific whiting (whiting) fishery management.**

(a) *Sectors*. The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting during a calendar year. The shore-based sector is composed of vessels that harvest whiting for delivery to shore-based processors.

(b) \* \* \*

(1) \* \* \*

(iii) *Primary whiting seasons*. After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the quota is taken and the fishery season for that sector is closed by NMFS. The primary seasons for the whiting fishery are as follows:

(2) *South of 40°30' N. lat.* The primary season starts on April 15 south of 40°30' N. lat.

(3) *Trip limits in the whiting fishery*. The “per trip” limit for whiting before and after the regular (primary) season for the shore-based sector is announced in Table 3 of this subpart, and is a routine management measure under § 660.370(c). This trip limit includes any whiting caught shoreward of 100-fm (183-m) in the Eureka, CA area. The “per trip” limit for other groundfish species before, during, and after the regular (primary) season are announced in Table 3 (North) and Table 3 (South) of this subpart and apply as follows:

(4) *Bycatch limits in the whiting fishery*. The bycatch limits for the whiting fishery may be used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock, under routine management measure authority at § 660.370 (c)(1)(ii). These limits are routine management measures under § 660.370 (c) and, as such, may be adjusted inseason or may have new species added to the list of those with

bycatch limits. The whiting fishery bycatch limits for the sectors identified § 660.323(a) are 4.7 mt of canary rockfish, 200 mt of widow rockfish, and 25 mt of darkblotched rockfish.

\* \* \* \* \*

(c) \* \* \*

(1) *Klamath River Salmon Conservation Zone*. The ocean area surrounding the Klamath River mouth bounded on the north by 41°38.80' N. lat. (approximately 6 nm north of the Klamath River mouth), on the west by 124°23' W. long. (approximately 12 nm from shore), and on the south by 41°26.80' N. lat. (approximately 6 nm south of the Klamath River mouth).

(2) *Columbia River Salmon Conservation Zone*. The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18' N. lat. to 124°13.30' W. long., then southerly along a line of 167 True to 46°11.10' N. lat. and 124°11' W. long. (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty.

(3) *Ocean Salmon Conservation Zone*. All waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour. Latitude and longitude coordinates defining the boundary line approximating the 100 fm (183 m) depth contour are provided at § 660.393(a).

(d) \* \* \*

(1) *Whiting trip limits*. No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fm (183-m) contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka management area (defined at § 660.302).

\* \* \* \* \*

14. In § 660.381, paragraphs (a), (b)(3), (d)(3), and (d)(4)(i) and (ii) are revised ; and paragraph (d)(5) is added to read as follows:

**§ 660.381 Limited entry trawl fishery management measures.**

(a) *General*. Limited entry trawl vessels include those vessels registered to a limited entry permit with a trawl endorsement. Most species taken in limited entry trawl fisheries will be managed with cumulative trip limits (see trip limits in Tables 3 (North) and 3 (South) of this subpart), size limits (see § 660.370 (h)(5)), seasons (see Pacific whiting at § 660.373), gear restrictions (see paragraph (b) of this section) and closed areas (see paragraph (d) of this section and §§ 660.390 through 660.399). The trawl fishery has gear requirements and trip limits that

differ by the type of trawl gear on board and the area fished. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (d)(1) of this section and § 660.390). The trip limits in Table 3 (North) and Table 3 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

\* \* \* \* \*

(b) \* \* \*

(3) *Chafing gear.* Chafing gear may encircle no more than 50 percent of the net's circumference. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Chafing gear may be used only on the last 50 meshes, measured from the terminal (closed) end of the codend. Except at the corners, the terminal end of each section of chafing gear on all trawl gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

\* \* \* \* \*

(d) \* \* \*

(3) *Cordell Banks.* Commercial fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Banks as defined by specific latitude and longitude coordinates at § 660.390.

(4) \* \* \*

(i) Coastwide, it is unlawful to take and retain, possess, or land any species of fish taken with trawl gear within the trawl RCA, except as permitted for vessels participating in the primary whiting season and for vessels fishing with demersal seine gear between 38° N. lat. and 36° N. lat. shoreward of a boundary line approximating the 100-fm (183-m) depth contour as defined at § 660.393. Throughout the year, boundaries for the trawl RCA are provided in Table 3 (North) and Table 3 (South) of this subpart, and may be modified by NMFS inseason pursuant to § 660.370(c). Trawl RCA boundaries are defined by specific latitude and longitude coordinates which are provided at §§ 660.390 through 660.394.

(ii) Trawl vessels may transit through the trawl RCA, with or without groundfish on board, provided all groundfish trawl gear is stowed either:

below deck; or if the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; or remaining on deck uncovered if the trawl doors are hung from their stanchions and the net is disconnected from the doors. These restrictions do not apply to vessels fishing with mid-water trawl gear for Pacific whiting or taking and retaining yellowtail rockfish or widow rockfish in association with Pacific whiting caught with mid-water trawl gear.

\* \* \* \* \*

(5) *Essential Fish Habitat Conservation Areas.* The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.396 through 660.399, where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.306.

15. In § 660.382, paragraphs (a) and (c) are revised to read as follows:

**§ 660.382 Limited entry fixed gear fishery management measures.**

(a) *General.* Most species taken in limited entry fixed gear (longline and pot/trap) fisheries will be managed with cumulative trip limits (see trip limits in Tables 4 (North) and 4 (South) of this subpart), size limits (see § 660.370(h)(5)), seasons (see trip limits in Tables 4 (North) and 4 (South) of this subpart and primary sablefish season details in § 660.372(b)), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (c) of this section and §§ 660.390 through 660.399). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (c)(4) of this section and § 660.390). Yelloweye rockfish and canary rockfish retention is prohibited in the limited entry fixed gear fisheries. Regulations governing and tier limits for the limited entry, fixed gear primary sablefish season north of 36° N. lat. are found in § 660.372. Vessels not participating in the primary sablefish season are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.371. The trip limits in Table 4 (North) and Table 4 (South) of this subpart apply to vessels

participating in the limited entry groundfish fixed gear fishery and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

\* \* \* \* \*

(c) *Groundfish Conservation Areas.* A Groundfish Conservation Area (GCA), a type of closed area, is a geographic area defined by coordinates expressed in degrees latitude and longitude. The following GCAs apply to vessels participating in the limited entry fixed gear fishery.

(1) *North Coast Recreational Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.390. The North Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(2) *North Coast Commercial Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.390. Fishing with limited entry fixed gear is prohibited within the North Coast Commercial YRCA. It is unlawful to take and retain, possess, or land groundfish taken with limited entry fixed gear within the North Coast Commercial YRCA.

(3) *South Coast Recreational Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.390. The South Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(4) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.390. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50' N. lat., and bounded on the south by the latitude line at 32°59.50' N. lat. Fishing with

limited entry fixed gear is prohibited within the CCAs, except as follows:

(i) Fishing for "other flatfish" is permitted within the CCAs using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line.

(ii) Fishing for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour.

(iii) If a vessel has VMS, as required at § 660.312, with position reports set at 15 minute intervals, fishing is permitted within the boundaries of the Western CCA described at § 660.390(f) but outside the boundaries of the 175-fm (320-m) CCAs described at § 660.390(j). Vessels with commercial fishing gear onboard are prohibited from transiting the 175-fm (320-m) CCAs.

(5) *Non-trawl Rockfish Conservation Areas*. Fishing for groundfish with non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, gillnet, set net, trammel net and spear) is prohibited within the non-trawl rockfish conservation area (RCA). An exception to this prohibition is that commercial fishing for "other flatfish" is permitted within the non-trawl RCA off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear within the non-trawl RCA, unless otherwise authorized in this section. Limited entry fixed gear vessels may transit through the non-trawl RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish with non-trawl gear, although non-trawl vessels on a fishing trip for species other than groundfish that occurs within the non-trawl RCA may not retain any groundfish taken on that trip. If a vessel fishes in the non-trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the non-trawl RCA. [For example, if a vessel participates in the salmon troll fishery within the RCA, the vessel cannot on the same trip participate in the sablefish fishery outside of the RCA.] Boundaries for the non-trawl RCA throughout the year are provided in the header to Table 4 (North) and Table 4 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-trawl RCA boundaries are defined by

coordinates and are provided at §§ 660.390 through 660.394.

(6) *Farallon Islands*. Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line. (See Table 4 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.390.

(7) *Cordell Banks*. Commercial fishing for groundfish is prohibited in waters of depths less than 100 fm (183 m) around Cordell Banks, as defined by specific latitude and longitude coordinates at § 660.390. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1-lb (0.45-kg) weights per line.

(8) *Essential Fish Habitat Conservation Areas*. The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.396 through 660.399, where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.306.

16. In § 660.383, paragraphs (a), (b) introductory text, (b)(2)(i)(A), (b)(2)(iii) introductory text, (c), (d)(1)(i), (d)(2)(i), and (d)(3)(i) are revised to read as follows:

**§ 660.383 Open access fishery management measures.**

(a) *General*. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see trip limits in Tables 5 (North) and 5 (South) of this subpart), size limits (see § 660.370(h)(5)), seasons (see seasons in Tables 5 (North) and 5 (South) of this subpart), gear restrictions (see paragraph (b) of this section), and closed areas (see paragraph (c) of this section and §§ 660.390 through 660.399). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (c)(4) of this section and § 660.390). Retention of yelloweye rockfish and canary rockfish

is prohibited in all open access fisheries. For information on the open access daily/weekly trip limit fishery for sablefish, see § 660.372(c) and the trip limits in Tables 5 (North) and 5 (South) of this subpart. Open access vessels are subject to daily or weekly sablefish limits in addition to cumulative limits for each cumulative limit period. Only one sablefish landing per week may be made in excess of the daily trip limit and, if the vessel chooses to make a landing in excess of that daily trip limit, then that is the only sablefish landing permitted for that week. The trip limit for black rockfish caught with hook-and-line gear also applies, see § 660.371. The trip limits in Table 5 (North) and Table 5 (South) of this subpart apply to vessels participating in the open access fisheries and may not be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally managed groundfish.

(b) *Gear restrictions*. Open access gear is gear used to take and retain groundfish from a vessel that is not registered for use with a limited entry permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), setnet (anchored gillnet or trammel net, which are permissible south of 38° N. lat. only), spear and non-groundfish trawl gear (trawls used to target non-groundfish species: pink shrimp or ridgeback prawns, and, south of Pt. Arena, CA (38°57.50' N. lat.), California halibut or sea cucumbers). Restrictions for gears used in the open access fisheries are as follows:

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) Marked at the surface, at each terminal end, with a pole, flag, light, radar reflector, and a buoy except as provided in paragraph (b)(2)(ii) of this section.

\* \* \* \* \*

(iii) A buoy used to mark fixed gear under paragraph (b)(2)(i)(A) or (b)(2)(ii) of this section must be marked with a number clearly identifying the owner or operator of the vessel. The number may be either:

\* \* \* \* \*

(c) *Open Access Groundfish Conservation Areas*. A Groundfish Conservation Area (GCA), a type of

closed area, is a geographic area defined by coordinates expressed in degrees latitude and longitude. The following CCAs apply to participants in the open access fishery.

(1) *North Coast Recreational Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.390. The North Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(2) *North Coast Commercial Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.390. Fishing with open access gear is prohibited within the North Coast Commercial YRCA. It is unlawful to take and retain, possess, or land groundfish within the North Coast Commercial YRCA.

(3) *South Coast Recreational Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified at § 660.390. The South Coast Recreational YRCA is designated as an area to be avoided (a voluntary closure) by commercial fixed gear fishers.

(4) *Salmon Troll Yelloweye Rockfish Conservation Area.* The latitude and longitude coordinates of the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA) boundaries are specified in the groundfish regulations at § 660.390 and in the salmon regulations at § 660.405. Fishing with salmon troll gear is prohibited within the Salmon Troll YRCA. It is unlawful for commercial salmon troll vessels to take and retain, possess, or land fish within the Salmon Troll YRCA.

(5) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.390. It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this paragraph caught according to gear requirements in this paragraph, when those waters are open to fishing. Commercial fishing vessels may transit through the Western CCA with their gear stowed and groundfish on board only in a corridor through the Western CCA bounded on the north by the latitude line at 33°00.50' N. lat., and bounded on the south by the latitude line at 32°59.50' N. lat. Fishing with

open access gear is prohibited in the CCAs, except as follows:

(i) Fishing for "other flatfish" is permitted within the CCAs using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line.

(ii) Fishing with open access non-trawl gear for rockfish and lingcod is permitted shoreward of the 20 fm (37 m) depth contour.

(iii) If an open access non-trawl vessel has VMS, as required at § 660.312, with position reports set at 15 minute intervals, fishing is permitted with open access non-trawl gear within the boundaries of the Western CCA described at § 660.390(f) but outside the boundaries of the 175-fm (320-m) CCAs described at § 660.390(j). Vessels with commercial fishing gear onboard are prohibited from transiting the 175-fm (320-m) CCAs.

(6) *Non-trawl Rockfish Conservation Area for the open access fisheries.* Fishing for groundfish with non-trawl gear (limited entry or open access longline and pot or trap, open access hook-and-line, gillnet, set net, trammel net and spear) is prohibited within the non-trawl rockfish conservation area (RCA). An exception to this prohibition is that commercial fishing for "other flatfish" is permitted within the non-trawl RCA off California (between 42° N. lat. south to the U.S./Mexico border) using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line. It is unlawful to take and retain, possess, or land groundfish taken with non-trawl gear within the non-trawl RCA, unless otherwise authorized in this section. Open access non-trawl gear vessels may transit through the non-trawl RCA, with or without groundfish on board. These restrictions do not apply to vessels fishing for species other than groundfish or Pacific halibut with non-trawl gear, although non-trawl vessels on a fishing trip for species other than groundfish and Pacific halibut that occurs within the non-trawl RCA may not retain any groundfish taken on that trip (The Pacific halibut regulations at 50 CFR 300.63(e) describe the RCA that applies to the commercial halibut fishery). If a vessel fishes in the non-trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the non-trawl RCA. Retention of groundfish caught by salmon troll gear is prohibited in the non-trawl RCA, except that salmon trollers may retain yellowtail rockfish caught both inside and outside

the non-trawl RCA subject to the limits in Tables 5 (North) and 5 (South) of this subpart. Boundaries for the non-trawl RCA throughout the year are provided in the open access trip limit tables, Table 5 (North) and Table 5(South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-trawl RCA boundaries are defined by specific latitude and longitude coordinates which are specified at §§ 660.390 through 660.394.

(7) *Non-groundfish Trawl Rockfish Conservation Area for the open access non-groundfish trawl fisheries.*

(i) Fishing with any non-groundfish trawl gear in the open access fisheries is prohibited within the non-groundfish trawl RCA coastwide, except as authorized in this paragraph. Nothing in these Federal regulations supercedes any state regulations that may prohibit trawling shoreward of the 3 nm state waters boundary line. Trawlers operating in the open access fisheries with legal groundfish trawl gear are considered to be operating in the non-groundfish trawl fishery and are, therefore, prohibited from fishing in the non-groundfish trawl RCA. Coastwide, it is unlawful to take and retain, possess, or land any species of fish taken with non-groundfish trawl gear within the non-groundfish trawl RCA, except as permitted in this paragraph for vessels participating in the pink shrimp and ridgeback prawn trawl fisheries. Boundaries for the non-groundfish trawl RCA throughout the year in the open access fishery are provided in Table 5 (North) and Table 5 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-groundfish trawl RCA boundaries are defined by specific latitude and longitude coordinates which are specified below at §§ 660.390 through 660.394. The non-groundfish trawl RCA is closed coastwide to open access non-groundfish trawl fishing, except as follows:

(A) Pink shrimp trawling is permitted in the non-groundfish trawl RCA, and

(B) When the shoreward line of the non-groundfish trawl RCA is shallower than 100 fm (183 m), the ridgeback prawn trawl fishery south of 34°27.00' N. lat. may operate out to the 100 fm (183 m) boundary line specified at § 660.393 (i.e., the shoreward boundary of the non-groundfish trawl RCA is at the 100 fm (183 m) boundary line all year for the ridgeback prawn trawl fishery in this area).

(ii) If a vessel fishes in the non-groundfish trawl RCA, it may not participate in any fishing on that trip that is prohibited by the restrictions that apply within the non-groundfish trawl

RCA. [For example, if a vessel participates in the pink shrimp fishery within the RCA, the vessel cannot on the same trip participate in the DTS fishery seaward of the RCA.]

(8) *Farallon Islands*. Under California law, commercial fishing for all groundfish is prohibited between the shoreline and the 10 fm (18 m) depth contour around the Farallon Islands. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around the Farallon Islands using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line. (See Table 5 (South) of this subpart.) For a definition of the Farallon Islands, see § 660.390.

(9) *Cordell Banks*. Commercial fishing for groundfish is prohibited in waters of depths less than 100–fm (183–m) around Cordell Banks, as defined by specific latitude and longitude coordinates at § 660.390. An exception to this prohibition is that commercial fishing for "other flatfish" is permitted around Cordell Banks using no more than 12 hooks, "Number 2" or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line.

(10) *Essential Fish Habitat Conservation Areas*. The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.396 through 660.399, where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.306.

(d) \* \* \*

(1) \* \* \*

(i) It is not registered to a valid Federal limited entry groundfish permit issued under § 660.333 for trawl gear; and

\* \* \* \* \*

(2) \* \* \*

(i) It is not registered to a valid Federal limited entry groundfish permit issued under § 660.333 for trawl gear;

\* \* \* \* \*

(3) \* \* \*

(i) It is not registered to a valid Federal limited entry groundfish permit issued under § 660.333 for trawl gear;

\* \* \* \* \*

17. In § 660.384, paragraphs (c)(1)(i), (c)(1)(iii), (c)(2)(i), (c)(2)(iii), (c)(3) introductory text, (c)(3)(i)(A)(1) through (4), (c)(3)(i)(B), (c)(3)(ii)(A)(1) through (4), (c)(3)(ii)(B), (c)(3)(iii)(A)(1) through (4), (c)(3)(iv), (c)(3)(v) introductory text, and (c)(3)(v)(A)(1) through (3) are revised; and paragraph (c)(3)(i)(E) is added to read as follows:

**§ 660.384 Recreational fishery management measures.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Recreational Groundfish Conservation Areas off Washington.

(A) *North Coast Recreational Yelloweye Rockfish Conservation Area*. Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish within the North Coast Recreational YRCA. The North Coast Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.390.

(B) *South Coast Recreational Yelloweye Rockfish Conservation Area*. Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish within the South Coast Recreational YRCA. The South Coast Recreational YRCA is defined by latitude and longitude coordinates specified at § 660.390.

(C) *Recreational Rockfish Conservation Area*. Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.]

(1) Between the U.S. border with Canada and the Queets River, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 20–fm (37–m) depth contour from May 1 through September 30, except on days when the Pacific halibut fishery is open in this area. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206)526 6667 or (800)662 9825. Coordinates for the boundary line approximating the 20–fm (37–m) depth contour are listed in § 660.391.

\* \* \* \* \*

(2) Between the Queets River and Leadbetter Point, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 30–fm (55–m) depth contour in from March 17,

2007, through July 31, 2007, except that recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15. In 2008, recreational fishing for groundfish is prohibited seaward of a boundary line approximating the 30–fm (55–m) depth contour in from March 15, 2008, through July 31, 2008, except that recreational fishing for sablefish and Pacific cod is permitted within the recreational RCA from May 1 through June 15. Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in § 660.391.

\* \* \* \* \*

(iii) *Lingcod*. In areas of the EEZ seaward of Washington that are open to recreational groundfish fishing and when the recreational season for lingcod is open, there is a bag limit of 2 lingcod per day, which may be no smaller than 22 in (56 cm) total length. The recreational fishing season for lingcod is open as follows:

(A) Between the U.S./Canada border to 48°10' N. lat. (Cape Alava) (Washington Marine Area 4), recreational fishing for lingcod is open, for 2007, from April 15 through October 13, and for 2008, from April 15 through October 15.

(B) Between 48°10' N. lat. (Cape Alava) and 46°16' N. lat. (Washington/Oregon border) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2007, from March 17 through October 13, and for 2008, from March 15 through October 18.

(2) \* \* \*

(i) *Recreational Groundfish Conservation Areas off Oregon*.

(A) *Stonewall Bank Yelloweye Rockfish Conservation Area*. Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land groundfish within the Stonewall Bank YRCA. The Stonewall Bank YRCA is defined by latitude and longitude coordinates specified at § 660.390.

(B) *Recreational Rockfish Conservation Area*. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or GCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may,



however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from April 1 through September 30, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40 fm (73 m) depth contour. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed at § 660.391.

(C) *Essential Fish Habitat Conservation Areas.* The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.396 through 660.399, where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.306.

\* \* \* \* \*

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are two lingcod per day, which may be no smaller than 22 in (56 cm) total length; and 8 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, flatfish, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. The bag limit for all flatfish is 25 fish per day, which excludes Pacific halibut, but which includes all soles, flounders and Pacific sanddabs. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast “all-depth” sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish. “All-depth” season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1 800 662 9825. The minimum size limit for cabezon retained in the recreational fishery is 16 in (41 cm), and for greenling is 10 in (26 cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas.

(3) *California.* Seaward of California, California law provides that, in times and areas when the recreational fishery is open, there is a 20 fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. [Note: There are some exceptions to this rule. The following groundfish species are not subject to a bag limit: petrale sole, Pacific sanddab and starry flounder.] For groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20–fish bag limit for all species of finfish and the depth restrictions at paragraph (3)(i). California state law may provide regulations similar to Federal regulations for the following state-managed species: ocean whitefish, California sheephead, and all greenlings of the genus *Hexagrammos*. Kelp greenling is the only federally-managed greenling. Retention of cowcod, yelloweye rockfish, and canary rockfish is prohibited in the recreational fishery seaward of California all year in all areas. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) \* \* \*

(A) \* \* \*

(1) Between 42° N. lat. (California/Oregon border) and 40°10.00' N. lat. (North Region), recreational fishing for all groundfish (except “other flatfish” as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through December 31; and is closed entirely from January 1 through April 30 (i.e., prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are specified in § 660.391.

(2) Between 40°10' N. lat. and 37°11' N. lat. (North Central Region), recreational fishing for all groundfish (except “other flatfish” as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 30 fm (55 m) depth contour along the mainland coast and along islands and offshore seamounts from June 1 through November 30; and is closed entirely from January 1 through May 31 and from December 1 - 31 (i.e., prohibited seaward of the shoreline). Closures around the Farallon Islands (see paragraph (c)(3)(i)(C) of this section) and Cordell Banks (see paragraph (c)(3)(i)(D) of this section) also apply in this area.

(3) Between 37°11' N. lat. and 34°27' N. lat. (South Central Regions -

Monterey and Morro Bay), recreational fishing for all groundfish (except “other flatfish” as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 40 fm (73 m) depth contour along the mainland coast and along islands and offshore seamounts from May 1 through November 30; and is closed entirely from January 1 through April 30 and from December 1 - 31 (i.e., prohibited seaward of the shoreline). Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are specified in § 660.391.

(4) South of 34°27' N. latitude (South Region), recreational fishing for all groundfish (except California scorpionfish as specified below in this paragraph and in paragraph (v) and “other flatfish” as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of a boundary line approximating the 60 fm (110 m) depth contour from March 1 through December 31 along the mainland coast and along islands and offshore seamounts, except in the CCAs where fishing is prohibited seaward of the 20 fm (37 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section). Recreational fishing for all groundfish (except California scorpionfish and “other flatfish”) is closed entirely from January 1 through February 28 (i.e., prohibited seaward of the shoreline). Recreational fishing for California scorpionfish south of 34°27' N. lat. is prohibited seaward of a boundary line approximating the 40 fm (73 m) depth contour from January 1 through February 28, and seaward of the 60 fm (110 m) depth contour from March 1 through December 31, except in the CCAs where fishing is prohibited seaward of the 20 fm (37 m) depth contour when the fishing season is open. Coordinates for the boundary line approximating the 40 fm (73 m) and 60 fm (110 m) depth contours are specified in §§ 660.391 and 660.392.

(B) *Cowcod Conservation Areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.390. In general, recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for “other flatfish” is permitted within the CCAs as specified in paragraph (c)(3)(iv) of this section. However, recreational fishing for the following species is permitted shoreward of the 20 fm (37 m) depth contour when the season for those species is open south of 34°27' N. lat.: minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, and “other flatfish”

(subject to gear requirements at paragraph (c)(3)(iv) of this section during January-February). [NOTE: California state regulations also permit recreational fishing for California sheephead, ocean whitefish, and all greenlings of the genus *Hexagrammos* shoreward of the 20 fm (37 m) depth contour in the CCAs when the season for the RCG Complex is open south of 34°27' N. lat.] It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this section.

\* \* \* \* \*

(E) *Essential Fish Habitat Conservation Areas*. The Essential Fish Habitat Conservation Areas (EFHCAs) are closed areas, defined by specific latitude and longitude coordinates at §§ 660.396 through 660.399, where specified types of fishing are prohibited. Prohibitions applying to specific EFHCAs are found at § 660.306.

(ii) \* \* \*

(A) \* \* \*

(1) North of 40°10' N. lat. (North Region), recreational fishing for the RCG Complex is open from May 1 through December 31.

(2) Between 40°10' N. lat. and 37°11' N. lat. (North Central Region), recreational fishing for the RCG Complex is open from June 1 through November 30 (i.e., it's closed from January 1 through May 31 and from December 1 - 31).

(3) Between 37°11' N. lat. and 34°27' N. lat. (South Central Regions - Monterey and Morro Bay), recreational fishing for the RCG Complex is open from May 1 through November 30 (i.e., it's closed from January 1 through April 30 and from December 1 - 31).

(4) South of 34°27' N. lat. (South Region), recreational fishing for the RCG Complex is open from March 1 through December 31 (i.e., it's closed from January 1 through February 29).

(B) *Bag limits, hook limits*. In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for rockfish. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish and cowcod is prohibited. North of 40°10' N. lat., within the 10 RCG Complex fish per day limit, no more than 2 may be bocaccio, no more than 2 may be greenling (kelp and/or other greenlings) and no more than 1 may be cabezon. South of 40°10' N. lat., within the 10 RCG Complex fish per day limit, no more than 1 may be bocaccio, no more than 2 may be greenling (kelp and/or other greenlings) and no more than 1 may be cabezon. Multi-day limits

are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

\* \* \* \* \*

(iii) \* \* \*

(A) \* \* \*

(1) North of 40°10' N. lat. (North Region), recreational fishing for lingcod is open from May 1 through November 30 (i.e., it's closed from January 1 through April 30 and from December 1 - 31).

(2) Between 40°10' N. lat. and 37°11' N. lat. (North Central Region), recreational fishing for lingcod is open from June 1 through November 30 (i.e., it's closed from January 1 through May 31 and from December 1 - 31).

(3) Between 37°11' N. lat. and 34°27' N. lat. (South Central Regions - Monterey and Morro Bay), recreational fishing for lingcod is open from May 1 through November 30 (i.e., it's closed from January 1 through April 30 and from December 1 - 31).

(4) South of 34°27' N. lat. (South Region), recreational fishing for lingcod is open from April 1 through November 30 (i.e., it's closed from January 1 through March 31 and from December 1 - 31).

\* \* \* \* \*

(iv) *“Other flatfish”*. Coastwide off California, recreational fishing for “other flatfish” is permitted both shoreward of and within the closed areas described in paragraph (c)(3)(i) of this section. “Other flatfish” are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole. Recreational fishing for “other flatfish” is permitted within the closed areas, subject to a limit of up to 12 hooks, “Number 2” or smaller, which measure no more than 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. “Other flatfish,” except Pacific sanddab, are subject to the overall 20 fish bag limit for all species of finfish, of which there may be no more than 10 fish of any one species. There is no season restriction or size limit for “other flatfish;” however, it is prohibited to filet “other flatfish” at sea.

(v) *California scorpionfish*. California scorpionfish predominately occur south of 40°10' N. lat.

(A) \* \* \*

(1) Between 40°10' N. lat. and 37°11' N. lat. (North Central Region), recreational fishing for California scorpionfish is open from June 1 through November 30 (i.e., it's closed from January 1 through May 31 and from December 1 through December 31).

(2) Between 37°11' N. lat. and 34°27' N. lat. (South Central Regions - Monterey and Morro Bay), recreational fishing for California scorpionfish is open from May 1 through November 30 (i.e., it's closed from January 1 through April 30 and from December 1 through December 31).

(3) South of 34°27' N. lat. (South Region), recreational fishing for California scorpionfish is open from January 1 through December 31.

\* \* \* \* \*

18. In § 660.385, paragraphs (a), (b) introductory text, (b)(1) and (2), (b)(5), (d), (f), and (g) are revised; and paragraph (b)(7) is removed to read as follows:

**§ 660.385 Washington coastal tribal fisheries management measures.**

\* \* \* \* \*

(a) *Sablefish*. The tribal allocation is 561.4 mt per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area OY, less 1.9 percent estimated discard mortality.

(b) *Rockfish*. The tribes will require full retention of all overfished rockfish species and all other marketable rockfish species during treaty fisheries.

(1) For the commercial harvest of black rockfish off Washington State, a harvest guideline of: 20,000 lb (9,072 kg) north of Cape Alava, WA (48°09.50' N. lat.) and 10,000 lb (4,536 kg) between Destruction Island, WA (47°40' N. lat.) and Leadbetter Point, WA (46°38.17' N. lat.). There are no tribal harvest restrictions for the area between Cape Alava and Destruction Island.

(2) *Thornyheads*. The tribes will manage their fisheries to the limited entry trip limits in place at the beginning on the year for both shortspine and longspine thornyheads as follows:

(i) *Trawl gear*. (A) Shortspine thornyhead cumulative trip limits are as follows:

(1) small and large footrope trawl gear- 7,500-lb (3,402-kg) per 2 months.

(2) selective flatfish trawl gear- 3,000-lb (1,361-kg) per 2 months.

(3) multiple bottom trawl gear- 3,000-lb (1,361-kg) per 2 months.

(B) Longspine thornyhead cumulative trip limits are as follows:

(1) small and large footrope trawl gear- 22,000-lb (9,979-kg) per 2 months.

(2) selective flatfish trawl gear- 3,000-lb (1,361-kg) per 2 months.

(3) multiple bottom trawl gear- 3,000-lb (1,361-kg) per 2 months.

(ii) *Fixed gear*. (A) Shortspine thornyhead cumulative trip limits are 2,000-lb (907-kg) per 2 months.

(B) Longspine thornyhead cumulative trip limits are 10,000–lb (4,536–kg) per 2 months.

\* \* \* \* \*

(5) The Makah Tribe will manage the midwater trawl fisheries as follows: yellowtail rockfish taken in the directed tribal mid-water trawl fisheries are subject to a cumulative limit of 180,000 lb (81,647 kg) per 2 month period for the entire fleet. Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed in any two-month period. These limits may be adjusted by the tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish, provided the average 2–month cumulative yellowtail rockfish limit does not exceed 180,000 lb (81,647 kg) for the fleet.

\* \* \* \* \*

(d) *Flatfish and other fish*. Treaty fishing vessels using bottom trawl gear are subject to the limits applicable to the non-tribal limited entry trawl fishery for Dover sole, English sole, rex sole, arrowtooth flounder, and other flatfish in place at the beginning of the season. For Dover sole and arrowtooth flounder, the limited entry trip limits in place at the beginning of the season will be combined across periods and the fleet to create a cumulative harvest target. The limits available to individual vessels will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species. For petrale sole, treaty fishing vessels are restricted to a 50,000 lb (22,680 kg) per 2 month limit for the entire year. Trawl vessels are restricted to using small footrope trawl gear.

\* \* \* \* \*

(f) *Pacific cod*. There is a tribal harvest guideline of 400 mt of Pacific cod. The tribes will manage their fisheries to stay within this harvest guideline.

(g) *Spiny dogfish*. The tribes will manage their spiny dogfish fishery within the limited entry trip limits for the non-tribal fisheries.

19. Section 660.390 is revised to read as follows:

**§ 660.390 Groundfish conservation areas.**

In § 660.302, a groundfish conservation area is defined in part as “a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited.” While some groundfish conservation areas may be designed with the intent that their shape be determined by ocean bottom depth contours, their shapes are defined in

regulation by latitude/longitude coordinates and are enforced by those coordinates. Latitude/longitude coordinates designating the large-scale boundaries for rockfish conservation areas are found in §§ 660.391 through 660.394. Fishing activity that is prohibited or permitted within a particular groundfish conservation area is detailed at §§ 660.381 through 660.384.

(a) *North Coast Recreational Yelloweye Rockfish Conservation Area*. The North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 48°18.00′ N. lat.; 125°18.00′ W. long.;

(2) 48°18.00′ N. lat.; 124°59.00′ W. long.;

(3) 48°11.00′ N. lat.; 124°59.00′ W. long.;

(4) 48°11.00′ N. lat.; 125°11.00′ W. long.;

(5) 48°04.00′ N. lat.; 125°11.00′ W. long.;

(6) 48°04.00′ N. lat.; 124°59.00′ W. long.;

(7) 48°00.00′ N. lat.; 124°59.00′ W. long.;

(8) 48°00.00′ N. lat.; 125°18.00′ W. long.;

and connecting back to 48°18.00′ N. lat.; 125°18.00′ W. long.

(b) *North Coast Commercial Yelloweye Rockfish Conservation Area*. The North Coast Commercial Yelloweye Rockfish Conservation Area (YRCA) is an area off the northern Washington coast, overlapping the northern part of North Coast Recreational YRCA, intended to protect yelloweye rockfish. The North Coast Commercial YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 48°11.77′ N. lat., 125°13.03′ W. long.;

(2) 48°16.43′ N. lat., 125°07.55′ W. long.;

(3) 48°14.72′ N. lat., 125°01.84′ W. long.;

(4) 48°13.36′ N. lat., 125°03.20′ W. long.;

(5) 48°12.74′ N. lat., 125°05.83′ W. long.;

(6) 48°11.55′ N. lat., 125°04.99′ W. long.;

(7) 48°09.96′ N. lat., 125°06.63′ W. long.;

(8) 48°09.68′ N. lat., 125°08.75′ W. long.;

and connecting back to 48°11.77′ N. lat., 125°13.03′ W. long.

(c) *Salmon Troll Yelloweye Rockfish Conservation Area*. The Salmon Troll Yelloweye Rockfish Conservation Area (YRCA) is an area off the northern Washington coast, overlapping the southern part of North Coast Recreational YRCA, intended to protect yelloweye rockfish. The Salmon Troll YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 48°00.00′ N. lat., 125°14.00′ W. long.;

(2) 48°02.00′ N. lat., 125°14.00′ W. long.;

(3) 48°00.00′ N. lat., 125°16.50′ W. long.;

(4) 48°02.00′ N. lat., 125°16.50′ W. long.;

and connecting back to 48°00.00′ N. lat., 125°14.00′ W. long.

(d) *South Coast Recreational Yelloweye Rockfish Conservation Area*. The South Coast Recreational Yelloweye Rockfish Conservation Area (YRCA) is an area off the southern Washington coast intended to protect yelloweye rockfish. The South Coast Recreational YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 46°58.00′ N. lat., 124°48.00′ W. long.;

(2) 46°55.00′ N. lat., 124°48.00′ W. long.;

(3) 46°58.00′ N. lat., 124°49.00′ W. long.;

(4) 46°55.00′ N. lat., 124°49.00′ W. long.;

and connecting back to 46°58.00′ N. lat., 124°48.00′ W. long.

(e) *Stonewall Bank Yelloweye Rockfish Conservation Area*. The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 44°37.46′ N. lat.; 124°24.92′ W. long.;

(2) 44°37.46′ N. lat.; 124°23.63′ W. long.;

(3) 44°28.71′ N. lat.; 124°21.80′ W. long.;

(4) 44°28.71′ N. lat.; 124°24.10′ W. long.;

(5) 44°31.42′ N. lat.; 124°25.47′ W. long.;

and connecting back to 44°37.46′ N. lat.; 124°24.92′ W. long.

(f) *Cowcod Conservation Areas*. The Cowcod Conservation Areas (CCAs) are

two areas off the southern California coast intended to protect cowcod. The Western CCA is an area south of Point Conception defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 33°50.00' N. lat., 119°30.00' W. long.;
  - (2) 33°50.00' N. lat., 118°50.00' W. long.;
  - (3) 32°20.00' N. lat., 118°50.00' W. long.;
  - (4) 32°20.00' N. lat., 119°37.00' W. long.;
  - (5) 33°00.00' N. lat., 119°37.00' W. long.;
  - (6) 33°00.00' N. lat., 119°53.00' W. long.;
  - (7) 33°33.00' N. lat., 119°53.00' W. long.;
  - (8) 33°33.00' N. lat., 119°30.00' W. long.;
- and connecting back to 33°50.00' N. lat., 119°30.00' W. long.

(g) The Eastern CCA is an area west of San Diego defined by the straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 32°42.00' N. lat., 118°02.00' W. long.;
  - (2) 32°42.00' N. lat., 117°50.00' W. long.;
  - (3) 32°36.70' N. lat., 117°50.00' W. long.;
  - (4) 32°30.00' N. lat., 117°53.50' W. long.;
  - (5) 32°30.00' N. lat., 118°02.00' W. long.;
- and connecting back to 32°42.00' N. lat., 118°02.00' W. long.

(h) *Farallon Islands*. The Farallon Islands, off San Francisco and San Mateo Counties, include Southeast Farallon Island, Middle Farallon Island, North Farallon Island and Noon Day Rock. Generally, the State of California prohibits fishing for groundfish between the shoreline and the 10-fm (18-m) depth contour around the Farallon Islands.

(i) *Cordell Banks*. Cordell Banks are located offshore of California's Marin County. Generally, fishing for groundfish is prohibited in waters of depths less than 100-fm (183-m) around Cordell Banks as defined by specific latitude and longitude coordinates. The Cordell Banks closed area is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 38°03.18' N. lat., 123°20.77' W. long.;
- (2) 38°06.29' N. lat., 123°25.03' W. long.;
- (3) 38°06.34' N. lat., 123°29.32' W. long.;

(4) 38°04.57' N. lat., 123°31.30' W. long.;

(5) 38°02.32' N. lat., 123°31.07' W. long.;

(6) 38°00.00' N. lat., 123°28.40' W. long.;

(7) 37°58.10' N. lat., 123°26.66' W. long.;

(8) 37°55.07' N. lat., 123°26.81' W. long.;

and connecting back to 38°03.18' N. lat., 123°20.77' W. long.

(j) *Rockfish Conservation Areas*. RCA restrictions are detailed at §§ 660.381 through 660.384. RCAs may apply to a single gear type or to a group of gear types such as "trawl RCAs" or "non-trawl RCAs." Specific latitude and longitude coordinates for RCA boundaries that approximate the depth contours selected for trawl, non-trawl, and recreational RCAs are provided in §§ 660.391 through 660.394. Also provided in §§ 660.391 through 660.394 are references to islands and rocks that serve as reference points for the RCAs.

(1) *Trawl (Limited Entry and Open Access Nongroundfish Trawl Gears) Rockfish Conservation Areas*. Trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates intended to approximate particular depth contours. Boundaries for the trawl RCA throughout the year are provided in Tables 3 and 5 (North) and Tables 3 and 5 (South) and may be modified by NMFS inseason pursuant to § 660.370(c). Trawl RCA boundaries are defined by specific latitude and longitude coordinates and are provided in §§ 660.391 through 660.394.

(2) *Non-Trawl (Limited Entry Fixed Gear and Open Access Non-trawl Gears) Rockfish Conservation Areas*. Non-trawl RCAs are intended to protect a complex of species, such as overfished shelf rockfish species, and have boundaries defined by specific latitude and longitude coordinates intended to approximate particular depth contours. Boundaries for the non-trawl RCA throughout the year are provided in Tables 4 and 5 (North) and Tables 4 and 5 (South) of this subpart and may be modified by NMFS inseason pursuant to § 660.370(c). Non-trawl RCA boundaries are defined by specific latitude and longitude coordinates and are provided in §§ 660.391 through 660.394.

(3) *Recreational Rockfish Conservation Areas*. Recreational RCAs are closed areas intended to protect overfished rockfish species. Recreational RCAs may either have boundaries defined by general depth contours or boundaries defined by

specific latitude and longitude coordinates intended to approximate particular depth contours. Boundaries for the recreational RCAs throughout the year are provided in the text in § 660.384(c) under each state (Washington, Oregon and California) and may be modified by NMFS inseason pursuant to § 660.370. Recreational RCA boundaries are defined by specific latitude and longitude coordinates and are provided in §§ 660.391 through 660.394.

(k) *175-fm (320-m) Cowcod Conservation Areas*. The 175-fm (320-m) Cowcod Conservation Areas (CCAs) are five areas off the southern California coast that are within the Western CCA described at § 660.390(f). They are intended to protect cowcod and are defined by latitude and longitude coordinates approximating the 175-fm (320-m) depth contour. The Tanner Bank Western 175-fm (320-m) CCA is an area defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

- (1) 33°04.87' N. lat., 119°39.51' W. long.;
- (2) 33°05.85' N. lat., 119°39.45' W. long.;
- (3) 33°06.14' N. lat., 119°37.30' W. long.;
- (4) 33°03.61' N. lat., 119°34.92' W. long.;
- (5) 33°02.99' N. lat., 119°33.66' W. long.;
- (6) 33°01.99' N. lat., 119°33.51' W. long.;
- (7) 33°00.64' N. lat., 119°32.22' W. long.;
- (8) 32°59.63' N. lat., 119°31.60' W. long.;
- (9) 32°57.50' N. lat., 119°30.58' W. long.;
- (10) 32°56.51' N. lat., 119°26.48' W. long.;
- (11) 32°57.22' N. lat., 119°23.53' W. long.;
- (12) 32°57.06' N. lat., 119°21.07' W. long.;
- (13) 32°55.25' N. lat., 119°19.52' W. long.;
- (14) 32°54.07' N. lat., 119°20.35' W. long.;
- (15) 32°53.22' N. lat., 119°21.87' W. long.;
- (16) 32°52.18' N. lat., 119°21.01' W. long.;
- (17) 32°50.60' N. lat., 119°21.07' W. long.;
- (18) 32°49.22' N. lat., 119°19.65' W. long.;
- (19) 32°48.31' N. lat., 119°20.91' W. long.;
- (20) 32°48.55' N. lat., 119°22.96' W. long.;
- (21) 32°50.49' N. lat., 119°26.08' W. long.;

- (22) 32°53.90' N. lat., 119°29.10' W. long.;
- (23) 32°57.35' N. lat., 119°30.87' W. long.;
- (24) 32°59.39' N. lat., 119°31.98' W. long.;
- (25) 33°01.63' N. lat., 119°35.64' W. long.;
- (26) 33°02.19' N. lat., 119°37.05' W. long.;
- (27) 33°03.90' N. lat., 119°37.50' W. long.;
- and connecting back to 33°04.87' N. lat., 119°39.51' W. long.;
- (l) The West Tanner Bank Western 175–fm (320–m) CCA is an area defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:
- (1) 32°42.36' N. lat., 119°36.07' W. long.;
- (2) 32°41.85' N. lat., 119°33.50' W. long.;
- (3) 32°40.49' N. lat., 119°32.26' W. long.;
- (4) 32°38.33' N. lat., 119°33.49' W. long.;
- (5) 32°37.14' N. lat., 119°33.55' W. long.;
- (6) 32°38.71' N. lat., 119°34.95' W. long.;
- (7) 32°40.28' N. lat., 119°36.88' W. long.;
- and connecting back to 32°42.36' N. lat., 119°36.07' W. long.
- (m) The Santa Barbara Island Western 175–fm (320–m) CCA is an area defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:
- (1) 33°28.50' N. lat., 118°57.89' W. long.;
- (2) 33°28.50' N. lat., 118°54.53' W. long.;
- (3) 33°21.78' N. lat., 118°54.54' W. long.;
- (4) 33°21.79' N. lat., 119°00.13' W. long.;
- (5) 33°20.94' N. lat., 119°00.14' W. long.;
- (6) 33°20.52' N. lat., 119°01.28' W. long.;
- (7) 33°21.76' N. lat., 119°04.78' W. long.;
- (8) 33°24.60' N. lat., 119°09.61' W. long.;
- (9) 33°26.14' N. lat., 119°08.27' W. long.;
- (10) 33°23.87' N. lat., 119°05.82' W. long.;
- (11) 33°23.56' N. lat., 119°04.33' W. long.;
- (12) 33°24.08' N. lat., 119°02.20' W. long.;
- (13) 33°25.96' N. lat., 119°02.20' W. long.;
- (14) 33°25.70' N. lat., 119°03.42' W. long.;
- (15) 33°26.08' N. lat., 119°04.68' W. long.;
- (16) 33°26.48' N. lat., 119°06.80' W. long.;
- (17) 33°27.69' N. lat., 119°07.64' W. long.;
- (18) 33°28.01' N. lat., 119°09.02' W. long.;
- (19) 33°28.19' N. lat., 119°12.91' W. long.;
- (20) 33°29.31' N. lat., 119°12.87' W. long.;
- (21) 33°29.67' N. lat., 119°08.44' W. long.;
- (22) 33°32.00' N. lat., 119°06.95' W. long.;
- (23) 33°34.60' N. lat., 119°07.61' W. long.;
- (24) 33°37.01' N. lat., 119°11.10' W. long.;
- (25) 33°39.41' N. lat., 119°11.17' W. long.;
- (26) 33°40.47' N. lat., 119°13.02' W. long.;
- (27) 33°42.07' N. lat., 119°15.00' W. long.;
- (28) 33°42.62' N. lat., 119°15.94' W. long.;
- (29) 33°43.18' N. lat., 119°16.02' W. long.;
- (30) 33°46.01' N. lat., 119°14.12' W. long.;
- (31) 33°45.45' N. lat., 119°11.83' W. long.;
- (32) 33°44.27' N. lat., 119°09.25' W. long.;
- (33) 33°42.79' N. lat., 119°07.79' W. long.;
- (34) 33°40.83' N. lat., 119°04.76' W. long.;
- (35) 33°38.15' N. lat., 119°02.58' W. long.;
- (36) 33°36.27' N. lat., 118°58.76' W. long.;
- (37) 33°33.33' N. lat., 118°57.79' W. long.;
- (38) 33°33.30' N. lat., 119°02.45' W. long.;
- (39) 33°32.43' N. lat., 119°02.43' W. long.;
- and connecting back to 33°28.50' N. lat., 118°57.89' W. long.
- (n) The San Nicolas Island Western 175–fm (320–m) CCA is an area defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:
- (1) 33°33.01' N. lat., 119°49.70' W. long.;
- (2) 33°32.40' N. lat., 119°45.01' W. long.;
- (3) 33°25.64' N. lat., 119°35.56' W. long.;
- (4) 33°20.80' N. lat., 119°26.10' W. long.;
- (5) 33°17.25' N. lat., 119°21.24' W. long.;
- (6) 33°16.81' N. lat., 119°18.76' W. long.;
- (7) 33°15.88' N. lat., 119°18.30' W. long.;
- (8) 33°15.27' N. lat., 119°18.71' W. long.;
- (9) 33°15.38' N. lat., 119°17.23' W. long.;
- (10) 33°14.49' N. lat., 119°15.05' W. long.;
- (11) 33°13.39' N. lat., 119°14.41' W. long.;
- (12) 33°11.52' N. lat., 119°17.40' W. long.;
- (13) 33°11.24' N. lat., 119°23.08' W. long.;
- (14) 33°10.27' N. lat., 119°25.65' W. long.;
- (15) 33°13.74' N. lat., 119°38.97' W. long.;
- (16) 33°12.22' N. lat., 119°41.95' W. long.;
- (17) 33°12.23' N. lat., 119°42.82' W. long.;
- (18) 33°13.41' N. lat., 119°43.79' W. long.;
- (19) 33°14.29' N. lat., 119°43.59' W. long.;
- (20) 33°15.01' N. lat., 119°44.97' W. long.;
- (21) 33°17.06' N. lat., 119°46.22' W. long.;
- (22) 33°17.24' N. lat., 119°47.49' W. long.;
- (23) 33°18.34' N. lat., 119°48.83' W. long.;
- (24) 33°17.16' N. lat., 119°48.99' W. long.;
- (25) 33°16.73' N. lat., 119°48.59' W. long.;
- (26) 33°16.27' N. lat., 119°47.75' W. long.;
- (27) 33°15.19' N. lat., 119°47.06' W. long.;
- (28) 33°13.71' N. lat., 119°46.74' W. long.;
- (29) 33°13.21' N. lat., 119°47.05' W. long.;
- (30) 33°13.04' N. lat., 119°47.77' W. long.;
- (31) 33°13.13' N. lat., 119°48.37' W. long.;
- (32) 33°12.96' N. lat., 119°48.94' W. long.;
- (33) 33°12.27' N. lat., 119°49.41' W. long.;
- (34) 33°12.36' N. lat., 119°50.12' W. long.;
- (35) 33°12.33' N. lat., 119°50.75' W. long.;
- (36) 33°12.73' N. lat., 119°51.47' W. long.;
- (37) 33°13.26' N. lat., 119°52.94' W. long.;
- (38) 33°15.05' N. lat., 119°52.95' W. long.;
- (39) 33°15.75' N. lat., 119°52.12' W. long.;
- (40) 33°16.32' N. lat., 119°52.65' W. long.;
- (41) 33°18.12' N. lat., 119°52.94' W. long.;

(42) 33°18.18' N. lat., 119°52.68' W. long.;

(43) 33°17.97' N. lat., 119°51.07' W. long.;

(44) 33°17.44' N. lat., 119°50.04' W. long.;

(45) 33°17.27' N. lat., 119°49.19' W. long.;

(46) 33°18.40' N. lat., 119°49.00' W. long.;

(47) 33°21.18' N. lat., 119°50.81' W. long.;

(48) 33°22.57' N. lat., 119°50.42' W. long.;

(49) 33°23.90' N. lat., 119°50.67' W. long.;

(50) 33°25.84' N. lat., 119°51.85' W. long.;

(51) 33°30.00' N. lat., 119°53.19' W. long.;

and connecting back to 33°33.01' N. lat., 119°49.70' W. long.

(o) The Cortes Bank Western 175-fm (320-m) CCA is an area defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(1) 32°45.52' N. lat., 119°15.88' W. long.;

(2) 32°46.66' N. lat., 119°13.89' W. long.;

(3) 32°46.55' N. lat., 119°11.82' W. long.;

(4) 32°46.23' N. lat., 119°10.53' W. long.;

(5) 32°44.85' N. lat., 119°07.57' W. long.;

(6) 32°42.34' N. lat., 119°03.11' W. long.;

(7) 32°40.75' N. lat., 119°01.39' W. long.;

(8) 32°40.20' N. lat., 119°02.61' W. long.;

(9) 32°37.41' N. lat., 119°02.61' W. long.;

(10) 32°36.44' N. lat., 119°03.47' W. long.;

(11) 32°36.19' N. lat., 119°04.75' W. long.;

(12) 32°36.82' N. lat., 119°06.88' W. long.;

(13) 32°34.68' N. lat., 119°05.27' W. long.;

(14) 32°33.71' N. lat., 119°06.06' W. long.;

(15) 32°33.09' N. lat., 119°07.92' W. long.;

(16) 32°32.19' N. lat., 119°06.81' W. long.;

(17) 32°31.79' N. lat., 119°05.57' W. long.;

(18) 32°00.50' N. lat., 119°04.25' W. long.;

(19) 32°29.18' N. lat., 119°03.38' W. long.;

(20) 32°27.19' N. lat., 118°59.72' W. long.;

(21) 32°22.89' N. lat., 118°55.73' W. long.;

(22) 32°20.92' N. lat., 118°56.20' W. long.;

(23) 32°23.08' N. lat., 119°01.71' W. long.;

(24) 32°21.96' N. lat., 119°01.21' W. long.;

(25) 32°21.68' N. lat., 119°01.84' W. long.;

(26) 32°22.08' N. lat., 119°03.43' W. long.;

(27) 32°23.20' N. lat., 119°05.07' W. long.;

(28) 32°23.40' N. lat., 119°07.48' W. long.;

(29) 32°22.77' N. lat., 119°07.73' W. long.;

(30) 32°23.12' N. lat., 119°09.67' W. long.;

(31) 32°24.59' N. lat., 119°11.44' W. long.;

(32) 32°22.66' N. lat., 119°13.68' W. long.;

(33) 32°24.66' N. lat., 119°14.44' W. long.;

(34) 32°25.96' N. lat., 119°14.98' W. long.;

(35) 32°26.63' N. lat., 119°13.97' W. long.;

(36) 32°27.27' N. lat., 119°15.77' W. long.;

(37) 32°28.66' N. lat., 119°15.67' W. long.;

(38) 32°30.26' N. lat., 119°19.06' W. long.;

(39) 32°30.60' N. lat., 119°20.97' W. long.;

(40) 32°33.41' N. lat., 119°22.12' W. long.;

(41) 32°37.11' N. lat., 119°22.58' W. long.;

(42) 32°39.03' N. lat., 119°21.19' W. long.;

(43) 32°39.65' N. lat., 119°19.56' W. long.;

(44) 32°41.49' N. lat., 119°19.15' W. long.;

(45) 32°41.44' N. lat., 119°15.73' W. long.;

(46) 32°39.93' N. lat., 119°12.79' W. long.;

(47) 32°40.84' N. lat., 119°12.55' W. long.;

(48) 32°42.58' N. lat., 119°14.33' W. long.;

(49) 32°44.00' N. lat., 119°16.64' W. long.;

(50) 32°45.17' N. lat., 119°16.97' W. long.;

and connecting back to 32°45.52' N. lat., 119°15.88' W. long.

20. In § 660.391, the section heading and introductory paragraph are revised, paragraph (a) is removed, paragraphs (b) through (k) are redesignated as (d) through (m), newly redesignated paragraphs (d) and (j) are revised, and paragraphs (a) through (c) are added to read as follows:

**§ 660.391 Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.**

Boundaries for RCAs are defined by straight lines connecting a series of latitude/longitude coordinates. This section provides coordinates for the 10-fm (18-m) through 40-fm (73-m) depth contours.

(a) The 10-fm (18-m) depth contour between the U.S. border with Canada and 46°16' N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 48°23.80' N. lat., 124°44.18' W. long.;

(2) 48°23.60' N. lat., 124°44.80' W. long.;

(3) 48°23.45' N. lat., 124°44.80' W. long.;

(4) 48°23.30' N. lat., 124°44.20' W. long.;

(5) 48°22.20' N. lat., 124°44.30' W. long.;

(6) 48°20.25' N. lat., 124°42.20' W. long.;

(7) 48°12.80' N. lat., 124°43.10' W. long.;

(8) 48°11.10' N. lat., 124°46.50' W. long.;

(9) 48°10.00' N. lat., 124°46.50' W. long.;

(10) 48°08.50' N. lat., 124°44.20' W. long.;

(11) 47°59.40' N. lat., 124°42.50' W. long.;

(12) 47°52.60' N. lat., 124°38.80' W. long.;

(13) 47°51.50' N. lat., 124°34.60' W. long.;

(14) 47°39.80' N. lat., 124°28.10' W. long.;

(15) 47°31.70' N. lat., 124°26.30' W. long.;

(16) 47°25.20' N. lat., 124°24.80' W. long.;

(17) 47°09.80' N. lat., 124°15.20' W. long.;

(18) 46°54.40' N. lat., 124°14.80' W. long.;

(19) 46°48.30' N. lat., 124°10.25' W. long.;

(20) 46°38.17' N. lat., 124°10.30' W. long.;

(21) 46°27.20' N. lat., 124°06.50' W. long.;

and

(22) 46°16.00' N. lat., 124°10.00' W. long.

(b) The 20-fm (37-m) depth contour between the U.S. border with Canada and 42° N. lat. is defined by straight lines connecting all of the following points in the order stated:

(1) 48°23.90' N. lat., 124°44.20' W. long.;

(2) 48°23.60' N. lat., 124°44.90' W. long.;

(3) 48°18.60' N. lat., 124°43.60' W. long.;

- (4) 48°18.60' N. lat., 124°48.20' W. long.;
- (5) 48°10.00' N. lat., 124°48.80' W. long.;
- (6) 48°02.40' N. lat., 124°49.30' W. long.;
- (7) 47°37.60' N. lat., 124°34.30' W. long.;
- (8) 47°31.70' N. lat., 124°32.40' W. long.;
- (9) 47°17.90' N. lat., 124°25.00' W. long.;
- (10) 46°58.80' N. lat., 124°18.30' W. long.;
- (11) 46°47.40' N. lat., 124°12.70' W. long.;
- (12) 46°38.17' N. lat., 124°12.40' W. long.;
- (13) 46°16.00' N. lat., 124°11.50' W. long.;
- (14) 46°16.01' N. lat., 124°11.56' W. long.;
- (15) 46°15.09' N. lat., 124°11.33' W. long.;
- (16) 46°11.94' N. lat., 124°08.51' W. long.;
- (17) 46°08.02' N. lat., 124°04.06' W. long.;
- (18) 46°05.05' N. lat., 124°02.13' W. long.;
- (19) 46°02.19' N. lat., 124°01.35' W. long.;
- (20) 45°58.28' N. lat., 124°01.70' W. long.;
- (21) 45°55.64' N. lat., 124°01.16' W. long.;
- (22) 45°52.61' N. lat., 124°00.33' W. long.;
- (23) 45°48.43' N. lat., 124°00.65' W. long.;
- (24) 45°46.59' N. lat., 124°00.79' W. long.;
- (25) 45°46.00' N. lat., 124°00.53' W. long.;
- (26) 45°44.75' N. lat., 123°59.92' W. long.;
- (27) 45°44.57' N. lat., 123°59.64' W. long.;
- (28) 45°41.86' N. lat., 123°58.82' W. long.;
- (29) 45°36.40' N. lat., 123°59.42' W. long.;
- (30) 45°34.10' N. lat., 123°59.90' W. long.;
- (31) 45°32.81' N. lat., 124°00.35' W. long.;
- (32) 45°29.87' N. lat., 124°00.98' W. long.;
- (33) 45°27.49' N. lat., 124°00.79' W. long.;
- (34) 45°25.37' N. lat., 124°00.73' W. long.;
- (35) 45°22.06' N. lat., 124°01.66' W. long.;
- (36) 45°17.27' N. lat., 124°00.76' W. long.;
- (37) 45°14.09' N. lat., 124°00.75' W. long.;
- (38) 45°12.50' N. lat., 124°00.53' W. long.;
- (39) 45°11.92' N. lat., 124°01.62' W. long.;
- (40) 45°11.02' N. lat., 124°00.60' W. long.;
- (41) 45°10.08' N. lat., 124°00.58' W. long.;
- (42) 45°05.51' N. lat., 124°02.15' W. long.;
- (43) 45°01.03' N. lat., 124°03.22' W. long.;
- (44) 44°57.98' N. lat., 124°04.29' W. long.;
- (45) 44°55.37' N. lat., 124°04.39' W. long.;
- (46) 44°51.56' N. lat., 124°05.54' W. long.;
- (47) 44°45.24' N. lat., 124°06.47' W. long.;
- (48) 44°42.69' N. lat., 124°06.73' W. long.;
- (49) 44°33.86' N. lat., 124°07.43' W. long.;
- (50) 44°29.78' N. lat., 124°07.62' W. long.;
- (51) 44°28.53' N. lat., 124°07.93' W. long.;
- (52) 44°23.71' N. lat., 124°08.30' W. long.;
- (53) 44°21.75' N. lat., 124°08.79' W. long.;
- (54) 44°20.99' N. lat., 124°08.48' W. long.;
- (55) 44°17.29' N. lat., 124°08.82' W. long.;
- (56) 44°11.90' N. lat., 124°09.44' W. long.;
- (57) 44°03.25' N. lat., 124°10.33' W. long.;
- (58) 43°52.69' N. lat., 124°12.01' W. long.;
- (59) 43°42.94' N. lat., 124°13.88' W. long.;
- (60) 43°41.44' N. lat., 124°14.47' W. long.;
- (61) 43°36.60' N. lat., 124°14.92' W. long.;
- (62) 43°29.85' N. lat., 124°17.35' W. long.;
- (63) 43°25.00' N. lat., 124°20.84' W. long.;
- (64) 43°21.61' N. lat., 124°24.09' W. long.;
- (65) 43°20.51' N. lat., 124°25.01' W. long.;
- (66) 43°19.33' N. lat., 124°25.43' W. long.;
- (67) 43°16.18' N. lat., 124°26.02' W. long.;
- (68) 43°14.39' N. lat., 124°26.17' W. long.;
- (69) 43°13.94' N. lat., 124°26.72' W. long.;
- (70) 43°13.39' N. lat., 124°26.41' W. long.;
- (71) 43°11.39' N. lat., 124°26.90' W. long.;
- (72) 43°10.06' N. lat., 124°28.24' W. long.;
- (73) 43°07.48' N. lat., 124°28.65' W. long.;
- (74) 43°06.67' N. lat., 124°28.63' W. long.;
- (75) 43°06.43' N. lat., 124°28.22' W. long.;
- (76) 43°03.09' N. lat., 124°28.52' W. long.;
- (77) 42°57.55' N. lat., 124°30.74' W. long.;
- (78) 42°52.91' N. lat., 124°35.03' W. long.;
- (79) 42°51.58' N. lat., 124°36.43' W. long.;
- (80) 42°49.85' N. lat., 124°37.20' W. long.;
- (81) 42°46.07' N. lat., 124°36.98' W. long.;
- (82) 42°46.03' N. lat., 124°34.76' W. long.;
- (83) 42°45.37' N. lat., 124°33.59' W. long.;
- (84) 42°43.91' N. lat., 124°32.14' W. long.;
- (85) 42°41.73' N. lat., 124°29.20' W. long.;
- (86) 42°40.49' N. lat., 124°28.95' W. long.;
- (87) 42°40.06' N. lat., 124°28.94' W. long.;
- (88) 42°39.74' N. lat., 124°27.80' W. long.;
- (89) 42°37.53' N. lat., 124°26.39' W. long.;
- (90) 42°34.33' N. lat., 124°26.56' W. long.;
- (91) 42°32.81' N. lat., 124°27.55' W. long.;
- (92) 42°31.66' N. lat., 124°29.58' W. long.;
- (93) 42°30.70' N. lat., 124°30.91' W. long.;
- (94) 42°29.20' N. lat., 124°31.27' W. long.;
- (95) 42°27.52' N. lat., 124°30.79' W. long.;
- (96) 42°24.70' N. lat., 124°29.65' W. long.;
- (97) 42°23.93' N. lat., 124°28.60' W. long.;
- (98) 42°19.35' N. lat., 124°27.23' W. long.;
- (99) 42°14.87' N. lat., 124°26.14' W. long.;
- (100) 42°11.85' N. lat., 124°23.78' W. long.;
- (101) 42°08.08' N. lat., 124°22.91' W. long.;
- (102) 42°07.04' N. lat., 124°22.66' W. long.;
- (103) 42°05.17' N. lat., 124°21.41' W. long.;
- (104) 42°04.16' N. lat., 124°20.55' W. long.;
- (105) 42°02.12' N. lat., 124°20.51' W. long.;
- (106) 42°01.42' N. lat., 124°20.29' W. long.;
- (107) 42°00.00' N. lat., 124°19.61' W. long.;
- (c) The 25–fm (46–m) depth contour between the Queets River, WA, and 42°

N. lat. is defined by straight lines connecting all of the following points in the order stated:

- (1) 47°31.70' N. lat., 124°34.70' W. long.;
- (2) 47°25.70' N. lat., 124°33.00' W. long.;
- (3) 47°12.80' N. lat., 124°26.00' W. long.;
- (4) 46°53.00' N. lat., 124°21.00' W. long.;
- (5) 46°44.20' N. lat., 124°15.00' W. long.;
- (6) 46°38.17' N. lat., 124°13.70' W. long.;
- (7) 46°16.00' N. lat., 124°12.50' W. long.;
- (8) 46°15.99' N. lat., 124°12.04' W. long.;
- (9) 46°13.72' N. lat., 124°11.04' W. long.;
- (10) 46°09.50' N. lat., 124°07.62' W. long.;
- (11) 46°04.00' N. lat., 124°03.20' W. long.;
- (12) 45°57.61' N. lat., 124°01.85' W. long.;
- (13) 45°51.73' N. lat., 124°01.06' W. long.;
- (14) 45°47.27' N. lat., 124°01.22' W. long.;
- (15) 45°43.19' N. lat., 124°00.32' W. long.;
- (16) 45°36.11' N. lat., 124°00.38' W. long.;
- (17) 45°32.95' N. lat., 124°01.38' W. long.;
- (18) 45°27.47' N. lat., 124°01.46' W. long.;
- (19) 45°23.18' N. lat., 124°01.94' W. long.;
- (20) 45°19.04' N. lat., 124°01.29' W. long.;
- (21) 45°16.79' N. lat., 124°01.90' W. long.;
- (22) 45°13.54' N. lat., 124°01.64' W. long.;
- (23) 45°09.56' N. lat., 124°01.94' W. long.;
- (24) 45°06.15' N. lat., 124°02.38' W. long.;
- (25) 45°00.77' N. lat., 124°03.72' W. long.;
- (26) 44°49.08' N. lat., 124°06.49' W. long.;
- (27) 44°40.06' N. lat., 124°08.14' W. long.;
- (28) 44°36.64' N. lat., 124°08.51' W. long.;
- (29) 44°29.41' N. lat., 124°09.24' W. long.;
- (30) 44°25.18' N. lat., 124°09.37' W. long.;
- (31) 44°16.34' N. lat., 124°10.30' W. long.;
- (32) 44°12.16' N. lat., 124°10.82' W. long.;
- (33) 44°06.59' N. lat., 124°11.00' W. long.;

- (34) 44°02.09' N. lat., 124°11.24' W. long.;
- (35) 43°57.82' N. lat., 124°11.60' W. long.;
- (36) 43°53.44' N. lat., 124°12.34' W. long.;
- (37) 43°49.19' N. lat., 124°13.08' W. long.;
- (38) 43°45.19' N. lat., 124°13.73' W. long.;
- (39) 43°41.22' N. lat., 124°14.59' W. long.;
- (40) 43°37.52' N. lat., 124°15.05' W. long.;
- (41) 43°33.97' N. lat., 124°16.00' W. long.;
- (42) 43°29.72' N. lat., 124°17.78' W. long.;
- (43) 43°27.63' N. lat., 124°19.11' W. long.;
- (44) 43°20.66' N. lat., 124°25.39' W. long.;
- (45) 43°15.57' N. lat., 124°26.86' W. long.;
- (46) 43°06.88' N. lat., 124°29.30' W. long.;
- (47) 43°03.37' N. lat., 124°29.06' W. long.;
- (48) 43°01.03' N. lat., 124°29.41' W. long.;
- (49) 42°56.59' N. lat., 124°31.93' W. long.;
- (50) 42°54.08' N. lat., 124°34.55' W. long.;
- (51) 42°51.16' N. lat., 124°37.02' W. long.;
- (52) 42°49.27' N. lat., 124°37.73' W. long.;
- (53) 42°46.02' N. lat., 124°37.54' W. long.;
- (54) 42°45.76' N. lat., 124°35.68' W. long.;
- (55) 42°42.25' N. lat., 124°30.47' W. long.;
- (56) 42°40.51' N. lat., 124°29.00' W. long.;
- (57) 42°40.00' N. lat., 124°29.01' W. long.;
- (58) 42°39.64' N. lat., 124°28.28' W. long.;
- (59) 42°38.80' N. lat., 124°27.57' W. long.;
- (60) 42°35.42' N. lat., 124°26.77' W. long.;
- (61) 42°33.13' N. lat., 124°29.06' W. long.;
- (62) 42°31.44' N. lat., 124°30.71' W. long.;
- (63) 42°29.03' N. lat., 124°31.71' W. long.;
- (64) 42°24.98' N. lat., 124°29.95' W. long.;
- (65) 42°20.05' N. lat., 124°28.16' W. long.;
- (66) 42°14.24' N. lat., 124°26.03' W. long.;
- (67) 42°10.23' N. lat., 124°23.93' W. long.;
- (68) 42°06.20' N. lat., 124°22.70' W. long.;

- (69) 42°04.66' N. lat., 124°21.49' W. long.; and
- (70) 42°00.00' N. lat., 124°20.80' W. long.

(d) The 30–fm (55–m) depth contour between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

- (1) 48°24.79' N. lat., 124°44.07' W. long.;
- (2) 48°24.80' N. lat., 124°44.74' W. long.;
- (3) 48°23.94' N. lat., 124°44.70' W. long.;
- (4) 48°23.51' N. lat., 124°45.01' W. long.;
- (5) 48°22.59' N. lat., 124°44.97' W. long.;
- (6) 48°21.75' N. lat., 124°45.26' W. long.;
- (7) 48°21.23' N. lat., 124°47.78' W. long.;
- (8) 48°20.32' N. lat., 124°49.53' W. long.;
- (9) 48°16.72' N. lat., 124°51.58' W. long.;
- (10) 48°10.00' N. lat., 124°52.58' W. long.;
- (11) 48°05.63' N. lat., 124°52.91' W. long.;
- (12) 47°53.37' N. lat., 124°47.37' W. long.;
- (13) 47°40.28' N. lat., 124°40.07' W. long.;
- (14) 47°31.70' N. lat., 124°37.03' W. long.;
- (15) 47°25.67' N. lat., 124°34.79' W. long.;
- (16) 47°12.82' N. lat., 124°29.12' W. long.;
- (17) 46°52.94' N. lat., 124°22.58' W. long.;
- (18) 46°44.18' N. lat., 124°18.00' W. long.;
- (19) 46°38.17' N. lat., 124°15.88' W. long.;
- (20) 46°29.53' N. lat., 124°15.89' W. long.;
- (21) 46°19.27' N. lat., 124°14.15' W. long.;
- (22) 46°16.00' N. lat., 124°13.05' W. long.;
- (23) 46°16.00' N. lat., 124°13.04' W. long.;
- (24) 46°07.00' N. lat., 124°07.01' W. long.;
- (25) 45°55.95' N. lat., 124°02.23' W. long.;
- (26) 45°54.53' N. lat., 124°02.57' W. long.;
- (27) 45°50.65' N. lat., 124°01.62' W. long.;
- (28) 45°48.20' N. lat., 124°02.16' W. long.;
- (29) 45°46.00' N. lat., 124°01.86' W. long.;
- (30) 45°43.46' N. lat., 124°01.28' W. long.;



- (31) 45°40.48' N. lat., 124°01.03' W. long.;
- (32) 45°39.04' N. lat., 124°01.68' W. long.;
- (33) 45°35.48' N. lat., 124°01.90' W. long.;
- (34) 45°29.81' N. lat., 124°02.45' W. long.;
- (35) 45°27.97' N. lat., 124°01.90' W. long.;
- (36) 45°27.22' N. lat., 124°02.66' W. long.;
- (37) 45°24.20' N. lat., 124°02.94' W. long.;
- (38) 45°20.60' N. lat., 124°01.74' W. long.;
- (39) 45°20.25' N. lat., 124°01.85' W. long.;
- (40) 45°16.44' N. lat., 124°03.22' W. long.;
- (41) 45°13.63' N. lat., 124°02.69' W. long.;
- (42) 45°11.05' N. lat., 124°03.59' W. long.;
- (43) 45°08.55' N. lat., 124°03.47' W. long.;
- (44) 45°02.81' N. lat., 124°04.64' W. long.;
- (45) 44°58.06' N. lat., 124°05.03' W. long.;
- (46) 44°53.97' N. lat., 124°06.92' W. long.;
- (47) 44°48.89' N. lat., 124°07.04' W. long.;
- (48) 44°46.94' N. lat., 124°08.25' W. long.;
- (49) 44°42.72' N. lat., 124°08.98' W. long.;
- (50) 44°38.16' N. lat., 124°11.48' W. long.;
- (51) 44°33.38' N. lat., 124°11.54' W. long.;
- (52) 44°28.51' N. lat., 124°12.04' W. long.;
- (53) 44°27.65' N. lat., 124°12.56' W. long.;
- (54) 44°19.67' N. lat., 124°12.37' W. long.;
- (55) 44°10.79' N. lat., 124°12.22' W. long.;
- (56) 44°09.22' N. lat., 124°12.28' W. long.;
- (57) 44°08.30' N. lat., 124°12.30' W. long.;
- (58) 44°00.22' N. lat., 124°12.80' W. long.;
- (59) 43°51.56' N. lat., 124°13.18' W. long.;
- (60) 43°44.26' N. lat., 124°14.50' W. long.;
- (61) 43°33.82' N. lat., 124°16.28' W. long.;
- (62) 43°28.66' N. lat., 124°18.72' W. long.;
- (63) 43°23.12' N. lat., 124°24.04' W. long.;
- (64) 43°20.83' N. lat., 124°25.67' W. long.;
- (65) 43°20.48' N. lat., 124°25.90' W. long.;
- (66) 43°16.41' N. lat., 124°27.52' W. long.;
- (67) 43°14.23' N. lat., 124°29.28' W. long.;
- (68) 43°14.03' N. lat., 124°28.31' W. long.;
- (69) 43°11.92' N. lat., 124°28.26' W. long.;
- (70) 43°11.02' N. lat., 124°29.11' W. long.;
- (71) 43°10.13' N. lat., 124°29.15' W. long.;
- (72) 43°09.26' N. lat., 124°31.03' W. long.;
- (73) 43°07.73' N. lat., 124°30.92' W. long.;
- (74) 43°05.93' N. lat., 124°29.64' W. long.;
- (75) 43°01.59' N. lat., 124°30.64' W. long.;
- (76) 42°59.72' N. lat., 124°31.16' W. long.;
- (77) 42°53.75' N. lat., 124°36.09' W. long.;
- (78) 42°50.00' N. lat., 124°38.39' W. long.;
- (79) 42°49.37' N. lat., 124°38.81' W. long.;
- (80) 42°46.42' N. lat., 124°37.69' W. long.;
- (81) 42°46.07' N. lat., 124°38.56' W. long.;
- (82) 42°45.29' N. lat., 124°37.95' W. long.;
- (83) 42°45.61' N. lat., 124°36.87' W. long.;
- (84) 42°44.27' N. lat., 124°33.64' W. long.;
- (85) 42°42.75' N. lat., 124°31.84' W. long.;
- (86) 42°40.50' N. lat., 124°29.67' W. long.;
- (87) 42°40.04' N. lat., 124°29.20' W. long.;
- (88) 42°38.09' N. lat., 124°28.39' W. long.;
- (89) 42°36.73' N. lat., 124°27.54' W. long.;
- (90) 42°36.56' N. lat., 124°28.40' W. long.;
- (91) 42°35.77' N. lat., 124°28.79' W. long.;
- (92) 42°34.03' N. lat., 124°29.98' W. long.;
- (93) 42°34.19' N. lat., 124°30.58' W. long.;
- (94) 42°31.27' N. lat., 124°32.24' W. long.;
- (95) 42°27.07' N. lat., 124°32.53' W. long.;
- (96) 42°24.21' N. lat., 124°31.23' W. long.;
- (97) 42°20.47' N. lat., 124°28.87' W. long.;
- (98) 42°14.60' N. lat., 124°26.80' W. long.;
- (99) 42°13.67' N. lat., 124°26.25' W. long.;
- (100) 42°10.90' N. lat., 124°24.56' W. long.;
- (101) 42°07.04' N. lat., 124°23.35' W. long.;
- (102) 42°02.16' N. lat., 124°22.59' W. long.;
- (103) 42°00.00' N. lat., 124°21.81' W. long.;
- (104) 41°55.75' N. lat., 124°20.72' W. long.;
- (105) 41°50.93' N. lat., 124°23.76' W. long.;
- (106) 41°42.53' N. lat., 124°16.47' W. long.;
- (107) 41°37.20' N. lat., 124°17.05' W. long.;
- (108) 41°24.58' N. lat., 124°10.51' W. long.;
- (109) 41°20.73' N. lat., 124°11.73' W. long.;
- (110) 41°17.59' N. lat., 124°10.66' W. long.;
- (111) 41°04.54' N. lat., 124°14.47' W. long.;
- (112) 40°54.26' N. lat., 124°13.90' W. long.;
- (113) 40°40.31' N. lat., 124°26.24' W. long.;
- (114) 40°34.00' N. lat., 124°27.39' W. long.;
- (115) 40°30.00' N. lat., 124°31.32' W. long.;
- (116) 40°28.89' N. lat., 124°32.43' W. long.;
- (117) 40°24.77' N. lat., 124°29.51' W. long.;
- (118) 40°22.47' N. lat., 124°24.12' W. long.;
- (119) 40°19.73' N. lat., 124°23.59' W. long.;
- (120) 40°18.64' N. lat., 124°21.89' W. long.;
- (121) 40°17.67' N. lat., 124°23.07' W. long.;
- (122) 40°15.58' N. lat., 124°23.61' W. long.;
- (123) 40°13.42' N. lat., 124°22.94' W. long.;
- (124) 40°10.00' N. lat., 124°16.65' W. long.;
- (125) 40°09.46' N. lat., 124°15.28' W. long.;
- (126) 40°08.89' N. lat., 124°15.24' W. long.;
- (127) 40°06.40' N. lat., 124°10.97' W. long.;
- (128) 40°06.08' N. lat., 124°09.34' W. long.;
- (129) 40°06.64' N. lat., 124°08.00' W. long.;
- (130) 40°05.08' N. lat., 124°07.57' W. long.;
- (131) 40°04.29' N. lat., 124°08.12' W. long.;
- (132) 40°00.61' N. lat., 124°07.35' W. long.;
- (133) 39°58.60' N. lat., 124°05.51' W. long.;
- (134) 39°54.89' N. lat., 124°04.67' W. long.;
- (135) 39°53.01' N. lat., 124°02.33' W. long.;

- (136) 39°53.20' N. lat., 123°58.18' W. long.;
- (137) 39°48.45' N. lat., 123°53.21' W. long.;
- (138) 39°43.89' N. lat., 123°51.75' W. long.;
- (139) 39°39.60' N. lat., 123°49.14' W. long.;
- (140) 39°34.43' N. lat., 123°48.48' W. long.;
- (141) 39°30.63' N. lat., 123°49.71' W. long.;
- (142) 39°21.25' N. lat., 123°50.54' W. long.;
- (143) 39°08.87' N. lat., 123°46.24' W. long.;
- (144) 39°03.79' N. lat., 123°43.91' W. long.;
- (145) 38°59.65' N. lat., 123°45.94' W. long.;
- (146) 38°57.50' N. lat., 123°46.28' W. long.;
- (147) 38°56.80' N. lat., 123°46.48' W. long.;
- (148) 38°51.16' N. lat., 123°41.48' W. long.;
- (149) 38°45.77' N. lat., 123°35.14' W. long.;
- (150) 38°42.21' N. lat., 123°28.17' W. long.;
- (151) 38°34.05' N. lat., 123°20.96' W. long.;
- (152) 38°22.47' N. lat., 123°07.48' W. long.;
- (153) 38°16.52' N. lat., 123°05.62' W. long.;
- (154) 38°14.42' N. lat., 123°01.91' W. long.;
- (155) 38°08.24' N. lat., 122°59.79' W. long.;
- (156) 38°02.69' N. lat., 123°01.96' W. long.;
- (157) 38°00.00' N. lat., 123°04.75' W. long.;
- (158) 37°58.41' N. lat., 123°02.93' W. long.;
- (159) 37°58.25' N. lat., 122°56.49' W. long.;
- (160) 37°50.30' N. lat., 122°52.23' W. long.;
- (161) 37°43.36' N. lat., 123°04.18' W. long.;
- (162) 37°40.77' N. lat., 123°01.62' W. long.;
- (163) 37°40.13' N. lat., 122°57.30' W. long.;
- (164) 37°42.59' N. lat., 122°53.64' W. long.;
- (165) 37°35.67' N. lat., 122°44.20' W. long.;
- (166) 37°29.62' N. lat., 122°36.00' W. long.;
- (167) 37°22.38' N. lat., 122°31.66' W. long.;
- (168) 37°13.86' N. lat., 122°28.27' W. long.;
- (169) 37°11.00' N. lat., 122°26.50' W. long.;
- (170) 37°08.01' N. lat., 122°24.75' W. long.;
- (171) 37°07.00' N. lat., 122°23.60' W. long.;
- (172) 37°05.84' N. lat., 122°22.47' W. long.;
- (173) 36°58.77' N. lat., 122°13.03' W. long.;
- (174) 36°53.74' N. lat., 122°03.39' W. long.;
- (175) 36°52.71' N. lat., 122°00.14' W. long.;
- (176) 36°52.51' N. lat., 121°56.77' W. long.;
- (177) 36°49.44' N. lat., 121°49.63' W. long.;
- (178) 36°48.01' N. lat., 121°49.92' W. long.;
- (179) 36°48.25' N. lat., 121°47.66' W. long.;
- (180) 36°46.26' N. lat., 121°51.27' W. long.;
- (181) 36°39.14' N. lat., 121°52.05' W. long.;
- (182) 36°38.00' N. lat., 121°53.57' W. long.;
- (183) 36°39.14' N. lat., 121°55.45' W. long.;
- (184) 36°38.50' N. lat., 121°57.09' W. long.;
- (185) 36°36.75' N. lat., 121°59.44' W. long.;
- (186) 36°34.97' N. lat., 121°59.37' W. long.;
- (187) 36°33.07' N. lat., 121°58.32' W. long.;
- (188) 36°33.27' N. lat., 121°57.07' W. long.;
- (189) 36°32.68' N. lat., 121°57.03' W. long.;
- (190) 36°32.04' N. lat., 121°55.98' W. long.;
- (191) 36°31.61' N. lat., 121°55.72' W. long.;
- (192) 36°31.59' N. lat., 121°57.12' W. long.;
- (193) 36°31.52' N. lat., 121°57.57' W. long.;
- (194) 36°30.88' N. lat., 121°57.90' W. long.;
- (195) 36°30.25' N. lat., 121°57.37' W. long.;
- (196) 36°29.47' N. lat., 121°57.55' W. long.;
- (197) 36°26.72' N. lat., 121°56.40' W. long.;
- (198) 36°24.33' N. lat., 121°56.00' W. long.;
- (199) 36°23.36' N. lat., 121°55.45' W. long.;
- (200) 36°18.86' N. lat., 121°56.15' W. long.;
- (201) 36°16.21' N. lat., 121°54.81' W. long.;
- (202) 36°15.30' N. lat., 121°53.79' W. long.;
- (203) 36°12.04' N. lat., 121°45.38' W. long.;
- (204) 36°11.87' N. lat., 121°44.45' W. long.;
- (205) 36°12.13' N. lat., 121°44.25' W. long.;
- (206) 36°11.89' N. lat., 121°43.65' W. long.;
- (207) 36°10.56' N. lat., 121°42.62' W. long.;
- (208) 36°09.90' N. lat., 121°41.57' W. long.;
- (209) 36°08.14' N. lat., 121°40.44' W. long.;
- (210) 36°06.69' N. lat., 121°38.79' W. long.;
- (211) 36°05.85' N. lat., 121°38.47' W. long.;
- (212) 36°03.08' N. lat., 121°36.25' W. long.;
- (213) 36°02.92' N. lat., 121°35.89' W. long.;
- (214) 36°01.53' N. lat., 121°36.13' W. long.;
- (215) 36°00.59' N. lat., 121°35.40' W. long.;
- (216) 36°00.00' N. lat., 121°34.10' W. long.;
- (217) 35°59.93' N. lat., 121°33.81' W. long.;
- (218) 35°59.69' N. lat., 121°31.84' W. long.;
- (219) 35°58.59' N. lat., 121°30.30' W. long.;
- (220) 35°54.02' N. lat., 121°29.71' W. long.;
- (221) 35°51.54' N. lat., 121°27.67' W. long.;
- (222) 35°50.42' N. lat., 121°25.79' W. long.;
- (223) 35°48.37' N. lat., 121°24.29' W. long.;
- (224) 35°47.02' N. lat., 121°22.46' W. long.;
- (225) 35°42.28' N. lat., 121°21.20' W. long.;
- (226) 35°41.57' N. lat., 121°21.82' W. long.;
- (227) 35°39.24' N. lat., 121°18.84' W. long.;
- (228) 35°35.14' N. lat., 121°10.45' W. long.;
- (229) 35°30.11' N. lat., 121°05.59' W. long.;
- (230) 35°25.86' N. lat., 121°00.07' W. long.;
- (231) 35°22.82' N. lat., 120°54.68' W. long.;
- (232) 35°17.96' N. lat., 120°55.54' W. long.;
- (233) 35°14.83' N. lat., 120°55.42' W. long.;
- (234) 35°08.87' N. lat., 120°50.22' W. long.;
- (235) 35°05.55' N. lat., 120°44.89' W. long.;
- (236) 35°02.91' N. lat., 120°43.94' W. long.;
- (237) 34°53.80' N. lat., 120°43.94' W. long.;
- (238) 34°34.89' N. lat., 120°41.92' W. long.;
- (239) 34°32.48' N. lat., 120°40.05' W. long.;
- (240) 34°30.12' N. lat., 120°32.81' W. long.;

- (241) 34°27.00' N. lat., 120°30.46' W. long.;
- (242) 34°27.00' N. lat., 120°30.31' W. long.;
- (243) 34°25.84' N. lat., 120°27.40' W. long.;
- (244) 34°25.16' N. lat., 120°20.18' W. long.;
- (245) 34°25.88' N. lat., 120°18.24' W. long.;
- (246) 34°27.26' N. lat., 120°12.47' W. long.;
- (247) 34°26.27' N. lat., 120°02.22' W. long.;
- (248) 34°23.41' N. lat., 119°53.40' W. long.;
- (249) 34°23.33' N. lat., 119°48.74' W. long.;
- (250) 34°22.31' N. lat., 119°41.36' W. long.;
- (251) 34°21.72' N. lat., 119°40.14' W. long.;
- (252) 34°21.25' N. lat., 119°41.18' W. long.;
- (253) 34°20.25' N. lat., 119°39.03' W. long.;
- (254) 34°19.87' N. lat., 119°33.65' W. long.;
- (255) 34°18.67' N. lat., 119°30.16' W. long.;
- (256) 34°16.95' N. lat., 119°27.90' W. long.;
- (257) 34°13.02' N. lat., 119°26.99' W. long.;
- (258) 34°08.62' N. lat., 119°20.89' W. long.;
- (259) 34°06.95' N. lat., 119°17.68' W. long.;
- (260) 34°05.93' N. lat., 119°15.17' W. long.;
- (261) 34°08.42' N. lat., 119°13.11' W. long.;
- (262) 34°05.23' N. lat., 119°13.34' W. long.;
- (263) 34°04.98' N. lat., 119°11.39' W. long.;
- (264) 34°04.55' N. lat., 119°11.09' W. long.;
- (265) 34°04.15' N. lat., 119°09.35' W. long.;
- (266) 34°04.89' N. lat., 119°07.86' W. long.;
- (267) 34°04.08' N. lat., 119°07.33' W. long.;
- (268) 34°04.10' N. lat., 119°06.89' W. long.;
- (269) 34°05.08' N. lat., 119°07.02' W. long.;
- (270) 34°05.27' N. lat., 119°04.95' W. long.;
- (271) 34°04.51' N. lat., 119°04.70' W. long.;
- (272) 34°02.26' N. lat., 118°59.88' W. long.;
- (273) 34°01.08' N. lat., 118°59.77' W. long.;
- (274) 34°00.94' N. lat., 118°51.65' W. long.;
- (275) 33°59.77' N. lat., 118°49.26' W. long.;
- (276) 34°00.04' N. lat., 118°48.92' W. long.;
- (277) 33°59.65' N. lat., 118°48.43' W. long.;
- (278) 33°59.46' N. lat., 118°47.25' W. long.;
- (279) 33°59.80' N. lat., 118°45.89' W. long.;
- (280) 34°00.21' N. lat., 118°37.64' W. long.;
- (281) 33°59.26' N. lat., 118°34.58' W. long.;
- (282) 33°58.07' N. lat., 118°33.36' W. long.;
- (283) 33°53.76' N. lat., 118°30.14' W. long.;
- (284) 33°51.00' N. lat., 118°25.19' W. long.;
- (285) 33°50.07' N. lat., 118°24.70' W. long.;
- (286) 33°50.16' N. lat., 118°23.77' W. long.;
- (287) 33°48.80' N. lat., 118°25.31' W. long.;
- (288) 33°47.07' N. lat., 118°27.07' W. long.;
- (289) 33°46.12' N. lat., 118°26.87' W. long.;
- (290) 33°44.15' N. lat., 118°25.15' W. long.;
- (291) 33°43.54' N. lat., 118°23.02' W. long.;
- (292) 33°41.35' N. lat., 118°18.86' W. long.;
- (293) 33°39.96' N. lat., 118°17.37' W. long.;
- (294) 33°40.12' N. lat., 118°16.33' W. long.;
- (295) 33°39.28' N. lat., 118°16.21' W. long.;
- (296) 33°38.04' N. lat., 118°14.86' W. long.;
- (297) 33°36.57' N. lat., 118°14.67' W. long.;
- (298) 33°34.93' N. lat., 118°10.94' W. long.;
- (299) 33°35.14' N. lat., 118°08.61' W. long.;
- (300) 33°35.69' N. lat., 118°07.68' W. long.;
- (301) 33°36.21' N. lat., 118°07.53' W. long.;
- (302) 33°36.43' N. lat., 118°06.73' W. long.;
- (303) 33°36.05' N. lat., 118°06.15' W. long.;
- (304) 33°36.32' N. lat., 118°03.91' W. long.;
- (305) 33°35.69' N. lat., 118°03.64' W. long.;
- (306) 33°34.62' N. lat., 118°00.04' W. long.;
- (307) 33°34.80' N. lat., 117°57.73' W. long.;
- (308) 33°35.57' N. lat., 117°56.62' W. long.;
- (309) 33°35.46' N. lat., 117°55.99' W. long.;
- (310) 33°35.98' N. lat., 117°55.99' W. long.;
- (311) 33°35.46' N. lat., 117°55.38' W. long.;
- (312) 33°35.21' N. lat., 117°53.46' W. long.;
- (313) 33°33.61' N. lat., 117°50.45' W. long.;
- (314) 33°31.41' N. lat., 117°47.28' W. long.;
- (315) 33°27.54' N. lat., 117°44.36' W. long.;
- (316) 33°26.63' N. lat., 117°43.17' W. long.;
- (317) 33°25.21' N. lat., 117°40.90' W. long.;
- (318) 33°20.33' N. lat., 117°35.99' W. long.;
- (319) 33°16.35' N. lat., 117°31.51' W. long.;
- (320) 33°11.53' N. lat., 117°26.81' W. long.;
- (321) 33°07.59' N. lat., 117°21.13' W. long.;
- (322) 33°02.21' N. lat., 117°19.05' W. long.;
- (323) 32°56.55' N. lat., 117°17.70' W. long.;
- (324) 32°54.61' N. lat., 117°16.60' W. long.;
- (325) 32°52.32' N. lat., 117°15.97' W. long.;
- (326) 32°51.48' N. lat., 117°16.15' W. long.;
- (327) 32°51.85' N. lat., 117°17.26' W. long.;
- (328) 32°51.55' N. lat., 117°19.01' W. long.;
- (329) 32°49.55' N. lat., 117°19.63' W. long.;
- (330) 32°46.71' N. lat., 117°18.32' W. long.;
- (331) 32°36.35' N. lat., 117°15.68' W. long.; and
- (332) 32°32.85' N. lat., 117°15.44' W. long.
- \* \* \* \*
- (j) The 40–fm (73–m) depth contour between 46°16' N. lat. and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
- (1) 46°16.00' N. lat., 124°16.10' W. long.;
  - (2) 46°15.29' N. lat., 124°15.60' W. long.;
  - (3) 46°11.90' N. lat., 124°13.59' W. long.;
  - (4) 46°06.94' N. lat., 124°10.15' W. long.;
  - (5) 46°05.33' N. lat., 124°08.30' W. long.;
  - (6) 45°58.69' N. lat., 124°05.60' W. long.;
  - (7) 45°57.71' N. lat., 124°05.81' W. long.;
  - (8) 45°53.98' N. lat., 124°05.05' W. long.;
  - (9) 45°49.75' N. lat., 124°05.14' W. long.;

- (10) 45°47.87' N. lat., 124°05.16' W. long.;
- (11) 45°47.07' N. lat., 124°04.21' W. long.;
- (12) 45°46.00' N. lat., 124°04.49' W. long.;
- (13) 45°44.34' N. lat., 124°05.09' W. long.;
- (14) 45°40.64' N. lat., 124°04.90' W. long.;
- (15) 45°33.00' N. lat., 124°04.46' W. long.;
- (16) 45°32.27' N. lat., 124°04.74' W. long.;
- (17) 45°29.26' N. lat., 124°04.22' W. long.;
- (18) 45°20.25' N. lat., 124°04.67' W. long.;
- (19) 45°19.99' N. lat., 124°04.62' W. long.;
- (20) 45°17.50' N. lat., 124°04.91' W. long.;
- (21) 45°11.29' N. lat., 124°05.20' W. long.;
- (22) 45°05.80' N. lat., 124°05.40' W. long.;
- (23) 45°05.08' N. lat., 124°05.93' W. long.;
- (24) 45°03.83' N. lat., 124°06.47' W. long.;
- (25) 45°01.70' N. lat., 124°06.53' W. long.;
- (26) 44°58.75' N. lat., 124°07.14' W. long.;
- (27) 44°51.28' N. lat., 124°10.21' W. long.;
- (28) 44°49.49' N. lat., 124°10.90' W. long.;
- (29) 44°44.96' N. lat., 124°14.39' W. long.;
- (30) 44°43.44' N. lat., 124°14.78' W. long.;
- (31) 44°42.26' N. lat., 124°13.81' W. long.;
- (32) 44°41.68' N. lat., 124°15.38' W. long.;
- (33) 44°34.87' N. lat., 124°15.80' W. long.;
- (34) 44°33.74' N. lat., 124°14.44' W. long.;
- (35) 44°27.66' N. lat., 124°16.99' W. long.;
- (36) 44°19.13' N. lat., 124°19.22' W. long.;
- (37) 44°15.35' N. lat., 124°17.38' W. long.;
- (38) 44°14.38' N. lat., 124°17.78' W. long.;
- (39) 44°12.80' N. lat., 124°17.18' W. long.;
- (40) 44°09.23' N. lat., 124°15.96' W. long.;
- (41) 44°08.38' N. lat., 124°16.79' W. long.;
- (42) 44°08.30' N. lat., 124°16.75' W. long.;
- (43) 44°01.18' N. lat., 124°15.42' W. long.;
- (44) 43°51.61' N. lat., 124°14.68' W. long.;
- (45) 43°42.66' N. lat., 124°15.46' W. long.;
- (46) 43°40.49' N. lat., 124°15.74' W. long.;
- (47) 43°38.77' N. lat., 124°15.64' W. long.;
- (48) 43°34.52' N. lat., 124°16.73' W. long.;
- (49) 43°28.82' N. lat., 124°19.52' W. long.;
- (50) 43°23.91' N. lat., 124°24.28' W. long.;
- (51) 43°20.83' N. lat., 124°26.63' W. long.;
- (52) 43°17.96' N. lat., 124°28.81' W. long.;
- (53) 43°16.75' N. lat., 124°28.42' W. long.;
- (54) 43°13.97' N. lat., 124°31.99' W. long.;
- (55) 43°13.72' N. lat., 124°33.25' W. long.;
- (56) 43°12.26' N. lat., 124°34.16' W. long.;
- (57) 43°10.96' N. lat., 124°32.33' W. long.;
- (58) 43°05.65' N. lat., 124°31.52' W. long.;
- (59) 42°59.66' N. lat., 124°32.58' W. long.;
- (60) 42°54.97' N. lat., 124°36.99' W. long.;
- (61) 42°53.81' N. lat., 124°38.57' W. long.;
- (62) 42°50.00' N. lat., 124°39.68' W. long.;
- (63) 42°49.13' N. lat., 124°39.70' W. long.;
- (64) 42°46.47' N. lat., 124°38.89' W. long.;
- (65) 42°45.74' N. lat., 124°38.86' W. long.;
- (66) 42°44.79' N. lat., 124°37.96' W. long.;
- (67) 42°45.01' N. lat., 124°36.39' W. long.;
- (68) 42°44.14' N. lat., 124°35.17' W. long.;
- (69) 42°42.14' N. lat., 124°32.82' W. long.;
- (70) 42°40.50' N. lat., 124°31.98' W. long.;
- (71) 42°38.81' N. lat., 124°31.09' W. long.;
- (72) 42°35.91' N. lat., 124°31.02' W. long.;
- (73) 42°31.34' N. lat., 124°34.84' W. long.;
- (74) 42°28.13' N. lat., 124°34.84' W. long.;
- (75) 42°26.74' N. lat., 124°35.59' W. long.;
- (76) 42°23.84' N. lat., 124°34.06' W. long.;
- (77) 42°21.68' N. lat., 124°30.64' W. long.;
- (78) 42°19.62' N. lat., 124°29.02' W. long.;
- (79) 42°15.01' N. lat., 124°27.72' W. long.;
- (80) 42°13.67' N. lat., 124°26.93' W. long.;
- (81) 42°11.38' N. lat., 124°25.63' W. long.;
- (82) 42°04.66' N. lat., 124°24.40' W. long.;
- (83) 42°00.00' N. lat., 124°23.55' W. long.;
- (84) 41°51.35' N. lat., 124°25.25' W. long.;
- (85) 41°44.10' N. lat., 124°19.05' W. long.;
- (86) 41°38.00' N. lat., 124°20.04' W. long.;
- (87) 41°18.43' N. lat., 124°13.48' W. long.;
- (88) 40°55.12' N. lat., 124°16.33' W. long.;
- (89) 40°41.00' N. lat., 124°27.66' W. long.;
- (90) 40°36.71' N. lat., 124°27.15' W. long.;
- (91) 40°32.81' N. lat., 124°29.42' W. long.;
- (92) 40°30.00' N. lat., 124°32.38' W. long.;
- (93) 40°29.13' N. lat., 124°33.23' W. long.;
- (94) 40°24.55' N. lat., 124°30.40' W. long.;
- (95) 40°22.32' N. lat., 124°24.19' W. long.;
- (96) 40°19.67' N. lat., 124°25.52' W. long.;
- (97) 40°18.63' N. lat., 124°22.38' W. long.;
- (98) 40°15.21' N. lat., 124°24.53' W. long.;
- (99) 40°12.56' N. lat., 124°22.69' W. long.;
- (100) 40°10.00' N. lat., 124°17.84' W. long.;
- (101) 40°09.30' N. lat., 124°15.68' W. long.;
- (102) 40°08.31' N. lat., 124°15.17' W. long.;
- (103) 40°05.62' N. lat., 124°09.80' W. long.;
- (104) 40°06.57' N. lat., 124°07.99' W. long.;
- (105) 40°00.86' N. lat., 124°08.42' W. long.;
- (106) 39°54.79' N. lat., 124°05.25' W. long.;
- (107) 39°52.75' N. lat., 124°02.62' W. long.;
- (108) 39°52.51' N. lat., 123°58.15' W. long.;
- (109) 39°49.64' N. lat., 123°54.98' W. long.;
- (110) 39°41.46' N. lat., 123°50.65' W. long.;
- (111) 39°34.57' N. lat., 123°49.24' W. long.;
- (112) 39°22.62' N. lat., 123°51.21' W. long.;
- (113) 39°04.58' N. lat., 123°45.43' W. long.;
- (114) 39°00.45' N. lat., 123°47.58' W. long.;

- (115) 38°57.50' N. lat., 123°47.27' W. long.;
- (116) 38°55.82' N. lat., 123°46.97' W. long.;
- (117) 38°52.26' N. lat., 123°44.35' W. long.;
- (118) 38°45.41' N. lat., 123°35.67' W. long.;
- (119) 38°40.60' N. lat., 123°28.22' W. long.;
- (120) 38°21.64' N. lat., 123°08.91' W. long.;
- (121) 38°12.01' N. lat., 123°03.86' W. long.;
- (122) 38°06.16' N. lat., 123°07.01' W. long.;
- (123) 38°00.00' N. lat., 123°07.05' W. long.;
- (124) 37°51.73' N. lat., 122°57.97' W. long.;
- (125) 37°47.96' N. lat., 122°59.34' W. long.;
- (126) 37°47.37' N. lat., 123°08.84' W. long.;
- (127) 37°50.00' N. lat., 123°14.38' W. long.;
- (128) 37°39.91' N. lat., 123°00.84' W. long.;
- (129) 37°38.75' N. lat., 122°52.16' W. long.;
- (130) 37°35.67' N. lat., 122°49.47' W. long.;
- (131) 37°20.24' N. lat., 122°33.82' W. long.;
- (132) 37°11.00' N. lat., 122°28.50' W. long.;
- (133) 37°07.00' N. lat., 122°26.26' W. long.;
- (134) 36°52.04' N. lat., 122°04.60' W. long.;
- (135) 36°52.00' N. lat., 121°57.41' W. long.;
- (136) 36°47.87' N. lat., 121°50.15' W. long.;
- (137) 36°48.07' N. lat., 121°48.21' W. long.;
- (138) 36°45.93' N. lat., 121°52.11' W. long.;
- (139) 36°40.55' N. lat., 121°52.59' W. long.;
- (140) 36°38.93' N. lat., 121°58.17' W. long.;
- (141) 36°36.54' N. lat., 122°00.18' W. long.;
- (142) 36°32.87' N. lat., 121°58.81' W. long.;
- (143) 36°31.90' N. lat., 121°56.00' W. long.;
- (144) 36°31.51' N. lat., 121°58.17' W. long.;
- (145) 36°23.28' N. lat., 121°56.10' W. long.;
- (146) 36°17.52' N. lat., 121°57.33' W. long.;
- (147) 36°15.90' N. lat., 121°57.00' W. long.;
- (148) 36°11.06' N. lat., 121°43.10' W. long.;
- (149) 36°02.85' N. lat., 121°36.21' W. long.;
- (150) 36°01.22' N. lat., 121°36.36' W. long.;
- (151) 36°00.00' N. lat., 121°34.73' W. long.;
- (152) 35°58.67' N. lat., 121°30.68' W. long.;
- (153) 35°54.16' N. lat., 121°30.21' W. long.;
- (154) 35°46.98' N. lat., 121°24.02' W. long.;
- (155) 35°40.75' N. lat., 121°21.89' W. long.;
- (156) 35°34.36' N. lat., 121°11.07' W. long.;
- (157) 35°29.30' N. lat., 121°05.74' W. long.;
- (158) 35°22.15' N. lat., 120°56.15' W. long.;
- (159) 35°14.93' N. lat., 120°56.37' W. long.;
- (160) 35°04.06' N. lat., 120°46.35' W. long.;
- (161) 34°45.85' N. lat., 120°43.96' W. long.;
- (162) 34°37.80' N. lat., 120°44.44' W. long.;
- (163) 34°32.82' N. lat., 120°42.08' W. long.;
- (164) 34°27.00' N. lat., 120°31.27' W. long.;
- (165) 34°24.25' N. lat., 120°23.33' W. long.;
- (166) 34°26.48' N. lat., 120°13.93' W. long.;
- (167) 34°25.12' N. lat., 120°03.46' W. long.;
- (168) 34°17.58' N. lat., 119°31.62' W. long.;
- (169) 34°11.49' N. lat., 119°27.30' W. long.;
- (170) 34°05.59' N. lat., 119°15.52' W. long.;
- (171) 34°08.60' N. lat., 119°12.93' W. long.;
- (172) 34°04.81' N. lat., 119°13.44' W. long.;
- (173) 34°04.26' N. lat., 119°12.39' W. long.;
- (174) 34°03.89' N. lat., 119°07.06' W. long.;
- (175) 34°05.14' N. lat., 119°05.55' W. long.;
- (176) 34°01.27' N. lat., 118°59.62' W. long.;
- (177) 33°59.56' N. lat., 118°48.21' W. long.;
- (178) 33°59.30' N. lat., 118°35.43' W. long.;
- (179) 33°55.14' N. lat., 118°32.16' W. long.;
- (180) 33°52.95' N. lat., 118°34.49' W. long.;
- (181) 33°51.07' N. lat., 118°31.50' W. long.;
- (182) 33°52.45' N. lat., 118°28.54' W. long.;
- (183) 33°49.86' N. lat., 118°24.10' W. long.;
- (184) 33°47.14' N. lat., 118°28.38' W. long.;
- (185) 33°44.14' N. lat., 118°25.18' W. long.;
- (186) 33°41.54' N. lat., 118°19.63' W. long.;
- (187) 33°37.86' N. lat., 118°15.06' W. long.;
- (188) 33°36.58' N. lat., 118°15.97' W. long.;
- (189) 33°34.78' N. lat., 118°12.60' W. long.;
- (190) 33°34.46' N. lat., 118°08.77' W. long.;
- (191) 33°35.92' N. lat., 118°07.04' W. long.;
- (192) 33°36.06' N. lat., 118°03.96' W. long.;
- (193) 33°34.98' N. lat., 118°02.74' W. long.;
- (194) 33°34.03' N. lat., 117°59.37' W. long.;
- (195) 33°35.46' N. lat., 117°55.61' W. long.;
- (196) 33°34.97' N. lat., 117°53.33' W. long.;
- (197) 33°31.20' N. lat., 117°47.40' W. long.;
- (198) 33°27.26' N. lat., 117°44.34' W. long.;
- (199) 33°24.84' N. lat., 117°40.75' W. long.;
- (200) 33°11.45' N. lat., 117°26.84' W. long.;
- (201) 33°07.59' N. lat., 117°21.46' W. long.;
- (202) 33°01.74' N. lat., 117°19.23' W. long.;
- (203) 32°56.44' N. lat., 117°18.08' W. long.;
- (204) 32°54.63' N. lat., 117°16.94' W. long.;
- (205) 32°51.67' N. lat., 117°16.21' W. long.;
- (206) 32°52.16' N. lat., 117°19.41' W. long.;
- (207) 32°46.91' N. lat., 117°20.43' W. long.;
- (208) 32°43.49' N. lat., 117°18.12' W. long.; and
- (209) 32°33.00' N. lat., 117°16.39' W. long.
- \* \* \* \* \*
21. In § 660.392, paragraphs (a), (f), and (j) are revised to read as follows:
- § 660.392 Latitude/longitude coordinates defining the 50-fm (91-m) through 75-fm (137-m) depth contours.**
- \* \* \* \* \*
- (a) The 50-fm (91-m) depth contour between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°22.15' N. lat., 124°43.15' W. long.;
- (2) 48°22.15' N. lat., 124°49.10' W. long.;
- (3) 48°20.03' N. lat., 124°51.18' W. long.;

- (4) 48°16.61' N. lat., 124°53.72' W. long.;
- (5) 48°14.68' N. lat., 124°54.50' W. long.;
- (6) 48°12.02' N. lat., 124°55.29' W. long.;
- (7) 48°03.14' N. lat., 124°57.02' W. long.;
- (8) 47°56.05' N. lat., 124°55.60' W. long.;
- (9) 47°52.58' N. lat., 124°54.00' W. long.;
- (10) 47°50.18' N. lat., 124°52.36' W. long.;
- (11) 47°45.34' N. lat., 124°51.07' W. long.;
- (12) 47°40.96' N. lat., 124°48.84' W. long.;
- (13) 47°34.59' N. lat., 124°46.24' W. long.;
- (14) 47°27.86' N. lat., 124°42.12' W. long.;
- (15) 47°22.34' N. lat., 124°39.43' W. long.;
- (16) 47°17.66' N. lat., 124°38.75' W. long.;
- (17) 47°06.25' N. lat., 124°39.74' W. long.;
- (18) 47°00.43' N. lat., 124°38.01' W. long.;
- (19) 46°52.00' N. lat., 124°32.44' W. long.;
- (20) 46°35.41' N. lat., 124°25.51' W. long.;
- (21) 46°25.43' N. lat., 124°23.46' W. long.;
- (22) 46°16.00' N. lat., 124°17.32' W. long.;
- (23) 45°50.88' N. lat., 124°09.68' W. long.;
- (24) 45°46.00' N. lat., 124°09.39' W. long.;
- (25) 45°20.25' N. lat., 124°07.34' W. long.;
- (26) 45°12.99' N. lat., 124°06.71' W. long.;
- (27) 45°03.83' N. lat., 124°09.17' W. long.;
- (28) 44°52.48' N. lat., 124°11.22' W. long.;
- (29) 44°42.41' N. lat., 124°19.70' W. long.;
- (30) 44°38.80' N. lat., 124°26.58' W. long.;
- (31) 44°23.39' N. lat., 124°31.70' W. long.;
- (32) 44°20.30' N. lat., 124°38.72' W. long.;
- (33) 44°13.52' N. lat., 124°40.45' W. long.;
- (34) 44°18.80' N. lat., 124°35.48' W. long.;
- (35) 44°19.62' N. lat., 124°27.18' W. long.;
- (36) 44°08.30' N. lat., 124°22.17' W. long.;
- (37) 43°56.65' N. lat., 124°16.86' W. long.;
- (38) 43°34.95' N. lat., 124°17.47' W. long.;
- (39) 43°20.83' N. lat., 124°29.11' W. long.;
- (40) 43°12.60' N. lat., 124°35.80' W. long.;
- (41) 43°08.96' N. lat., 124°33.77' W. long.;
- (42) 42°59.66' N. lat., 124°34.79' W. long.;
- (43) 42°54.29' N. lat., 124°39.46' W. long.;
- (44) 42°50.00' N. lat., 124°39.84' W. long.;
- (45) 42°46.50' N. lat., 124°39.99' W. long.;
- (46) 42°41.00' N. lat., 124°34.92' W. long.;
- (47) 42°40.50' N. lat., 124°34.98' W. long.;
- (48) 42°36.29' N. lat., 124°34.70' W. long.;
- (49) 42°28.36' N. lat., 124°37.90' W. long.;
- (50) 42°25.53' N. lat., 124°37.68' W. long.;
- (51) 42°18.64' N. lat., 124°29.47' W. long.;
- (52) 42°13.67' N. lat., 124°27.67' W. long.;
- (53) 42°03.04' N. lat., 124°25.81' W. long.;
- (54) 42°00.00' N. lat., 124°26.21' W. long.;
- (55) 41°57.60' N. lat., 124°27.35' W. long.;
- (56) 41°52.53' N. lat., 124°26.51' W. long.;
- (57) 41°50.17' N. lat., 124°25.63' W. long.;
- (58) 41°46.01' N. lat., 124°22.16' W. long.;
- (59) 41°26.50' N. lat., 124°21.78' W. long.;
- (60) 41°15.66' N. lat., 124°16.42' W. long.;
- (61) 41°05.45' N. lat., 124°16.89' W. long.;
- (62) 40°54.55' N. lat., 124°19.53' W. long.;
- (63) 40°42.22' N. lat., 124°28.29' W. long.;
- (64) 40°39.68' N. lat., 124°28.37' W. long.;
- (65) 40°36.76' N. lat., 124°27.39' W. long.;
- (66) 40°34.44' N. lat., 124°28.89' W. long.;
- (67) 40°32.57' N. lat., 124°32.43' W. long.;
- (68) 40°30.95' N. lat., 124°33.87' W. long.;
- (69) 40°30.00' N. lat., 124°34.18' W. long.;
- (70) 40°28.90' N. lat., 124°34.59' W. long.;
- (71) 40°24.36' N. lat., 124°31.42' W. long.;
- (72) 40°23.66' N. lat., 124°28.35' W. long.;
- (73) 40°22.54' N. lat., 124°24.71' W. long.;
- (74) 40°21.52' N. lat., 124°24.86' W. long.;
- (75) 40°21.25' N. lat., 124°25.59' W. long.;
- (76) 40°20.63' N. lat., 124°26.47' W. long.;
- (77) 40°19.18' N. lat., 124°25.98' W. long.;
- (78) 40°18.42' N. lat., 124°24.77' W. long.;
- (79) 40°18.64' N. lat., 124°22.81' W. long.;
- (80) 40°15.31' N. lat., 124°25.28' W. long.;
- (81) 40°15.37' N. lat., 124°26.82' W. long.;
- (82) 40°11.91' N. lat., 124°22.68' W. long.;
- (83) 40°10.01' N. lat., 124°19.97' W. long.;
- (84) 40°10.00' N. lat., 124°19.97' W. long.;
- (85) 40°09.20' N. lat., 124°15.81' W. long.;
- (86) 40°07.51' N. lat., 124°15.29' W. long.;
- (87) 40°05.22' N. lat., 124°10.06' W. long.;
- (88) 40°06.51' N. lat., 124°08.01' W. long.;
- (89) 40°00.72' N. lat., 124°08.45' W. long.;
- (90) 39°56.60' N. lat., 124°07.12' W. long.;
- (91) 39°52.58' N. lat., 124°03.57' W. long.;
- (92) 39°50.65' N. lat., 123°57.98' W. long.;
- (93) 39°40.16' N. lat., 123°52.41' W. long.;
- (94) 39°30.12' N. lat., 123°52.92' W. long.;
- (95) 39°24.53' N. lat., 123°55.16' W. long.;
- (96) 39°11.58' N. lat., 123°50.93' W. long.;
- (97) 38°57.50' N. lat., 123°51.10' W. long.;
- (98) 38°55.13' N. lat., 123°51.14' W. long.;
- (99) 38°28.58' N. lat., 123°22.84' W. long.;
- (100) 38°14.60' N. lat., 123°09.92' W. long.;
- (101) 38°01.84' N. lat., 123°09.75' W. long.;
- (102) 38°00.00' N. lat., 123°09.25' W. long.;
- (103) 37°55.24' N. lat., 123°08.30' W. long.;
- (104) 37°52.06' N. lat., 123°09.19' W. long.;
- (105) 37°50.21' N. lat., 123°14.90' W. long.;
- (106) 37°35.67' N. lat., 122°55.43' W. long.;
- (107) 37°11.00' N. lat., 122°31.67' W. long.;
- (108) 37°07.00' N. lat., 122°28.00' W. long.;

- (109) 37°03.06' N. lat., 122°24.22' W. long.;
- (110) 36°50.20' N. lat., 122°03.58' W. long.;
- (111) 36°51.46' N. lat., 121°57.54' W. long.;
- (112) 36°44.14' N. lat., 121°58.10' W. long.;
- (113) 36°36.76' N. lat., 122°01.16' W. long.;
- (114) 36°15.62' N. lat., 121°57.13' W. long.;
- (115) 36°10.41' N. lat., 121°42.92' W. long.;
- (116) 36°02.56' N. lat., 121°36.37' W. long.;
- (117) 36°00.00' N. lat., 121°35.15' W. long.;
- (118) 35°58.26' N. lat., 121°32.88' W. long.;
- (119) 35°40.38' N. lat., 121°22.59' W. long.;
- (120) 35°24.35' N. lat., 121°02.53' W. long.;
- (121) 35°02.66' N. lat., 120°51.63' W. long.;
- (122) 34°39.52' N. lat., 120°48.72' W. long.;
- (123) 34°31.26' N. lat., 120°44.12' W. long.;
- (124) 34°27.00' N. lat., 120°33.31' W. long.;
- (125) 34°23.47' N. lat., 120°24.76' W. long.;
- (126) 34°25.83' N. lat., 120°17.26' W. long.;
- (127) 34°24.65' N. lat., 120°04.83' W. long.;
- (128) 34°23.18' N. lat., 119°56.18' W. long.;
- (129) 34°19.20' N. lat., 119°41.64' W. long.;
- (130) 34°16.82' N. lat., 119°35.32' W. long.;
- (131) 34°13.43' N. lat., 119°32.29' W. long.;
- (132) 34°05.39' N. lat., 119°15.13' W. long.;
- (133) 34°08.22' N. lat., 119°13.64' W. long.;
- (134) 34°07.64' N. lat., 119°13.10' W. long.;
- (135) 34°04.56' N. lat., 119°13.73' W. long.;
- (136) 34°03.90' N. lat., 119°12.66' W. long.;
- (137) 34°03.66' N. lat., 119°06.82' W. long.;
- (138) 34°04.58' N. lat., 119°04.91' W. long.;
- (139) 34°01.35' N. lat., 119°00.30' W. long.;
- (140) 34°00.24' N. lat., 119°03.18' W. long.;
- (141) 33°59.63' N. lat., 119°03.20' W. long.;
- (142) 33°59.54' N. lat., 119°00.88' W. long.;
- (143) 34°00.82' N. lat., 118°59.03' W. long.;
- (144) 33°59.11' N. lat., 118°47.52' W. long.;
- (145) 33°59.07' N. lat., 118°36.33' W. long.;
- (146) 33°55.06' N. lat., 118°32.86' W. long.;
- (147) 33°53.56' N. lat., 118°37.75' W. long.;
- (148) 33°51.22' N. lat., 118°36.14' W. long.;
- (149) 33°50.48' N. lat., 118°32.16' W. long.;
- (150) 33°51.86' N. lat., 118°28.71' W. long.;
- (151) 33°50.09' N. lat., 118°27.88' W. long.;
- (152) 33°49.95' N. lat., 118°26.38' W. long.;
- (153) 33°50.73' N. lat., 118°26.17' W. long.;
- (154) 33°49.86' N. lat., 118°24.25' W. long.;
- (155) 33°48.10' N. lat., 118°26.87' W. long.;
- (156) 33°47.54' N. lat., 118°29.66' W. long.;
- (157) 33°44.10' N. lat., 118°25.25' W. long.;
- (158) 33°41.78' N. lat., 118°20.28' W. long.;
- (159) 33°38.18' N. lat., 118°15.69' W. long.;
- (160) 33°37.50' N. lat., 118°16.71' W. long.;
- (161) 33°35.98' N. lat., 118°16.54' W. long.;
- (162) 33°34.15' N. lat., 118°11.22' W. long.;
- (163) 33°34.29' N. lat., 118°08.35' W. long.;
- (164) 33°35.85' N. lat., 118°07.00' W. long.;
- (165) 33°36.12' N. lat., 118°04.15' W. long.;
- (166) 33°34.97' N. lat., 118°02.91' W. long.;
- (167) 33°34.00' N. lat., 117°59.53' W. long.;
- (168) 33°35.44' N. lat., 117°55.67' W. long.;
- (169) 33°35.15' N. lat., 117°53.55' W. long.;
- (170) 33°31.12' N. lat., 117°47.40' W. long.;
- (171) 33°27.99' N. lat., 117°45.19' W. long.;
- (172) 33°26.88' N. lat., 117°43.87' W. long.;
- (173) 33°25.44' N. lat., 117°41.63' W. long.;
- (174) 33°19.50' N. lat., 117°36.08' W. long.;
- (175) 33°12.74' N. lat., 117°28.53' W. long.;
- (176) 33°10.29' N. lat., 117°25.68' W. long.;
- (177) 33°07.36' N. lat., 117°21.23' W. long.;
- (178) 32°59.39' N. lat., 117°18.56' W. long.;
- (179) 32°56.10' N. lat., 117°18.37' W. long.;
- (180) 32°54.43' N. lat., 117°16.93' W. long.;
- (181) 32°51.89' N. lat., 117°16.42' W. long.;
- (182) 32°52.24' N. lat., 117°19.36' W. long.;
- (183) 32°47.06' N. lat., 117°21.92' W. long.;
- (184) 32°45.09' N. lat., 117°20.68' W. long.;
- (185) 32°43.62' N. lat., 117°18.68' W. long.; and
- (186) 32°33.43' N. lat., 117°17.00' W. long.
- \* \* \* \* \*
- (f) The 60–fm (110–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°26.70' N. lat., 125°09.43' W. long.;
- (2) 48°23.76' N. lat., 125°06.77' W. long.;
- (3) 48°23.01' N. lat., 125°03.48' W. long.;
- (4) 48°22.42' N. lat., 124°57.84' W. long.;
- (5) 48°22.62' N. lat., 124°48.97' W. long.;
- (6) 48°18.61' N. lat., 124°52.52' W. long.;
- (7) 48°16.62' N. lat., 124°54.03' W. long.;
- (8) 48°15.39' N. lat., 124°54.79' W. long.;
- (9) 48°13.81' N. lat., 124°55.45' W. long.;
- (10) 48°10.51' N. lat., 124°56.56' W. long.;
- (11) 48°06.90' N. lat., 124°57.72' W. long.;
- (12) 48°02.23' N. lat., 125°00.20' W. long.;
- (13) 48°00.87' N. lat., 125°00.37' W. long.;
- (14) 47°56.30' N. lat., 124°59.51' W. long.;
- (15) 47°46.84' N. lat., 124°57.34' W. long.;
- (16) 47°36.49' N. lat., 124°50.93' W. long.;
- (17) 47°32.01' N. lat., 124°48.45' W. long.;
- (18) 47°27.19' N. lat., 124°46.47' W. long.;
- (19) 47°21.76' N. lat., 124°43.29' W. long.;
- (20) 47°17.82' N. lat., 124°42.12' W. long.;
- (21) 47°08.87' N. lat., 124°43.10' W. long.;
- (22) 47°03.16' N. lat., 124°42.61' W. long.;
- (23) 46°49.70' N. lat., 124°36.80' W. long.;

- (24) 46°42.91' N. lat., 124°33.20' W. long.;
- (25) 46°39.67' N. lat., 124°30.59' W. long.;
- (26) 46°32.47' N. lat., 124°26.34' W. long.;
- (27) 46°23.69' N. lat., 124°25.41' W. long.;
- (28) 46°20.84' N. lat., 124°24.24' W. long.;
- (29) 46°16.00' N. lat., 124°19.10' W. long.;
- (30) 46°15.97' N. lat., 124°18.80' W. long.;
- (31) 46°11.23' N. lat., 124°19.96' W. long.;
- (32) 46°02.51' N. lat., 124°19.84' W. long.;
- (33) 45°59.05' N. lat., 124°16.52' W. long.;
- (34) 45°50.99' N. lat., 124°12.83' W. long.;
- (35) 45°45.85' N. lat., 124°11.54' W. long.;
- (36) 45°38.53' N. lat., 124°11.92' W. long.;
- (37) 45°30.90' N. lat., 124°10.94' W. long.;
- (38) 45°21.20' N. lat., 124°09.12' W. long.;
- (39) 45°12.43' N. lat., 124°08.74' W. long.;
- (40) 44°59.89' N. lat., 124°11.95' W. long.;
- (41) 44°51.96' N. lat., 124°15.15' W. long.;
- (42) 44°44.63' N. lat., 124°20.07' W. long.;
- (43) 44°39.23' N. lat., 124°28.09' W. long.;
- (44) 44°30.61' N. lat., 124°31.66' W. long.;
- (45) 44°26.20' N. lat., 124°35.87' W. long.;
- (46) 44°23.65' N. lat., 124°39.07' W. long.;
- (47) 44°20.30' N. lat., 124°38.72' W. long.;
- (48) 44°13.52' N. lat., 124°40.45' W. long.;
- (49) 44°10.97' N. lat., 124°38.78' W. long.;
- (50) 44°08.71' N. lat., 124°33.54' W. long.;
- (51) 44°04.91' N. lat., 124°24.55' W. long.;
- (52) 43°57.49' N. lat., 124°20.05' W. long.;
- (53) 43°50.26' N. lat., 124°21.85' W. long.;
- (54) 43°41.69' N. lat., 124°21.94' W. long.;
- (55) 43°35.51' N. lat., 124°21.51' W. long.;
- (56) 43°25.77' N. lat., 124°28.47' W. long.;
- (57) 43°20.25' N. lat., 124°31.59' W. long.;
- (58) 43°12.73' N. lat., 124°36.68' W. long.;
- (59) 43°08.08' N. lat., 124°36.10' W. long.;
- (60) 43°00.33' N. lat., 124°37.57' W. long.;
- (61) 42°53.99' N. lat., 124°41.03' W. long.;
- (62) 42°46.66' N. lat., 124°41.13' W. long.;
- (63) 42°41.74' N. lat., 124°37.46' W. long.;
- (64) 42°37.42' N. lat., 124°37.22' W. long.;
- (65) 42°27.35' N. lat., 124°39.91' W. long.;
- (66) 42°23.94' N. lat., 124°38.29' W. long.;
- (67) 42°17.72' N. lat., 124°31.10' W. long.;
- (68) 42°10.36' N. lat., 124°29.11' W. long.;
- (68) 42°00.00' N. lat., 124°28.00' W. long.;
- (69) 41°54.87' N. lat., 124°28.50' W. long.;
- (70) 41°45.80' N. lat., 124°23.89' W. long.;
- (71) 41°34.40' N. lat., 124°24.03' W. long.;
- (72) 41°28.33' N. lat., 124°25.46' W. long.;
- (73) 41°15.80' N. lat., 124°18.90' W. long.;
- (74) 41°09.77' N. lat., 124°17.99' W. long.;
- (75) 41°02.26' N. lat., 124°18.71' W. long.;
- (76) 40°53.54' N. lat., 124°21.18' W. long.;
- (77) 40°49.93' N. lat., 124°23.02' W. long.;
- (78) 40°43.15' N. lat., 124°28.74' W. long.;
- (79) 40°40.19' N. lat., 124°29.07' W. long.;
- (80) 40°36.77' N. lat., 124°27.61' W. long.;
- (81) 40°34.13' N. lat., 124°29.39' W. long.;
- (82) 40°33.15' N. lat., 124°33.46' W. long.;
- (83) 40°30.00' N. lat., 124°35.84' W. long.;
- (84) 40°24.72' N. lat., 124°33.06' W. long.;
- (85) 40°23.91' N. lat., 124°31.28' W. long.;
- (86) 40°23.67' N. lat., 124°28.35' W. long.;
- (87) 40°22.53' N. lat., 124°24.72' W. long.;
- (88) 40°21.51' N. lat., 124°24.86' W. long.;
- (89) 40°21.02' N. lat., 124°27.70' W. long.;
- (90) 40°19.75' N. lat., 124°27.06' W. long.;
- (91) 40°18.23' N. lat., 124°25.30' W. long.;
- (92) 40°18.60' N. lat., 124°22.86' W. long.;
- (93) 40°15.43' N. lat., 124°25.37' W. long.;
- (94) 40°15.55' N. lat., 124°28.16' W. long.;
- (95) 40°11.27' N. lat., 124°22.56' W. long.;
- (96) 40°10.00' N. lat., 124°19.97' W. long.;
- (97) 40°09.20' N. lat., 124°15.81' W. long.;
- (98) 40°07.51' N. lat., 124°15.29' W. long.;
- (99) 40°05.22' N. lat., 124°10.06' W. long.;
- (100) 40°06.51' N. lat., 124°08.01' W. long.;
- (101) 40°00.72' N. lat., 124°08.45' W. long.;
- (102) 39°56.60' N. lat., 124°07.12' W. long.;
- (103) 39°52.58' N. lat., 124°03.57' W. long.;
- (104) 39°50.65' N. lat., 123°57.98' W. long.;
- (105) 39°40.16' N. lat., 123°52.41' W. long.;
- (106) 39°30.12' N. lat., 123°52.92' W. long.;
- (107) 39°24.53' N. lat., 123°55.16' W. long.;
- (108) 39°11.58' N. lat., 123°50.93' W. long.;
- (109) 38°57.50' N. lat., 123°51.14' W. long.;
- (110) 38°55.13' N. lat., 123°51.14' W. long.;
- (111) 38°28.58' N. lat., 123°22.84' W. long.;
- (112) 38°08.57' N. lat., 123°14.74' W. long.;
- (113) 38°00.00' N. lat., 123°15.61' W. long.;
- (114) 37°56.98' N. lat., 123°21.82' W. long.;
- (115) 37°48.01' N. lat., 123°15.90' W. long.;
- (116) 37°35.67' N. lat., 122°58.48' W. long.;
- (117) 37°11.00' N. lat., 122°40.22' W. long.;
- (118) 37°07.00' N. lat., 122°37.64' W. long.;
- (119) 37°02.08' N. lat., 122°25.49' W. long.;
- (120) 36°48.20' N. lat., 122°03.32' W. long.;
- (121) 36°51.46' N. lat., 121°57.54' W. long.;
- (122) 36°44.14' N. lat., 121°58.10' W. long.;
- (123) 36°36.76' N. lat., 122°01.16' W. long.;
- (124) 36°15.62' N. lat., 121°57.13' W. long.;
- (125) 36°10.42' N. lat., 121°42.90' W. long.;
- (126) 36°02.55' N. lat., 121°36.35' W. long.;
- (127) 36°00.00' N. lat., 121°35.15' W. long.;



- (128) 35°58.25' N. lat., 121°32.88' W. long.;
- (129) 35°40.38' N. lat., 121°22.59' W. long.;
- (130) 35°24.35' N. lat., 121°02.53' W. long.;
- (131) 35°02.66' N. lat., 120°51.63' W. long.;
- (132) 34°39.52' N. lat., 120°48.72' W. long.;
- (133) 34°31.26' N. lat., 120°44.12' W. long.;
- (134) 34°27.00' N. lat., 120°36.00' W. long.;
- (135) 34°23.00' N. lat., 120°25.32' W. long.;
- (136) 34°25.68' N. lat., 120°17.46' W. long.;
- (137) 34°23.18' N. lat., 119°56.17' W. long.;
- (138) 34°18.73' N. lat., 119°41.89' W. long.;
- (139) 34°11.18' N. lat., 119°31.21' W. long.;
- (140) 34°10.01' N. lat., 119°25.84' W. long.;
- (141) 34°03.88' N. lat., 119°12.46' W. long.;
- (142) 34°03.58' N. lat., 119°06.71' W. long.;
- (143) 34°04.52' N. lat., 119°04.89' W. long.;
- (144) 34°01.28' N. lat., 119°00.27' W. long.;
- (145) 34°00.20' N. lat., 119°03.18' W. long.;
- (146) 33°59.60' N. lat., 119°03.14' W. long.;
- (147) 33°59.45' N. lat., 119°00.87' W. long.;
- (148) 34°00.71' N. lat., 118°59.07' W. long.;
- (149) 33°59.05' N. lat., 118°47.34' W. long.;
- (150) 33°59.06' N. lat., 118°36.30' W. long.;
- (151) 33°55.05' N. lat., 118°32.85' W. long.;
- (152) 33°53.56' N. lat., 118°37.73' W. long.;
- (153) 33°51.22' N. lat., 118°36.13' W. long.;
- (154) 33°50.19' N. lat., 118°32.19' W. long.;
- (155) 33°51.28' N. lat., 118°29.12' W. long.;
- (156) 33°49.89' N. lat., 118°28.04' W. long.;
- (157) 33°49.95' N. lat., 118°26.38' W. long.;
- (158) 33°50.73' N. lat., 118°26.16' W. long.;
- (159) 33°49.87' N. lat., 118°24.37' W. long.;
- (160) 33°47.54' N. lat., 118°29.65' W. long.;
- (161) 33°44.10' N. lat., 118°25.25' W. long.;
- (162) 33°41.77' N. lat., 118°20.32' W. long.;
- (163) 33°38.17' N. lat., 118°15.69' W. long.;
- (164) 33°37.48' N. lat., 118°16.72' W. long.;
- (165) 33°35.98' N. lat., 118°16.54' W. long.;
- (166) 33°34.15' N. lat., 118°11.22' W. long.;
- (167) 33°34.09' N. lat., 118°08.15' W. long.;
- (168) 33°35.73' N. lat., 118°05.01' W. long.;
- (169) 33°33.75' N. lat., 117°59.82' W. long.;
- (170) 33°35.44' N. lat., 117°55.65' W. long.;
- (171) 33°35.15' N. lat., 117°53.54' W. long.;
- (172) 33°31.12' N. lat., 117°47.39' W. long.;
- (173) 33°27.49' N. lat., 117°44.85' W. long.;
- (174) 33°16.42' N. lat., 117°32.92' W. long.;
- (175) 33°06.66' N. lat., 117°21.59' W. long.;
- (176) 33°00.08' N. lat., 117°19.02' W. long.;
- (177) 32°56.11' N. lat., 117°18.41' W. long.;
- (178) 32°54.43' N. lat., 117°16.93' W. long.;
- (179) 32°51.89' N. lat., 117°16.42' W. long.;
- (180) 32°52.61' N. lat., 117°19.50' W. long.;
- (181) 32°46.96' N. lat., 117°22.69' W. long.;
- (182) 32°44.98' N. lat., 117°21.87' W. long.;
- (183) 32°43.52' N. lat., 117°19.32' W. long.;
- (184) 32°33.56' N. lat., 117°17.72' W. long.
- \* \* \* \* \*
- (j) The 75–fm (137–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°16.80' N. lat., 125°34.90' W. long.;
- (2) 48°14.50' N. lat., 125°29.50' W. long.;
- (3) 48°12.08' N. lat., 125°28.00' W. long.;
- (4) 48°09.00' N. lat., 125°28.00' W. long.;
- (5) 48°07.80' N. lat., 125°31.70' W. long.;
- (6) 48°04.28' N. lat., 125°29.00' W. long.;
- (7) 48°02.50' N. lat., 125°25.70' W. long.;
- (8) 48°10.00' N. lat., 125°20.19' W. long.;
- (9) 48°21.70' N. lat., 125°17.56' W. long.;
- (10) 48°23.12' N. lat., 125°10.25' W. long.;
- (11) 48°21.77' N. lat., 125°02.59' W. long.;
- (12) 48°23.00' N. lat., 124°59.30' W. long.;
- (13) 48°23.90' N. lat., 124°54.37' W. long.;
- (14) 48°23.05' N. lat., 124°48.80' W. long.;
- (15) 48°17.10' N. lat., 124°54.82' W. long.;
- (16) 48°05.10' N. lat., 124°59.40' W. long.;
- (17) 48°04.50' N. lat., 125°02.00' W. long.;
- (18) 48°04.70' N. lat., 125°04.08' W. long.;
- (19) 48°05.20' N. lat., 125°04.90' W. long.;
- (20) 48°06.63' N. lat., 125°06.21' W. long.;
- (21) 48°05.91' N. lat., 125°08.30' W. long.;
- (22) 48°07.00' N. lat., 125°09.80' W. long.;
- (23) 48°06.93' N. lat., 125°11.48' W. long.;
- (24) 48°04.98' N. lat., 125°10.02' W. long.;
- (25) 47°54.00' N. lat., 125°04.98' W. long.;
- (26) 47°44.52' N. lat., 125°00.00' W. long.;
- (27) 47°42.00' N. lat., 124°58.98' W. long.;
- (28) 47°35.52' N. lat., 124°55.50' W. long.;
- (29) 47°22.02' N. lat., 124°44.40' W. long.;
- (30) 47°16.98' N. lat., 124°45.48' W. long.;
- (31) 47°10.98' N. lat., 124°48.48' W. long.;
- (32) 47°04.98' N. lat., 124°49.02' W. long.;
- (33) 46°57.98' N. lat., 124°46.50' W. long.;
- (34) 46°54.00' N. lat., 124°45.00' W. long.;
- (35) 46°48.48' N. lat., 124°44.52' W. long.;
- (36) 46°40.02' N. lat., 124°36.00' W. long.;
- (37) 46°34.09' N. lat., 124°27.03' W. long.;
- (38) 46°24.64' N. lat., 124°30.33' W. long.;
- (39) 46°19.98' N. lat., 124°36.00' W. long.;
- (40) 46°18.14' N. lat., 124°34.26' W. long.;
- (41) 46°18.72' N. lat., 124°22.68' W. long.;
- (42) 46°16.00' N. lat., 124°19.49' W. long.;
- (43) 46°14.63' N. lat., 124°22.54' W. long.;
- (44) 46°11.08' N. lat., 124°30.74' W. long.;

- (45) 46°04.28' N. lat., 124°31.49' W. long.;
- (46) 45°55.97' N. lat., 124°19.95' W. long.;
- (47) 45°46.00' N. lat., 124°16.41' W. long.;
- (48) 45°44.97' N. lat., 124°15.95' W. long.;
- (49) 45°43.14' N. lat., 124°21.86' W. long.;
- (50) 45°34.45' N. lat., 124°14.44' W. long.;
- (51) 45°20.25' N. lat., 124°12.23' W. long.;
- (52) 45°15.49' N. lat., 124°11.49' W. long.;
- (53) 45°03.83' N. lat., 124°13.75' W. long.;
- (54) 44°57.31' N. lat., 124°15.03' W. long.;
- (55) 44°43.90' N. lat., 124°28.88' W. long.;
- (56) 44°28.64' N. lat., 124°35.67' W. long.;
- (57) 44°25.31' N. lat., 124°43.08' W. long.;
- (58) 44°16.28' N. lat., 124°47.86' W. long.;
- (59) 44°13.47' N. lat., 124°54.08' W. long.;
- (60) 44°02.88' N. lat., 124°53.96' W. long.;
- (61) 44°00.14' N. lat., 124°55.25' W. long.;
- (62) 43°57.68' N. lat., 124°55.48' W. long.;
- (63) 43°56.66' N. lat., 124°55.45' W. long.;
- (64) 43°57.50' N. lat., 124°41.23' W. long.;
- (65) 44°01.79' N. lat., 124°38.00' W. long.;
- (66) 44°02.17' N. lat., 124°32.62' W. long.;
- (67) 43°58.15' N. lat., 124°30.39' W. long.;
- (68) 43°53.25' N. lat., 124°31.39' W. long.;
- (69) 43°35.56' N. lat., 124°28.17' W. long.;
- (70) 43°21.84' N. lat., 124°36.07' W. long.;
- (71) 43°20.83' N. lat., 124°35.49' W. long.;
- (72) 43°19.73' N. lat., 124°34.87' W. long.;
- (73) 43°09.38' N. lat., 124°39.29' W. long.;
- (74) 43°07.11' N. lat., 124°37.66' W. long.;
- (75) 42°56.27' N. lat., 124°43.28' W. long.;
- (76) 42°50.00' N. lat., 124°42.30' W. long.;
- (77) 42°45.01' N. lat., 124°41.50' W. long.;
- (78) 42°40.50' N. lat., 124°39.46' W. long.;
- (79) 42°39.71' N. lat., 124°39.11' W. long.;
- (80) 42°32.87' N. lat., 124°40.13' W. long.;
- (81) 42°32.30' N. lat., 124°39.04' W. long.;
- (82) 42°26.96' N. lat., 124°44.30' W. long.;
- (83) 42°24.11' N. lat., 124°42.16' W. long.;
- (84) 42°21.10' N. lat., 124°35.46' W. long.;
- (85) 42°14.72' N. lat., 124°32.30' W. long.;
- (86) 42°13.67' N. lat., 124°32.29' W. long.;
- (87) 42°09.25' N. lat., 124°32.04' W. long.;
- (88) 42°01.88' N. lat., 124°32.71' W. long.;
- (89) 42°00.00' N. lat., 124°32.02' W. long.;
- (90) 41°46.18' N. lat., 124°26.60' W. long.;
- (91) 41°29.22' N. lat., 124°28.04' W. long.;
- (92) 41°09.62' N. lat., 124°19.75' W. long.;
- (93) 40°50.71' N. lat., 124°23.80' W. long.;
- (94) 40°43.35' N. lat., 124°29.30' W. long.;
- (95) 40°40.24' N. lat., 124°29.86' W. long.;
- (96) 40°37.50' N. lat., 124°28.68' W. long.;
- (97) 40°34.42' N. lat., 124°29.65' W. long.;
- (98) 40°34.74' N. lat., 124°34.61' W. long.;
- (99) 40°31.70' N. lat., 124°37.13' W. long.;
- (100) 40°30.00' N. lat., 124°36.50' W. long.;
- (101) 40°25.03' N. lat., 124°34.77' W. long.;
- (102) 40°23.58' N. lat., 124°31.49' W. long.;
- (103) 40°23.64' N. lat., 124°28.35' W. long.;
- (104) 40°22.53' N. lat., 124°24.76' W. long.;
- (105) 40°21.46' N. lat., 124°24.86' W. long.;
- (106) 40°21.74' N. lat., 124°27.63' W. long.;
- (107) 40°19.76' N. lat., 124°28.15' W. long.;
- (108) 40°18.00' N. lat., 124°25.38' W. long.;
- (109) 40°18.54' N. lat., 124°22.94' W. long.;
- (110) 40°15.55' N. lat., 124°25.75' W. long.;
- (111) 40°16.06' N. lat., 124°30.48' W. long.;
- (112) 40°15.75' N. lat., 124°31.69' W. long.;
- (113) 40°10.00' N. lat., 124°21.28' W. long.;
- (114) 40°08.37' N. lat., 124°17.99' W. long.;
- (115) 40°09.00' N. lat., 124°15.77' W. long.;
- (116) 40°06.93' N. lat., 124°16.49' W. long.;
- (117) 40°03.60' N. lat., 124°11.60' W. long.;
- (118) 40°06.20' N. lat., 124°08.23' W. long.;
- (119) 40°00.94' N. lat., 124°08.57' W. long.;
- (120) 40°00.01' N. lat., 124°09.84' W. long.;
- (121) 39°57.75' N. lat., 124°09.53' W. long.;
- (122) 39°55.56' N. lat., 124°07.67' W. long.;
- (123) 39°52.21' N. lat., 124°05.54' W. long.;
- (124) 39°48.07' N. lat., 123°57.48' W. long.;
- (125) 39°41.60' N. lat., 123°55.12' W. long.;
- (126) 39°30.39' N. lat., 123°55.03' W. long.;
- (127) 39°29.48' N. lat., 123°56.12' W. long.;
- (128) 39°13.76' N. lat., 123°54.65' W. long.;
- (129) 39°05.21' N. lat., 123°55.38' W. long.;
- (130) 38°57.50' N. lat., 123°54.50' W. long.;
- (131) 38°55.90' N. lat., 123°54.35' W. long.;
- (132) 38°48.59' N. lat., 123°49.61' W. long.;
- (133) 38°28.82' N. lat., 123°27.44' W. long.;
- (134) 38°09.70' N. lat., 123°18.66' W. long.;
- (135) 38°01.81' N. lat., 123°19.22' W. long.;
- (136) 38°00.00' N. lat., 123°22.19' W. long.;
- (137) 37°57.70' N. lat., 123°25.98' W. long.;
- (138) 37°56.73' N. lat., 123°25.22' W. long.;
- (139) 37°55.59' N. lat., 123°25.62' W. long.;
- (140) 37°52.79' N. lat., 123°23.85' W. long.;
- (141) 37°49.13' N. lat., 123°18.83' W. long.;
- (142) 37°46.01' N. lat., 123°12.28' W. long.;
- (143) 37°35.67' N. lat., 123°00.33' W. long.;
- (144) 37°24.16' N. lat., 122°51.96' W. long.;
- (145) 37°23.32' N. lat., 122°52.38' W. long.;
- (146) 37°11.00' N. lat., 122°45.48' W. long.;
- (147) 37°07.00' N. lat., 122°41.60' W. long.;
- (148) 37°04.12' N. lat., 122°38.94' W. long.;
- (149) 37°00.64' N. lat., 122°33.26' W. long.;

- (150) 36°59.15' N. lat., 122°27.84' W. long.;
- (151) 37°01.41' N. lat., 122°24.41' W. long.;
- (152) 36°58.75' N. lat., 122°23.81' W. long.;
- (153) 36°59.17' N. lat., 122°21.44' W. long.;
- (154) 36°57.51' N. lat., 122°20.69' W. long.;
- (155) 36°51.46' N. lat., 122°10.01' W. long.;
- (156) 36°48.43' N. lat., 122°06.47' W. long.;
- (157) 36°48.66' N. lat., 122°04.99' W. long.;
- (158) 36°47.75' N. lat., 122°03.33' W. long.;
- (159) 36°51.23' N. lat., 121°57.79' W. long.;
- (160) 36°49.72' N. lat., 121°57.87' W. long.;
- (161) 36°48.84' N. lat., 121°58.68' W. long.;
- (162) 36°47.89' N. lat., 121°58.53' W. long.;
- (163) 36°48.66' N. lat., 121°50.49' W. long.;
- (164) 36°45.56' N. lat., 121°54.11' W. long.;
- (165) 36°45.30' N. lat., 121°57.62' W. long.;
- (166) 36°38.54' N. lat., 122°01.13' W. long.;
- (167) 36°35.76' N. lat., 122°00.87' W. long.;
- (168) 36°32.58' N. lat., 121°59.12' W. long.;
- (169) 36°32.95' N. lat., 121°57.62' W. long.;
- (170) 36°31.96' N. lat., 121°56.27' W. long.;
- (171) 36°31.74' N. lat., 121°58.24' W. long.;
- (172) 36°30.57' N. lat., 121°59.66' W. long.;
- (173) 36°27.80' N. lat., 121°59.30' W. long.;
- (174) 36°26.52' N. lat., 121°58.09' W. long.;
- (175) 36°23.65' N. lat., 121°58.94' W. long.;
- (176) 36°20.93' N. lat., 122°00.28' W. long.;
- (177) 36°18.23' N. lat., 122°03.10' W. long.;
- (178) 36°14.21' N. lat., 121°57.73' W. long.;
- (179) 36°14.68' N. lat., 121°55.43' W. long.;
- (180) 36°10.42' N. lat., 121°42.90' W. long.;
- (181) 36°02.55' N. lat., 121°36.35' W. long.;
- (182) 36°01.04' N. lat., 121°36.47' W. long.;
- (183) 36°00.00' N. lat., 121°35.15' W. long.;
- (184) 35°58.25' N. lat., 121°32.88' W. long.;
- (185) 35°39.35' N. lat., 121°22.63' W. long.;
- (186) 35°24.44' N. lat., 121°02.23' W. long.;
- (187) 35°10.84' N. lat., 120°55.90' W. long.;
- (188) 35°04.35' N. lat., 120°51.62' W. long.;
- (189) 34°55.25' N. lat., 120°49.36' W. long.;
- (190) 34°47.95' N. lat., 120°50.76' W. long.;
- (190) 34°39.27' N. lat., 120°49.16' W. long.;
- (192) 34°31.05' N. lat., 120°44.71' W. long.;
- (193) 34°27.00' N. lat., 120°36.54' W. long.;
- (194) 34°22.60' N. lat., 120°25.41' W. long.;
- (195) 34°25.45' N. lat., 120°17.41' W. long.;
- (196) 34°22.94' N. lat., 119°56.40' W. long.;
- (197) 34°18.37' N. lat., 119°42.01' W. long.;
- (198) 34°11.22' N. lat., 119°32.47' W. long.;
- (199) 34°09.58' N. lat., 119°25.94' W. long.;
- (200) 34°03.89' N. lat., 119°12.47' W. long.;
- (201) 34°03.57' N. lat., 119°06.72' W. long.;
- (202) 34°04.53' N. lat., 119°04.90' W. long.;
- (203) 34°02.84' N. lat., 119°02.37' W. long.;
- (204) 34°01.30' N. lat., 119°00.26' W. long.;
- (205) 34°00.22' N. lat., 119°03.20' W. long.;
- (206) 33°59.60' N. lat., 119°03.16' W. long.;
- (207) 33°59.46' N. lat., 119°00.88' W. long.;
- (208) 34°00.49' N. lat., 118°59.08' W. long.;
- (209) 33°59.07' N. lat., 118°47.34' W. long.;
- (210) 33°58.73' N. lat., 118°36.45' W. long.;
- (211) 33°55.24' N. lat., 118°33.42' W. long.;
- (212) 33°53.71' N. lat., 118°38.01' W. long.;
- (213) 33°51.22' N. lat., 118°36.17' W. long.;
- (214) 33°49.85' N. lat., 118°32.31' W. long.;
- (215) 33°49.61' N. lat., 118°28.07' W. long.;
- (216) 33°49.95' N. lat., 118°26.38' W. long.;
- (217) 33°50.36' N. lat., 118°25.84' W. long.;
- (218) 33°49.84' N. lat., 118°24.78' W. long.;
- (219) 33°47.53' N. lat., 118°30.12' W. long.;
- (220) 33°44.11' N. lat., 118°25.25' W. long.;
- (221) 33°41.77' N. lat., 118°20.32' W. long.;
- (222) 33°38.17' N. lat., 118°15.70' W. long.;
- (223) 33°37.48' N. lat., 118°16.73' W. long.;
- (224) 33°36.01' N. lat., 118°16.55' W. long.;
- (225) 33°33.76' N. lat., 118°11.37' W. long.;
- (226) 33°33.76' N. lat., 118°07.94' W. long.;
- (227) 33°35.59' N. lat., 118°05.05' W. long.;
- (228) 33°33.75' N. lat., 117°59.82' W. long.;
- (229) 33°35.10' N. lat., 117°55.68' W. long.;
- (230) 33°34.91' N. lat., 117°53.76' W. long.;
- (231) 33°30.77' N. lat., 117°47.56' W. long.;
- (232) 33°27.50' N. lat., 117°44.87' W. long.;
- (233) 33°16.89' N. lat., 117°34.37' W. long.;
- (234) 33°06.66' N. lat., 117°21.59' W. long.;
- (235) 33°03.35' N. lat., 117°20.92' W. long.;
- (236) 33°00.07' N. lat., 117°19.02' W. long.;
- (237) 32°55.99' N. lat., 117°18.60' W. long.;
- (238) 32°54.43' N. lat., 117°16.93' W. long.;
- (239) 32°52.13' N. lat., 117°16.55' W. long.;
- (240) 32°52.61' N. lat., 117°19.50' W. long.;
- (241) 32°46.95' N. lat., 117°22.81' W. long.;
- (242) 32°45.01' N. lat., 117°22.07' W. long.;
- (243) 32°43.40' N. lat., 117°19.80' W. long.; and
- (244) 32°33.74' N. lat., 117°18.67' W. long.
- \* \* \* \* \*
22. In § 660.393, paragraphs (a), (d), and (h) are revised to read as follows:
- § 660.393 Latitude/longitude coordinates defining the 100-fm (183-m) through 150-fm (274-m) depth contours.**
- \* \* \* \* \*
- (a) The 100-fm (183-m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°15.00' N. lat., 125°41.00' W. long.;
- (2) 48°14.00' N. lat., 125°36.00' W. long.;
- (3) 48°09.50' N. lat., 125°40.50' W. long.;

- (4) 48°08.00' N. lat., 125°38.00' W. long.;
- (5) 48°05.00' N. lat., 125°37.25' W. long.;
- (6) 48°02.60' N. lat., 125°34.70' W. long.;
- (7) 47°59.00' N. lat., 125°34.00' W. long.;
- (8) 47°57.26' N. lat., 125°29.82' W. long.;
- (9) 47°59.87' N. lat., 125°25.81' W. long.;
- (10) 48°01.80' N. lat., 125°24.53' W. long.;
- (11) 48°02.08' N. lat., 125°22.98' W. long.;
- (12) 48°02.97' N. lat., 125°22.89' W. long.;
- (13) 48°04.47' N. lat., 125°21.75' W. long.;
- (14) 48°06.11' N. lat., 125°19.33' W. long.;
- (15) 48°07.95' N. lat., 125°18.55' W. long.;
- (16) 48°09.00' N. lat., 125°18.00' W. long.;
- (17) 48°11.31' N. lat., 125°17.55' W. long.;
- (18) 48°14.60' N. lat., 125°13.46' W. long.;
- (19) 48°16.67' N. lat., 125°14.34' W. long.;
- (20) 48°18.73' N. lat., 125°14.41' W. long.;
- (21) 48°19.67' N. lat., 125°13.70' W. long.;
- (22) 48°19.70' N. lat., 125°11.13' W. long.;
- (23) 48°22.95' N. lat., 125°10.79' W. long.;
- (24) 48°21.61' N. lat., 125°02.54' W. long.;
- (25) 48°23.00' N. lat., 124°49.34' W. long.;
- (26) 48°17.00' N. lat., 124°56.50' W. long.;
- (27) 48°06.00' N. lat., 125°00.00' W. long.;
- (28) 48°04.62' N. lat., 125°01.73' W. long.;
- (29) 48°04.84' N. lat., 125°04.03' W. long.;
- (30) 48°06.41' N. lat., 125°06.51' W. long.;
- (31) 48°06.00' N. lat., 125°08.00' W. long.;
- (32) 48°07.08' N. lat., 125°09.34' W. long.;
- (33) 48°07.28' N. lat., 125°11.14' W. long.;
- (34) 48°03.45' N. lat., 125°16.66' W. long.;
- (35) 47°59.50' N. lat., 125°18.88' W. long.;
- (36) 47°58.68' N. lat., 125°16.19' W. long.;
- (37) 47°56.62' N. lat., 125°13.50' W. long.;
- (38) 47°53.71' N. lat., 125°11.96' W. long.;
- (39) 47°51.70' N. lat., 125°09.38' W. long.;
- (40) 47°49.95' N. lat., 125°06.07' W. long.;
- (41) 47°49.00' N. lat., 125°03.00' W. long.;
- (42) 47°46.95' N. lat., 125°04.00' W. long.;
- (43) 47°46.58' N. lat., 125°03.15' W. long.;
- (44) 47°44.07' N. lat., 125°04.28' W. long.;
- (45) 47°43.32' N. lat., 125°04.41' W. long.;
- (46) 47°40.95' N. lat., 125°04.14' W. long.;
- (47) 47°39.58' N. lat., 125°04.97' W. long.;
- (48) 47°36.23' N. lat., 125°02.77' W. long.;
- (49) 47°34.28' N. lat., 124°58.66' W. long.;
- (50) 47°32.17' N. lat., 124°57.77' W. long.;
- (51) 47°30.27' N. lat., 124°56.16' W. long.;
- (52) 47°30.60' N. lat., 124°54.80' W. long.;
- (53) 47°29.26' N. lat., 124°52.21' W. long.;
- (54) 47°28.21' N. lat., 124°50.65' W. long.;
- (55) 47°27.38' N. lat., 124°49.34' W. long.;
- (56) 47°25.61' N. lat., 124°48.26' W. long.;
- (57) 47°23.54' N. lat., 124°46.42' W. long.;
- (58) 47°20.64' N. lat., 124°45.91' W. long.;
- (59) 47°17.99' N. lat., 124°45.59' W. long.;
- (60) 47°18.20' N. lat., 124°49.12' W. long.;
- (61) 47°15.01' N. lat., 124°51.09' W. long.;
- (62) 47°12.61' N. lat., 124°54.89' W. long.;
- (63) 47°08.22' N. lat., 124°56.53' W. long.;
- (64) 47°08.50' N. lat., 124°57.74' W. long.;
- (65) 47°01.92' N. lat., 124°54.95' W. long.;
- (66) 47°01.14' N. lat., 124°59.35' W. long.;
- (67) 46°58.48' N. lat., 124°57.81' W. long.;
- (68) 46°56.79' N. lat., 124°56.03' W. long.;
- (69) 46°58.01' N. lat., 124°55.09' W. long.;
- (70) 46°55.07' N. lat., 124°54.14' W. long.;
- (71) 46°59.60' N. lat., 124°49.79' W. long.;
- (72) 46°58.72' N. lat., 124°48.78' W. long.;
- (73) 46°54.45' N. lat., 124°48.36' W. long.;
- (74) 46°53.99' N. lat., 124°49.95' W. long.;
- (75) 46°54.38' N. lat., 124°52.73' W. long.;
- (76) 46°52.38' N. lat., 124°52.02' W. long.;
- (77) 46°48.93' N. lat., 124°49.17' W. long.;
- (78) 46°41.50' N. lat., 124°43.00' W. long.;
- (79) 46°34.50' N. lat., 124°28.50' W. long.;
- (80) 46°29.00' N. lat., 124°30.00' W. long.;
- (81) 46°20.00' N. lat., 124°36.50' W. long.;
- (82) 46°18.00' N. lat., 124°38.00' W. long.;
- (83) 46°17.52' N. lat., 124°35.35' W. long.;
- (84) 46°17.00' N. lat., 124°22.50' W. long.;
- (85) 46°16.00' N. lat., 124°20.62' W. long.;
- (86) 46°13.52' N. lat., 124°25.49' W. long.;
- (87) 46°12.17' N. lat., 124°30.74' W. long.;
- (88) 46°10.63' N. lat., 124°37.96' W. long.;
- (89) 46°09.29' N. lat., 124°39.01' W. long.;
- (90) 46°02.40' N. lat., 124°40.37' W. long.;
- (91) 45°56.45' N. lat., 124°38.00' W. long.;
- (92) 45°51.92' N. lat., 124°38.50' W. long.;
- (93) 45°47.20' N. lat., 124°35.58' W. long.;
- (94) 45°46.40' N. lat., 124°32.36' W. long.;
- (95) 45°46.00' N. lat., 124°32.10' W. long.;
- (96) 45°41.75' N. lat., 124°28.12' W. long.;
- (97) 45°36.95' N. lat., 124°24.47' W. long.;
- (98) 45°31.84' N. lat., 124°22.04' W. long.;
- (99) 45°27.10' N. lat., 124°21.74' W. long.;
- (100) 45°20.25' N. lat., 124°18.54' W. long.;
- (101) 45°18.14' N. lat., 124°17.59' W. long.;
- (102) 45°11.08' N. lat., 124°16.97' W. long.;
- (103) 45°04.39' N. lat., 124°18.35' W. long.;
- (104) 45°03.83' N. lat., 124°18.60' W. long.;
- (105) 44°58.05' N. lat., 124°21.58' W. long.;
- (106) 44°47.67' N. lat., 124°31.41' W. long.;
- (107) 44°44.54' N. lat., 124°33.58' W. long.;
- (108) 44°39.88' N. lat., 124°35.00' W. long.;

- (109) 44°32.90' N. lat., 124°36.81' W. long.;
- (110) 44°30.34' N. lat., 124°38.56' W. long.;
- (111) 44°30.04' N. lat., 124°42.31' W. long.;
- (112) 44°26.84' N. lat., 124°44.91' W. long.;
- (113) 44°17.99' N. lat., 124°51.04' W. long.;
- (114) 44°12.92' N. lat., 124°56.28' W. long.;
- (115) 44°00.14' N. lat., 124°55.25' W. long.;
- (116) 43°57.68' N. lat., 124°55.48' W. long.;
- (117) 43°56.66' N. lat., 124°55.45' W. long.;
- (118) 43°56.47' N. lat., 124°34.61' W. long.;
- (119) 43°42.73' N. lat., 124°32.41' W. long.;
- (120) 43°30.92' N. lat., 124°34.43' W. long.;
- (121) 43°20.83' N. lat., 124°39.39' W. long.;
- (122) 43°17.45' N. lat., 124°41.16' W. long.;
- (123) 43°07.04' N. lat., 124°41.25' W. long.;
- (124) 43°03.45' N. lat., 124°44.36' W. long.;
- (125) 43°03.91' N. lat., 124°50.81' W. long.;
- (126) 42°55.70' N. lat., 124°52.79' W. long.;
- (127) 42°54.12' N. lat., 124°47.36' W. long.;
- (128) 42°50.00' N. lat., 124°45.33' W. long.;
- (129) 42°44.00' N. lat., 124°42.38' W. long.;
- (130) 42°40.50' N. lat., 124°41.71' W. long.;
- (131) 42°38.23' N. lat., 124°41.25' W. long.;
- (132) 42°33.02' N. lat., 124°42.38' W. long.;
- (133) 42°31.90' N. lat., 124°42.04' W. long.;
- (134) 42°30.08' N. lat., 124°42.67' W. long.;
- (135) 42°28.28' N. lat., 124°47.08' W. long.;
- (136) 42°25.22' N. lat., 124°43.51' W. long.;
- (137) 42°19.23' N. lat., 124°37.91' W. long.;
- (138) 42°16.29' N. lat., 124°36.11' W. long.;
- (139) 42°13.67' N. lat., 124°35.81' W. long.;
- (140) 42°05.66' N. lat., 124°34.92' W. long.;
- (141) 42°00.00' N. lat., 124°35.27' W. long.;
- (142) 42°00.00' N. lat., 124°35.27' W. long.;
- (143) 41°47.04' N. lat., 124°27.64' W. long.;
- (144) 41°32.92' N. lat., 124°28.79' W. long.;
- (145) 41°24.17' N. lat., 124°28.46' W. long.;
- (146) 41°10.12' N. lat., 124°20.50' W. long.;
- (147) 40°51.41' N. lat., 124°24.38' W. long.;
- (148) 40°43.71' N. lat., 124°29.89' W. long.;
- (149) 40°40.14' N. lat., 124°30.90' W. long.;
- (150) 40°37.35' N. lat., 124°29.05' W. long.;
- (151) 40°34.76' N. lat., 124°29.82' W. long.;
- (152) 40°36.78' N. lat., 124°37.06' W. long.;
- (153) 40°32.44' N. lat., 124°39.58' W. long.;
- (154) 40°30.00' N. lat., 124°38.13' W. long.;
- (155) 40°24.82' N. lat., 124°35.12' W. long.;
- (156) 40°23.30' N. lat., 124°31.60' W. long.;
- (157) 40°23.52' N. lat., 124°28.78' W. long.;
- (158) 40°22.43' N. lat., 124°25.00' W. long.;
- (159) 40°21.72' N. lat., 124°24.94' W. long.;
- (160) 40°21.87' N. lat., 124°27.96' W. long.;
- (161) 40°21.40' N. lat., 124°28.74' W. long.;
- (162) 40°19.68' N. lat., 124°28.49' W. long.;
- (163) 40°17.73' N. lat., 124°25.43' W. long.;
- (164) 40°18.37' N. lat., 124°23.35' W. long.;
- (165) 40°15.75' N. lat., 124°26.05' W. long.;
- (166) 40°16.75' N. lat., 124°33.71' W. long.;
- (167) 40°16.29' N. lat., 124°34.36' W. long.;
- (168) 40°10.00' N. lat., 124°21.12' W. long.;
- (169) 40°07.70' N. lat., 124°18.44' W. long.;
- (170) 40°08.84' N. lat., 124°15.86' W. long.;
- (171) 40°06.53' N. lat., 124°17.39' W. long.;
- (172) 40°03.15' N. lat., 124°14.43' W. long.;
- (173) 40°02.19' N. lat., 124°12.85' W. long.;
- (174) 40°02.89' N. lat., 124°11.78' W. long.;
- (175) 40°02.78' N. lat., 124°10.70' W. long.;
- (176) 40°04.57' N. lat., 124°10.08' W. long.;
- (177) 40°06.06' N. lat., 124°08.30' W. long.;
- (178) 40°04.05' N. lat., 124°08.93' W. long.;
- (179) 40°01.17' N. lat., 124°08.80' W. long.;
- (180) 40°01.03' N. lat., 124°10.06' W. long.;
- (181) 39°58.07' N. lat., 124°11.89' W. long.;
- (182) 39°56.39' N. lat., 124°08.71' W. long.;
- (183) 39°54.64' N. lat., 124°07.30' W. long.;
- (184) 39°53.86' N. lat., 124°07.95' W. long.;
- (185) 39°51.95' N. lat., 124°07.63' W. long.;
- (186) 39°48.78' N. lat., 124°03.29' W. long.;
- (187) 39°47.36' N. lat., 124°03.31' W. long.;
- (188) 39°40.08' N. lat., 123°58.37' W. long.;
- (189) 39°36.16' N. lat., 123°56.90' W. long.;
- (190) 39°30.75' N. lat., 123°55.86' W. long.;
- (191) 39°31.62' N. lat., 123°57.33' W. long.;
- (192) 39°30.91' N. lat., 123°57.88' W. long.;
- (193) 39°01.79' N. lat., 123°56.59' W. long.;
- (194) 38°59.42' N. lat., 123°55.67' W. long.;
- (195) 38°58.89' N. lat., 123°56.28' W. long.;
- (196) 38°57.50' N. lat., 123°56.28' W. long.;
- (197) 38°54.72' N. lat., 123°55.68' W. long.;
- (198) 38°48.95' N. lat., 123°51.85' W. long.;
- (199) 38°36.67' N. lat., 123°40.20' W. long.;
- (200) 38°33.82' N. lat., 123°39.23' W. long.;
- (201) 38°29.02' N. lat., 123°33.52' W. long.;
- (202) 38°18.88' N. lat., 123°25.93' W. long.;
- (203) 38°14.12' N. lat., 123°23.26' W. long.;
- (204) 38°11.07' N. lat., 123°22.07' W. long.;
- (205) 38°03.19' N. lat., 123°20.70' W. long.;
- (206) 38°00.00' N. lat., 123°23.08' W. long.;
- (207) 37°55.07' N. lat., 123°26.81' W. long.;
- (208) 37°50.66' N. lat., 123°23.06' W. long.;
- (209) 37°45.18' N. lat., 123°11.88' W. long.;
- (210) 37°35.67' N. lat., 123°01.20' W. long.;
- (211) 37°15.58' N. lat., 122°48.36' W. long.;
- (212) 37°11.00' N. lat., 122°44.50' W. long.;
- (213) 37°07.00' N. lat., 122°41.25' W. long.;

- (214) 37°03.18' N. lat., 122°38.15' W. long.;
- (215) 37°00.48' N. lat., 122°33.93' W. long.;
- (216) 36°58.70' N. lat., 122°27.22' W. long.;
- (217) 37°00.85' N. lat., 122°24.70' W. long.;
- (218) 36°58.00' N. lat., 122°24.14' W. long.;
- (219) 36°58.74' N. lat., 122°21.51' W. long.;
- (220) 36°56.97' N. lat., 122°21.32' W. long.;
- (221) 36°51.52' N. lat., 122°10.68' W. long.;
- (222) 36°48.39' N. lat., 122°07.60' W. long.;
- (223) 36°47.43' N. lat., 122°03.22' W. long.;
- (224) 36°50.95' N. lat., 121°58.03' W. long.;
- (225) 36°49.92' N. lat., 121°58.01' W. long.;
- (226) 36°48.88' N. lat., 121°58.90' W. long.;
- (227) 36°47.70' N. lat., 121°58.75' W. long.;
- (228) 36°48.37' N. lat., 121°51.14' W. long.;
- (229) 36°45.74' N. lat., 121°54.17' W. long.;
- (230) 36°45.51' N. lat., 121°57.72' W. long.;
- (231) 36°38.84' N. lat., 122°01.32' W. long.;
- (232) 36°35.62' N. lat., 122°00.98' W. long.;
- (233) 36°32.46' N. lat., 121°59.15' W. long.;
- (234) 36°32.79' N. lat., 121°57.67' W. long.;
- (235) 36°31.98' N. lat., 121°56.55' W. long.;
- (236) 36°31.79' N. lat., 121°58.40' W. long.;
- (237) 36°30.73' N. lat., 121°59.70' W. long.;
- (238) 36°30.31' N. lat., 122°00.22' W. long.;
- (239) 36°29.35' N. lat., 122°00.36' W. long.;
- (240) 36°27.66' N. lat., 121°59.80' W. long.;
- (241) 36°26.22' N. lat., 121°58.35' W. long.;
- (242) 36°21.20' N. lat., 122°00.72' W. long.;
- (243) 36°20.47' N. lat., 122°02.92' W. long.;
- (244) 36°18.46' N. lat., 122°04.51' W. long.;
- (245) 36°15.92' N. lat., 122°01.33' W. long.;
- (246) 36°13.76' N. lat., 121°57.27' W. long.;
- (247) 36°14.43' N. lat., 121°55.43' W. long.;
- (248) 36°10.24' N. lat., 121°43.08' W. long.;
- (249) 36°07.66' N. lat., 121°40.91' W. long.;
- (250) 36°02.49' N. lat., 121°36.51' W. long.;
- (251) 36°01.07' N. lat., 121°36.82' W. long.;
- (252) 36°00.00' N. lat., 121°35.15' W. long.;
- (253) 35°57.84' N. lat., 121°33.10' W. long.;
- (254) 35°50.36' N. lat., 121°29.32' W. long.;
- (255) 35°39.03' N. lat., 121°22.86' W. long.;
- (256) 35°24.30' N. lat., 121°02.56' W. long.;
- (257) 35°16.53' N. lat., 121°00.39' W. long.;
- (258) 35°04.82' N. lat., 120°53.96' W. long.;
- (259) 34°52.51' N. lat., 120°51.62' W. long.;
- (260) 34°43.36' N. lat., 120°52.12' W. long.;
- (261) 34°37.64' N. lat., 120°49.99' W. long.;
- (262) 34°30.80' N. lat., 120°45.02' W. long.;
- (263) 34°27.00' N. lat., 120°39.00' W. long.;
- (264) 34°21.90' N. lat., 120°25.25' W. long.;
- (265) 34°24.86' N. lat., 120°16.81' W. long.;
- (266) 34°22.80' N. lat., 119°57.06' W. long.;
- (267) 34°18.59' N. lat., 119°44.84' W. long.;
- (268) 34°15.04' N. lat., 119°40.34' W. long.;
- (269) 34°14.40' N. lat., 119°45.39' W. long.;
- (270) 34°12.32' N. lat., 119°42.41' W. long.;
- (271) 34°09.71' N. lat., 119°28.85' W. long.;
- (272) 34°04.70' N. lat., 119°15.38' W. long.;
- (273) 34°03.33' N. lat., 119°12.93' W. long.;
- (274) 34°02.72' N. lat., 119°07.01' W. long.;
- (275) 34°03.90' N. lat., 119°04.64' W. long.;
- (276) 34°01.80' N. lat., 119°03.23' W. long.;
- (277) 33°59.32' N. lat., 119°03.50' W. long.;
- (278) 33°59.00' N. lat., 118°59.55' W. long.;
- (279) 33°59.51' N. lat., 118°57.25' W. long.;
- (280) 33°58.82' N. lat., 118°52.47' W. long.;
- (281) 33°58.54' N. lat., 118°41.86' W. long.;
- (282) 33°55.07' N. lat., 118°34.25' W. long.;
- (283) 33°54.28' N. lat., 118°38.68' W. long.;
- (284) 33°51.00' N. lat., 118°36.66' W. long.;
- (285) 33°39.77' N. lat., 118°18.41' W. long.;
- (286) 33°35.50' N. lat., 118°16.85' W. long.;
- (287) 33°32.68' N. lat., 118°09.82' W. long.;
- (288) 33°34.09' N. lat., 117°54.06' W. long.;
- (289) 33°31.60' N. lat., 117°49.28' W. long.;
- (290) 33°16.07' N. lat., 117°34.74' W. long.;
- (291) 33°07.06' N. lat., 117°22.71' W. long.;
- (292) 32°59.28' N. lat., 117°19.69' W. long.;
- (293) 32°55.36' N. lat., 117°19.54' W. long.;
- (294) 32°53.35' N. lat., 117°17.05' W. long.;
- (295) 32°53.34' N. lat., 117°19.13' W. long.;
- (296) 32°46.39' N. lat., 117°23.45' W. long.;
- (297) 32°42.79' N. lat., 117°21.16' W. long.; and
- (298) 32°34.22' N. lat., 117°21.20' W. long.
- \* \* \* \* \*
- (d) The 125–fm (229–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°15.00' N. lat., 125°41.13' W. long.;
- (2) 48°13.05' N. lat., 125°37.43' W. long.;
- (3) 48°08.62' N. lat., 125°41.68' W. long.;
- (4) 48°07.42' N. lat., 125°42.38' W. long.;
- (5) 48°04.20' N. lat., 125°36.57' W. long.;
- (6) 48°02.79' N. lat., 125°35.55' W. long.;
- (7) 48°00.48' N. lat., 125°37.84' W. long.;
- (8) 47°54.90' N. lat., 125°34.79' W. long.;
- (9) 47°58.37' N. lat., 125°26.58' W. long.;
- (10) 47°59.84' N. lat., 125°25.20' W. long.;
- (11) 48°01.85' N. lat., 125°24.12' W. long.;
- (12) 48°02.13' N. lat., 125°22.80' W. long.;
- (13) 48°03.31' N. lat., 125°22.46' W. long.;
- (14) 48°06.83' N. lat., 125°17.73' W. long.;
- (15) 48°10.08' N. lat., 125°15.56' W. long.;
- (16) 48°11.24' N. lat., 125°13.72' W. long.;

- (17) 48°12.41' N. lat., 125°14.48' W. long.;
- (18) 48°13.01' N. lat., 125°13.77' W. long.;
- (19) 48°13.59' N. lat., 125°12.83' W. long.;
- (20) 48°12.22' N. lat., 125°12.28' W. long.;
- (21) 48°11.15' N. lat., 125°12.26' W. long.;
- (22) 48°10.18' N. lat., 125°10.44' W. long.;
- (23) 48°10.18' N. lat., 125°06.32' W. long.;
- (24) 48°15.39' N. lat., 125°02.83' W. long.;
- (25) 48°18.32' N. lat., 125°01.00' W. long.;
- (26) 48°21.67' N. lat., 125°01.86' W. long.;
- (27) 48°25.70' N. lat., 125°00.10' W. long.;
- (28) 48°26.43' N. lat., 124°56.65' W. long.;
- (29) 48°24.28' N. lat., 124°56.48' W. long.;
- (30) 48°23.27' N. lat., 124°59.12' W. long.;
- (31) 48°21.79' N. lat., 124°59.30' W. long.;
- (32) 48°20.71' N. lat., 124°58.74' W. long.;
- (33) 48°19.84' N. lat., 124°57.09' W. long.;
- (34) 48°22.06' N. lat., 124°54.78' W. long.;
- (35) 48°22.45' N. lat., 124°53.35' W. long.;
- (36) 48°22.74' N. lat., 124°50.96' W. long.;
- (37) 48°21.04' N. lat., 124°52.60' W. long.;
- (38) 48°18.07' N. lat., 124°55.85' W. long.;
- (39) 48°15.03' N. lat., 124°58.16' W. long.;
- (40) 48°11.31' N. lat., 124°58.53' W. long.;
- (41) 48°06.25' N. lat., 125°00.06' W. long.;
- (42) 48°04.70' N. lat., 125°01.80' W. long.;
- (43) 48°04.93' N. lat., 125°03.92' W. long.;
- (44) 48°06.44' N. lat., 125°06.50' W. long.;
- (45) 48°07.34' N. lat., 125°09.35' W. long.;
- (46) 48°07.62' N. lat., 125°11.37' W. long.;
- (47) 48°03.71' N. lat., 125°17.63' W. long.;
- (48) 48°01.35' N. lat., 125°18.66' W. long.;
- (49) 48°00.05' N. lat., 125°19.66' W. long.;
- (50) 47°59.51' N. lat., 125°18.90' W. long.;
- (51) 47°58.29' N. lat., 125°16.64' W. long.;
- (52) 47°54.67' N. lat., 125°13.20' W. long.;
- (53) 47°53.15' N. lat., 125°12.53' W. long.;
- (54) 47°48.46' N. lat., 125°04.72' W. long.;
- (55) 47°46.10' N. lat., 125°04.00' W. long.;
- (56) 47°44.60' N. lat., 125°04.49' W. long.;
- (57) 47°42.90' N. lat., 125°04.72' W. long.;
- (58) 47°40.71' N. lat., 125°04.68' W. long.;
- (59) 47°39.02' N. lat., 125°05.63' W. long.;
- (60) 47°34.86' N. lat., 125°02.11' W. long.;
- (61) 47°31.64' N. lat., 124°58.11' W. long.;
- (62) 47°29.69' N. lat., 124°55.71' W. long.;
- (63) 47°29.35' N. lat., 124°53.23' W. long.;
- (64) 47°28.56' N. lat., 124°51.34' W. long.;
- (65) 47°25.31' N. lat., 124°48.20' W. long.;
- (66) 47°23.92' N. lat., 124°47.15' W. long.;
- (67) 47°18.09' N. lat., 124°45.74' W. long.;
- (68) 47°18.65' N. lat., 124°51.51' W. long.;
- (69) 47°18.12' N. lat., 124°52.58' W. long.;
- (70) 47°17.64' N. lat., 124°50.45' W. long.;
- (71) 47°16.31' N. lat., 124°50.92' W. long.;
- (72) 47°15.60' N. lat., 124°52.62' W. long.;
- (73) 47°14.25' N. lat., 124°52.49' W. long.;
- (74) 47°11.32' N. lat., 124°57.19' W. long.;
- (75) 47°09.14' N. lat., 124°57.46' W. long.;
- (76) 47°08.83' N. lat., 124°58.47' W. long.;
- (77) 47°05.88' N. lat., 124°58.26' W. long.;
- (78) 47°03.60' N. lat., 124°55.84' W. long.;
- (79) 47°02.91' N. lat., 124°56.15' W. long.;
- (80) 47°01.08' N. lat., 124°59.46' W. long.;
- (81) 46°58.13' N. lat., 124°58.83' W. long.;
- (82) 46°57.44' N. lat., 124°57.78' W. long.;
- (83) 46°55.98' N. lat., 124°54.60' W. long.;
- (84) 46°54.90' N. lat., 124°54.14' W. long.;
- (85) 46°58.47' N. lat., 124°49.65' W. long.;
- (86) 46°54.44' N. lat., 124°48.79' W. long.;
- (87) 46°54.41' N. lat., 124°52.87' W. long.;
- (88) 46°49.36' N. lat., 124°52.77' W. long.;
- (89) 46°40.06' N. lat., 124°45.34' W. long.;
- (90) 46°39.64' N. lat., 124°42.21' W. long.;
- (91) 46°34.27' N. lat., 124°34.63' W. long.;
- (92) 46°33.58' N. lat., 124°29.10' W. long.;
- (93) 46°25.64' N. lat., 124°32.57' W. long.;
- (94) 46°21.33' N. lat., 124°36.36' W. long.;
- (95) 46°20.59' N. lat., 124°36.15' W. long.;
- (96) 46°19.38' N. lat., 124°38.21' W. long.;
- (97) 46°17.94' N. lat., 124°38.10' W. long.;
- (98) 46°16.00' N. lat., 124°22.17' W. long.;
- (99) 46°13.37' N. lat., 124°30.70' W. long.;
- (100) 46°12.20' N. lat., 124°36.04' W. long.;
- (101) 46°11.01' N. lat., 124°38.68' W. long.;
- (102) 46°09.73' N. lat., 124°39.91' W. long.;
- (103) 46°03.23' N. lat., 124°42.03' W. long.;
- (104) 46°01.16' N. lat., 124°42.06' W. long.;
- (105) 46°00.35' N. lat., 124°42.26' W. long.;
- (106) 45°52.81' N. lat., 124°41.62' W. long.;
- (107) 45°49.70' N. lat., 124°41.14' W. long.;
- (108) 45°46.00' N. lat., 124°38.92' W. long.;
- (109) 45°45.18' N. lat., 124°38.39' W. long.;
- (110) 45°43.24' N. lat., 124°37.77' W. long.;
- (111) 45°34.75' N. lat., 124°28.58' W. long.;
- (112) 45°19.90' N. lat., 124°21.34' W. long.;
- (113) 45°12.44' N. lat., 124°19.34' W. long.;
- (114) 45°07.48' N. lat., 124°19.73' W. long.;
- (115) 45°03.83' N. lat., 124°21.20' W. long.;
- (116) 44°59.96' N. lat., 124°22.91' W. long.;
- (117) 44°54.73' N. lat., 124°26.84' W. long.;
- (118) 44°51.16' N. lat., 124°31.41' W. long.;
- (119) 44°49.97' N. lat., 124°32.37' W. long.;
- (120) 44°47.06' N. lat., 124°34.43' W. long.;
- (121) 44°41.38' N. lat., 124°36.52' W. long.;

- (122) 44°31.80' N. lat., 124°38.11' W. long.;
- (123) 44°30.35' N. lat., 124°43.03' W. long.;
- (124) 44°27.95' N. lat., 124°45.13' W. long.;
- (125) 44°24.73' N. lat., 124°47.42' W. long.;
- (126) 44°19.67' N. lat., 124°51.17' W. long.;
- (127) 44°17.96' N. lat., 124°52.52' W. long.;
- (128) 44°13.70' N. lat., 124°56.45' W. long.;
- (129) 44°12.26' N. lat., 124°57.53' W. long.;
- (130) 44°08.30' N. lat., 124°57.17' W. long.;
- (131) 44°07.57' N. lat., 124°57.19' W. long.;
- (132) 44°04.78' N. lat., 124°56.31' W. long.;
- (133) 44°01.14' N. lat., 124°56.07' W. long.;
- (134) 43°57.49' N. lat., 124°56.78' W. long.;
- (135) 43°54.58' N. lat., 124°52.18' W. long.;
- (136) 43°53.18' N. lat., 124°47.41' W. long.;
- (137) 43°53.60' N. lat., 124°37.45' W. long.;
- (138) 43°53.05' N. lat., 124°36.00' W. long.;
- (139) 43°47.93' N. lat., 124°35.18' W. long.;
- (140) 43°39.32' N. lat., 124°35.14' W. long.;
- (141) 43°32.38' N. lat., 124°35.26' W. long.;
- (142) 43°30.19' N. lat., 124°35.89' W. long.;
- (143) 43°27.80' N. lat., 124°36.42' W. long.;
- (144) 43°23.73' N. lat., 124°39.66' W. long.;
- (145) 43°20.83' N. lat., 124°41.18' W. long.;
- (146) 43°10.48' N. lat., 124°43.54' W. long.;
- (147) 43°04.77' N. lat., 124°45.51' W. long.;
- (148) 43°05.94' N. lat., 124°49.77' W. long.;
- (149) 43°03.38' N. lat., 124°51.86' W. long.;
- (150) 43°00.39' N. lat., 124°51.77' W. long.;
- (151) 42°56.80' N. lat., 124°53.38' W. long.;
- (152) 42°54.53' N. lat., 124°52.72' W. long.;
- (153) 42°52.89' N. lat., 124°47.45' W. long.;
- (154) 42°50.00' N. lat., 124°47.03' W. long.;
- (155) 42°48.10' N. lat., 124°46.75' W. long.;
- (156) 42°46.34' N. lat., 124°43.54' W. long.;
- (157) 42°41.66' N. lat., 124°42.70' W. long.;
- (158) 42°39.97' N. lat., 124°42.45' W. long.;
- (159) 42°32.53' N. lat., 124°42.77' W. long.;
- (160) 42°30.37' N. lat., 124°42.97' W. long.;
- (161) 42°28.07' N. lat., 124°47.65' W. long.;
- (162) 42°21.58' N. lat., 124°41.41' W. long.;
- (163) 42°15.17' N. lat., 124°36.25' W. long.;
- (164) 42°13.67' N. lat., 124°36.20' W. long.;
- (165) 42°8.29' N. lat., 124°36.08' W. long.;
- (166) 42°00.00' N. lat., 124°35.46' W. long.;
- (167) 41°47.67' N. lat., 124°28.67' W. long.;
- (168) 41°32.91' N. lat., 124°29.01' W. long.;
- (169) 41°22.57' N. lat., 124°28.66' W. long.;
- (170) 41°13.38' N. lat., 124°22.88' W. long.;
- (171) 41°06.42' N. lat., 124°22.02' W. long.;
- (172) 40°50.19' N. lat., 124°25.58' W. long.;
- (173) 40°44.08' N. lat., 124°30.43' W. long.;
- (174) 40°40.54' N. lat., 124°31.75' W. long.;
- (175) 40°37.36' N. lat., 124°29.17' W. long.;
- (176) 40°35.30' N. lat., 124°30.03' W. long.;
- (177) 40°37.02' N. lat., 124°37.10' W. long.;
- (178) 40°35.82' N. lat., 124°39.58' W. long.;
- (179) 40°31.70' N. lat., 124°39.97' W. long.;
- (180) 40°30.00' N. lat., 124°38.50' W. long.;
- (181) 40°24.77' N. lat., 124°35.39' W. long.;
- (182) 40°23.22' N. lat., 124°31.87' W. long.;
- (183) 40°23.40' N. lat., 124°28.65' W. long.;
- (184) 40°22.30' N. lat., 124°25.27' W. long.;
- (185) 40°21.91' N. lat., 124°25.18' W. long.;
- (186) 40°21.91' N. lat., 124°27.97' W. long.;
- (187) 40°21.37' N. lat., 124°29.03' W. long.;
- (188) 40°19.74' N. lat., 124°28.71' W. long.;
- (189) 40°18.52' N. lat., 124°27.26' W. long.;
- (190) 40°17.57' N. lat., 124°25.49' W. long.;
- (191) 40°18.20' N. lat., 124°23.63' W. long.;
- (192) 40°15.89' N. lat., 124°26.00' W. long.;
- (193) 40°17.00' N. lat., 124°35.01' W. long.;
- (194) 40°15.97' N. lat., 124°35.91' W. long.;
- (195) 40°10.00' N. lat., 124°22.00' W. long.;
- (196) 40°07.35' N. lat., 124°18.64' W. long.;
- (197) 40°08.46' N. lat., 124°16.24' W. long.;
- (198) 40°06.26' N. lat., 124°17.54' W. long.;
- (199) 40°03.26' N. lat., 124°15.30' W. long.;
- (200) 40°02.00' N. lat., 124°12.97' W. long.;
- (201) 40°02.60' N. lat., 124°10.61' W. long.;
- (202) 40°03.63' N. lat., 124°09.12' W. long.;
- (203) 40°02.18' N. lat., 124°09.07' W. long.;
- (204) 40°01.26' N. lat., 124°09.86' W. long.;
- (205) 39°58.05' N. lat., 124°11.87' W. long.;
- (206) 39°56.39' N. lat., 124°08.70' W. long.;
- (207) 39°54.64' N. lat., 124°07.31' W. long.;
- (208) 39°53.87' N. lat., 124°07.95' W. long.;
- (209) 39°52.42' N. lat., 124°08.18' W. long.;
- (210) 39°42.50' N. lat., 124°00.60' W. long.;
- (211) 39°34.23' N. lat., 123°56.82' W. long.;
- (212) 39°33.00' N. lat., 123°56.44' W. long.;
- (213) 39°30.96' N. lat., 123°56.00' W. long.;
- (214) 39°32.03' N. lat., 123°57.44' W. long.;
- (215) 39°31.43' N. lat., 123°58.16' W. long.;
- (216) 39°05.56' N. lat., 123°57.24' W. long.;
- (217) 39°01.75' N. lat., 123°56.83' W. long.;
- (218) 38°59.52' N. lat., 123°55.95' W. long.;
- (219) 38°58.98' N. lat., 123°56.57' W. long.;
- (220) 38°57.50' N. lat., 123°56.57' W. long.;
- (221) 38°53.91' N. lat., 123°56.00' W. long.;
- (222) 38°42.57' N. lat., 123°46.60' W. long.;
- (223) 38°28.72' N. lat., 123°35.61' W. long.;
- (224) 38°28.01' N. lat., 123°36.47' W. long.;
- (225) 38°20.94' N. lat., 123°31.26' W. long.;
- (226) 38°15.94' N. lat., 123°25.33' W. long.;



- (227) 38°10.95' N. lat., 123°23.19' W. long.;
- (228) 38°05.52' N. lat., 123°22.90' W. long.;
- (229) 38°08.46' N. lat., 123°26.23' W. long.;
- (230) 38°06.95' N. lat., 123°28.03' W. long.;
- (231) 38°06.34' N. lat., 123°29.80' W. long.;
- (232) 38°04.57' N. lat., 123°31.24' W. long.;
- (233) 38°02.33' N. lat., 123°31.02' W. long.;
- (234) 38°00.00' N. lat., 123°28.23' W. long.;
- (235) 37°58.10' N. lat., 123°26.69' W. long.;
- (236) 37°55.46' N. lat., 123°27.05' W. long.;
- (237) 37°51.51' N. lat., 123°24.86' W. long.;
- (238) 37°45.01' N. lat., 123°12.09' W. long.;
- (239) 37°35.67' N. lat., 123°01.56' W. long.;
- (240) 37°26.62' N. lat., 122°56.21' W. long.;
- (241) 37°14.41' N. lat., 122°49.07' W. long.;
- (242) 37°11.00' N. lat., 122°45.87' W. long.;
- (243) 37°07.00' N. lat., 122°41.97' W. long.;
- (244) 37°03.19' N. lat., 122°38.31' W. long.;
- (245) 37°00.99' N. lat., 122°35.51' W. long.;
- (246) 36°58.23' N. lat., 122°27.36' W. long.;
- (247) 37°00.54' N. lat., 122°24.74' W. long.;
- (248) 36°57.81' N. lat., 122°24.65' W. long.;
- (249) 36°58.54' N. lat., 122°21.67' W. long.;
- (250) 36°56.52' N. lat., 122°21.70' W. long.;
- (251) 36°55.37' N. lat., 122°18.45' W. long.;
- (252) 36°52.16' N. lat., 122°12.17' W. long.;
- (253) 36°51.53' N. lat., 122°10.67' W. long.;
- (254) 36°48.05' N. lat., 122°07.59' W. long.;
- (255) 36°47.35' N. lat., 122°03.27' W. long.;
- (256) 36°50.71' N. lat., 121°58.17' W. long.;
- (257) 36°48.89' N. lat., 121°58.90' W. long.;
- (258) 36°47.70' N. lat., 121°58.76' W. long.;
- (259) 36°48.37' N. lat., 121°51.15' W. long.;
- (260) 36°45.74' N. lat., 121°54.18' W. long.;
- (261) 36°45.50' N. lat., 121°57.73' W. long.;
- (262) 36°44.02' N. lat., 121°58.55' W. long.;
- (263) 36°38.84' N. lat., 122°01.32' W. long.;
- (264) 36°35.63' N. lat., 122°00.98' W. long.;
- (265) 36°32.47' N. lat., 121°59.17' W. long.;
- (266) 36°32.52' N. lat., 121°57.62' W. long.;
- (267) 36°30.16' N. lat., 122°00.55' W. long.;
- (268) 36°24.56' N. lat., 121°59.19' W. long.;
- (269) 36°22.19' N. lat., 122°00.30' W. long.;
- (270) 36°20.62' N. lat., 122°02.93' W. long.;
- (271) 36°18.89' N. lat., 122°05.18' W. long.;
- (272) 36°14.45' N. lat., 121°59.44' W. long.;
- (273) 36°13.73' N. lat., 121°57.38' W. long.;
- (274) 36°14.41' N. lat., 121°55.45' W. long.;
- (275) 36°10.25' N. lat., 121°43.08' W. long.;
- (276) 36°07.67' N. lat., 121°40.92' W. long.;
- (277) 36°02.51' N. lat., 121°36.76' W. long.;
- (278) 36°00.00' N. lat., 121°35.15' W. long.;
- (279) 35°57.84' N. lat., 121°33.10' W. long.;
- (280) 35°45.57' N. lat., 121°27.26' W. long.;
- (281) 35°39.02' N. lat., 121°22.86' W. long.;
- (282) 35°25.92' N. lat., 121°05.52' W. long.;
- (283) 35°16.26' N. lat., 121°01.50' W. long.;
- (284) 35°07.60' N. lat., 120°56.49' W. long.;
- (285) 34°57.77' N. lat., 120°53.87' W. long.;
- (286) 34°42.30' N. lat., 120°53.42' W. long.;
- (287) 34°37.69' N. lat., 120°50.04' W. long.;
- (288) 34°30.13' N. lat., 120°44.45' W. long.;
- (289) 34°27.00' N. lat., 120°39.24' W. long.;
- (290) 34°24.71' N. lat., 120°35.37' W. long.;
- (291) 34°21.63' N. lat., 120°24.86' W. long.;
- (292) 34°24.39' N. lat., 120°16.65' W. long.;
- (293) 34°22.48' N. lat., 119°56.42' W. long.;
- (294) 34°18.54' N. lat., 119°46.26' W. long.;
- (295) 34°16.37' N. lat., 119°45.12' W. long.;
- (296) 34°15.91' N. lat., 119°47.29' W. long.;
- (297) 34°13.80' N. lat., 119°45.40' W. long.;
- (298) 34°11.69' N. lat., 119°41.80' W. long.;
- (299) 34°09.98' N. lat., 119°31.87' W. long.;
- (300) 34°08.12' N. lat., 119°27.71' W. long.;
- (301) 34°06.35' N. lat., 119°32.65' W. long.;
- (302) 34°06.80' N. lat., 119°40.08' W. long.;
- (303) 34°07.48' N. lat., 119°47.54' W. long.;
- (304) 34°08.21' N. lat., 119°54.90' W. long.;
- (305) 34°06.85' N. lat., 120°05.60' W. long.;
- (306) 34°06.99' N. lat., 120°10.37' W. long.;
- (307) 34°08.53' N. lat., 120°17.89' W. long.;
- (308) 34°10.00' N. lat., 120°23.05' W. long.;
- (309) 34°12.53' N. lat., 120°29.82' W. long.;
- (310) 34°09.02' N. lat., 120°37.47' W. long.;
- (311) 34°01.01' N. lat., 120°31.17' W. long.;
- (312) 33°58.07' N. lat., 120°28.33' W. long.;
- (313) 33°53.37' N. lat., 120°14.43' W. long.;
- (314) 33°50.53' N. lat., 120°07.20' W. long.;
- (315) 33°45.88' N. lat., 120°04.26' W. long.;
- (316) 33°38.19' N. lat., 119°57.85' W. long.;
- (317) 33°38.19' N. lat., 119°50.42' W. long.;
- (318) 33°42.36' N. lat., 119°49.60' W. long.;
- (319) 33°53.95' N. lat., 119°53.81' W. long.;
- (320) 33°55.85' N. lat., 119°43.34' W. long.;
- (321) 33°58.48' N. lat., 119°27.90' W. long.;
- (322) 34°00.34' N. lat., 119°19.22' W. long.;
- (323) 34°04.48' N. lat., 119°15.32' W. long.;
- (324) 34°02.80' N. lat., 119°12.95' W. long.;
- (325) 34°02.39' N. lat., 119°07.17' W. long.;
- (326) 34°03.75' N. lat., 119°04.72' W. long.;
- (327) 34°01.82' N. lat., 119°03.24' W. long.;
- (328) 33°59.33' N. lat., 119°03.49' W. long.;
- (329) 33°59.01' N. lat., 118°59.56' W. long.;
- (330) 33°59.51' N. lat., 118°57.25' W. long.;
- (331) 33°58.83' N. lat., 118°52.50' W. long.;

- (332) 33°58.55' N. lat., 118°41.86' W. long.;
- (333) 33°55.10' N. lat., 118°34.25' W. long.;
- (334) 33°54.30' N. lat., 118°38.71' W. long.;
- (335) 33°50.88' N. lat., 118°37.02' W. long.;
- (336) 33°39.78' N. lat., 118°18.40' W. long.;
- (337) 33°35.50' N. lat., 118°16.85' W. long.;
- (338) 33°32.46' N. lat., 118°10.90' W. long.;
- (339) 33°34.11' N. lat., 117°54.07' W. long.;
- (340) 33°31.61' N. lat., 117°49.30' W. long.;
- (341) 33°16.36' N. lat., 117°35.48' W. long.;
- (342) 33°06.81' N. lat., 117°22.93' W. long.;
- (343) 32°59.28' N. lat., 117°19.69' W. long.;
- (344) 32°55.37' N. lat., 117°19.55' W. long.;
- (345) 32°53.35' N. lat., 117°17.05' W. long.;
- (346) 32°53.36' N. lat., 117°19.12' W. long.;
- (347) 32°46.42' N. lat., 117°23.45' W. long.;
- (348) 32°42.71' N. lat., 117°21.45' W. long.; and
- (349) 32°34.54' N. lat., 117°23.04' W. long.
- \* \* \* \* \*
- (h) The 150-fm (274-m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°14.96' N. lat., 125°41.24' W. long.;
- (2) 48°12.89' N. lat., 125°37.83' W. long.;
- (3) 48°11.49' N. lat., 125°39.27' W. long.;
- (4) 48°08.72' N. lat., 125°41.84' W. long.;
- (5) 48°07.00' N. lat., 125°45.00' W. long.;
- (6) 48°06.13' N. lat., 125°41.57' W. long.;
- (7) 48°05.00' N. lat., 125°39.00' W. long.;
- (8) 48°04.15' N. lat., 125°36.71' W. long.;
- (9) 48°03.00' N. lat., 125°36.00' W. long.;
- (10) 48°01.65' N. lat., 125°36.96' W. long.;
- (11) 48°01.00' N. lat., 125°38.50' W. long.;
- (12) 47°57.50' N. lat., 125°36.50' W. long.;
- (13) 47°56.53' N. lat., 125°30.33' W. long.;
- (14) 47°57.28' N. lat., 125°27.89' W. long.;
- (15) 47°59.00' N. lat., 125°25.50' W. long.;
- (16) 48°01.77' N. lat., 125°24.05' W. long.;
- (17) 48°02.08' N. lat., 125°22.98' W. long.;
- (18) 48°03.00' N. lat., 125°22.50' W. long.;
- (19) 48°03.46' N. lat., 125°22.10' W. long.;
- (20) 48°04.29' N. lat., 125°20.37' W. long.;
- (21) 48°02.00' N. lat., 125°18.50' W. long.;
- (22) 48°00.01' N. lat., 125°19.90' W. long.;
- (23) 47°58.75' N. lat., 125°17.54' W. long.;
- (24) 47°53.50' N. lat., 125°13.50' W. long.;
- (25) 47°48.88' N. lat., 125°05.91' W. long.;
- (26) 47°48.50' N. lat., 125°05.00' W. long.;
- (27) 47°45.98' N. lat., 125°04.26' W. long.;
- (28) 47°45.00' N. lat., 125°05.50' W. long.;
- (29) 47°42.11' N. lat., 125°04.74' W. long.;
- (30) 47°39.00' N. lat., 125°06.00' W. long.;
- (31) 47°35.53' N. lat., 125°04.55' W. long.;
- (32) 47°30.90' N. lat., 124°57.31' W. long.;
- (33) 47°29.54' N. lat., 124°56.50' W. long.;
- (34) 47°29.50' N. lat., 124°54.50' W. long.;
- (35) 47°28.57' N. lat., 124°51.50' W. long.;
- (36) 47°25.00' N. lat., 124°48.00' W. long.;
- (37) 47°23.95' N. lat., 124°47.24' W. long.;
- (38) 47°23.00' N. lat., 124°47.00' W. long.;
- (39) 47°21.00' N. lat., 124°46.50' W. long.;
- (40) 47°18.20' N. lat., 124°45.84' W. long.;
- (41) 47°18.50' N. lat., 124°49.00' W. long.;
- (42) 47°19.17' N. lat., 124°50.86' W. long.;
- (43) 47°18.07' N. lat., 124°53.29' W. long.;
- (44) 47°17.78' N. lat., 124°51.39' W. long.;
- (45) 47°16.81' N. lat., 124°50.85' W. long.;
- (46) 47°15.96' N. lat., 124°53.15' W. long.;
- (47) 47°14.31' N. lat., 124°52.62' W. long.;
- (48) 47°11.87' N. lat., 124°56.90' W. long.;
- (49) 47°12.39' N. lat., 124°58.09' W. long.;
- (50) 47°09.50' N. lat., 124°57.50' W. long.;
- (51) 47°09.00' N. lat., 124°59.00' W. long.;
- (52) 47°06.06' N. lat., 124°58.80' W. long.;
- (53) 47°03.62' N. lat., 124°55.96' W. long.;
- (54) 47°02.89' N. lat., 124°56.89' W. long.;
- (55) 47°01.04' N. lat., 124°59.54' W. long.;
- (56) 46°58.47' N. lat., 124°59.08' W. long.;
- (57) 46°58.29' N. lat., 125°00.28' W. long.;
- (58) 46°56.30' N. lat., 125°00.75' W. long.;
- (59) 46°57.09' N. lat., 124°58.86' W. long.;
- (60) 46°55.95' N. lat., 124°54.88' W. long.;
- (61) 46°54.79' N. lat., 124°54.14' W. long.;
- (62) 46°58.00' N. lat., 124°50.00' W. long.;
- (63) 46°54.50' N. lat., 124°49.00' W. long.;
- (64) 46°54.53' N. lat., 124°52.94' W. long.;
- (65) 46°49.52' N. lat., 124°53.41' W. long.;
- (66) 46°42.24' N. lat., 124°47.86' W. long.;
- (67) 46°39.50' N. lat., 124°42.50' W. long.;
- (68) 46°37.50' N. lat., 124°41.00' W. long.;
- (69) 46°36.50' N. lat., 124°38.00' W. long.;
- (70) 46°33.85' N. lat., 124°36.99' W. long.;
- (71) 46°33.50' N. lat., 124°29.50' W. long.;
- (72) 46°32.00' N. lat., 124°31.00' W. long.;
- (73) 46°30.53' N. lat., 124°30.55' W. long.;
- (74) 46°25.50' N. lat., 124°33.00' W. long.;
- (75) 46°23.00' N. lat., 124°35.00' W. long.;
- (76) 46°21.05' N. lat., 124°37.00' W. long.;
- (77) 46°20.64' N. lat., 124°36.21' W. long.;
- (78) 46°20.36' N. lat., 124°37.85' W. long.;
- (79) 46°19.48' N. lat., 124°38.35' W. long.;
- (80) 46°17.87' N. lat., 124°38.54' W. long.;
- (81) 46°16.15' N. lat., 124°25.20' W. long.;
- (82) 46°16.00' N. lat., 124°23.00' W. long.;
- (83) 46°14.87' N. lat., 124°26.15' W. long.;

- (84) 46°13.37' N. lat., 124°31.36' W. long.;
- (85) 46°12.08' N. lat., 124°38.39' W. long.;
- (86) 46°09.46' N. lat., 124°40.64' W. long.;
- (87) 46°07.29' N. lat., 124°40.89' W. long.;
- (88) 46°02.76' N. lat., 124°44.01' W. long.;
- (89) 46°01.22' N. lat., 124°43.47' W. long.;
- (90) 45°51.82' N. lat., 124°42.89' W. long.;
- (91) 45°46.00' N. lat., 124°40.88' W. long.;
- (92) 45°45.95' N. lat., 124°40.72' W. long.;
- (93) 45°44.11' N. lat., 124°43.09' W. long.;
- (94) 45°34.50' N. lat., 124°30.28' W. long.;
- (95) 45°21.10' N. lat., 124°23.11' W. long.;
- (96) 45°20.25' N. lat., 124°22.92' W. long.;
- (97) 45°09.69' N. lat., 124°20.45' W. long.;
- (98) 45°03.83' N. lat., 124°23.30' W. long.;
- (99) 44°56.41' N. lat., 124°27.65' W. long.;
- (100) 44°44.47' N. lat., 124°37.85' W. long.;
- (101) 44°37.17' N. lat., 124°38.60' W. long.;
- (102) 44°35.55' N. lat., 124°39.27' W. long.;
- (103) 44°31.81' N. lat., 124°39.60' W. long.;
- (104) 44°31.48' N. lat., 124°43.30' W. long.;
- (105) 44°12.67' N. lat., 124°57.87' W. long.;
- (106) 44°08.30' N. lat., 124°57.84' W. long.;
- (107) 44°07.38' N. lat., 124°57.87' W. long.;
- (108) 43°57.42' N. lat., 124°57.20' W. long.;
- (109) 43°52.52' N. lat., 124°49.00' W. long.;
- (110) 43°51.55' N. lat., 124°37.49' W. long.;
- (111) 43°47.83' N. lat., 124°36.43' W. long.;
- (112) 43°31.79' N. lat., 124°36.80' W. long.;
- (113) 43°29.34' N. lat., 124°36.77' W. long.;
- (114) 43°26.37' N. lat., 124°39.53' W. long.;
- (115) 43°20.83' N. lat., 124°42.39' W. long.;
- (116) 43°16.15' N. lat., 124°44.36' W. long.;
- (117) 43°09.33' N. lat., 124°45.35' W. long.;
- (118) 43°08.77' N. lat., 124°49.82' W. long.;
- (119) 43°08.83' N. lat., 124°50.93' W. long.;
- (120) 43°05.89' N. lat., 124°51.60' W. long.;
- (121) 43°04.60' N. lat., 124°53.02' W. long.;
- (122) 43°02.64' N. lat., 124°52.01' W. long.;
- (123) 43°00.39' N. lat., 124°51.77' W. long.;
- (124) 42°58.00' N. lat., 124°52.99' W. long.;
- (125) 42°57.56' N. lat., 124°54.10' W. long.;
- (126) 42°53.82' N. lat., 124°55.76' W. long.;
- (127) 42°52.31' N. lat., 124°50.76' W. long.;
- (128) 42°50.00' N. lat., 124°48.97' W. long.;
- (129) 42°47.78' N. lat., 124°47.27' W. long.;
- (130) 42°46.31' N. lat., 124°43.60' W. long.;
- (131) 42°41.63' N. lat., 124°44.07' W. long.;
- (132) 42°40.50' N. lat., 124°43.52' W. long.;
- (133) 42°38.83' N. lat., 124°42.77' W. long.;
- (134) 42°35.36' N. lat., 124°43.22' W. long.;
- (135) 42°32.78' N. lat., 124°44.68' W. long.;
- (136) 42°32.02' N. lat., 124°43.00' W. long.;
- (137) 42°30.54' N. lat., 124°43.50' W. long.;
- (138) 42°28.16' N. lat., 124°48.38' W. long.;
- (139) 42°18.26' N. lat., 124°39.01' W. long.;
- (140) 42°13.66' N. lat., 124°36.82' W. long.;
- (141) 42°00.00' N. lat., 124°35.99' W. long.;
- (142) 41°47.80' N. lat., 124°29.41' W. long.;
- (143) 41°23.51' N. lat., 124°29.50' W. long.;
- (144) 41°13.29' N. lat., 124°23.31' W. long.;
- (145) 41°06.23' N. lat., 124°22.62' W. long.;
- (146) 40°55.60' N. lat., 124°26.04' W. long.;
- (147) 40°49.62' N. lat., 124°26.57' W. long.;
- (148) 40°45.72' N. lat., 124°30.00' W. long.;
- (149) 40°40.56' N. lat., 124°32.11' W. long.;
- (150) 40°37.33' N. lat., 124°29.27' W. long.;
- (151) 40°35.60' N. lat., 124°30.49' W. long.;
- (152) 40°37.38' N. lat., 124°37.14' W. long.;
- (153) 40°36.03' N. lat., 124°39.97' W. long.;
- (154) 40°31.58' N. lat., 124°40.74' W. long.;
- (155) 40°30.00' N. lat., 124°38.50' W. long.;
- (156) 40°29.76' N. lat., 124°38.13' W. long.;
- (157) 40°28.22' N. lat., 124°37.23' W. long.;
- (158) 40°24.86' N. lat., 124°35.71' W. long.;
- (159) 40°23.01' N. lat., 124°31.94' W. long.;
- (160) 40°23.39' N. lat., 124°28.64' W. long.;
- (161) 40°22.29' N. lat., 124°25.25' W. long.;
- (162) 40°21.90' N. lat., 124°25.18' W. long.;
- (163) 40°22.02' N. lat., 124°28.00' W. long.;
- (164) 40°21.34' N. lat., 124°29.53' W. long.;
- (165) 40°19.74' N. lat., 124°28.95' W. long.;
- (166) 40°18.13' N. lat., 124°27.08' W. long.;
- (167) 40°17.45' N. lat., 124°25.53' W. long.;
- (168) 40°17.97' N. lat., 124°24.12' W. long.;
- (169) 40°15.96' N. lat., 124°26.05' W. long.;
- (170) 40°17.00' N. lat., 124°35.01' W. long.;
- (171) 40°15.97' N. lat., 124°35.90' W. long.;
- (172) 40°10.00' N. lat., 124°22.96' W. long.;
- (173) 40°07.00' N. lat., 124°19.00' W. long.;
- (174) 40°08.10' N. lat., 124°16.70' W. long.;
- (175) 40°05.90' N. lat., 124°17.77' W. long.;
- (176) 40°02.99' N. lat., 124°15.55' W. long.;
- (177) 40°02.00' N. lat., 124°12.97' W. long.;
- (178) 40°02.60' N. lat., 124°10.61' W. long.;
- (179) 40°03.63' N. lat., 124°09.12' W. long.;
- (180) 40°02.18' N. lat., 124°09.07' W. long.;
- (181) 39°58.25' N. lat., 124°12.56' W. long.;
- (182) 39°57.03' N. lat., 124°11.34' W. long.;
- (183) 39°56.30' N. lat., 124°08.96' W. long.;
- (184) 39°54.82' N. lat., 124°07.66' W. long.;
- (185) 39°52.57' N. lat., 124°08.55' W. long.;
- (186) 39°45.34' N. lat., 124°03.30' W. long.;
- (187) 39°34.75' N. lat., 123°58.50' W. long.;
- (188) 39°34.22' N. lat., 123°56.82' W. long.;

- (189) 39°32.98' N. lat., 123°56.43' W. long.;
- (190) 39°31.47' N. lat., 123°58.73' W. long.;
- (191) 39°05.68' N. lat., 123°57.81' W. long.;
- (192) 39°00.24' N. lat., 123°56.74' W. long.;
- (193) 38°57.50' N. lat., 123°56.74' W. long.;
- (194) 38°54.31' N. lat., 123°56.73' W. long.;
- (195) 38°41.42' N. lat., 123°46.75' W. long.;
- (196) 38°39.61' N. lat., 123°46.48' W. long.;
- (197) 38°37.52' N. lat., 123°43.78' W. long.;
- (198) 38°35.25' N. lat., 123°42.00' W. long.;
- (199) 38°28.79' N. lat., 123°37.07' W. long.;
- (200) 38°19.88' N. lat., 123°32.54' W. long.;
- (201) 38°14.43' N. lat., 123°25.56' W. long.;
- (202) 38°08.75' N. lat., 123°24.48' W. long.;
- (203) 38°10.10' N. lat., 123°27.20' W. long.;
- (204) 38°07.16' N. lat., 123°28.18' W. long.;
- (205) 38°06.42' N. lat., 123°30.18' W. long.;
- (206) 38°04.28' N. lat., 123°31.70' W. long.;
- (207) 38°01.88' N. lat., 123°30.98' W. long.;
- (208) 38°00.75' N. lat., 123°29.72' W. long.;
- (209) 38°00.00' N. lat., 123°28.60' W. long.;
- (210) 37°58.23' N. lat., 123°26.90' W. long.;
- (211) 37°55.32' N. lat., 123°27.19' W. long.;
- (212) 37°51.47' N. lat., 123°24.92' W. long.;
- (213) 37°44.47' N. lat., 123°11.57' W. long.;
- (214) 37°35.67' N. lat., 123°01.76' W. long.;
- (215) 37°15.16' N. lat., 122°51.64' W. long.;
- (216) 37°11.00' N. lat., 122°47.20' W. long.;
- (217) 37°07.00' N. lat., 122°42.90' W. long.;
- (218) 37°01.68' N. lat., 122°37.28' W. long.;
- (219) 36°59.70' N. lat., 122°33.71' W. long.;
- (220) 36°58.00' N. lat., 122°27.80' W. long.;
- (221) 37°00.25' N. lat., 122°24.85' W. long.;
- (222) 36°57.50' N. lat., 122°24.98' W. long.;
- (223) 36°58.38' N. lat., 122°21.85' W. long.;
- (224) 36°55.85' N. lat., 122°21.95' W. long.;
- (225) 36°52.02' N. lat., 122°12.10' W. long.;
- (226) 36°47.63' N. lat., 122°07.37' W. long.;
- (227) 36°47.26' N. lat., 122°03.22' W. long.;
- (228) 36°50.34' N. lat., 121°58.40' W. long.;
- (229) 36°48.83' N. lat., 121°59.14' W. long.;
- (230) 36°44.81' N. lat., 121°58.28' W. long.;
- (231) 36°39.00' N. lat., 122°01.71' W. long.;
- (232) 36°29.60' N. lat., 122°00.49' W. long.;
- (233) 36°23.43' N. lat., 121°59.76' W. long.;
- (234) 36°18.90' N. lat., 122°05.32' W. long.;
- (235) 36°15.38' N. lat., 122°01.40' W. long.;
- (236) 36°13.79' N. lat., 121°58.12' W. long.;
- (237) 36°10.12' N. lat., 121°43.33' W. long.;
- (238) 36°02.57' N. lat., 121°37.02' W. long.;
- (239) 36°01.00' N. lat., 121°36.95' W. long.;
- (240) 36°00.00' N. lat., 121°35.15' W. long.;
- (241) 35°57.74' N. lat., 121°33.45' W. long.;
- (242) 35°51.32' N. lat., 121°30.08' W. long.;
- (243) 35°45.84' N. lat., 121°28.84' W. long.;
- (244) 35°38.94' N. lat., 121°23.16' W. long.;
- (245) 35°26.00' N. lat., 121°08.00' W. long.;
- (246) 35°07.42' N. lat., 120°57.08' W. long.;
- (247) 34°42.76' N. lat., 120°55.09' W. long.;
- (248) 34°37.75' N. lat., 120°51.96' W. long.;
- (249) 34°29.29' N. lat., 120°44.19' W. long.;
- (250) 34°27.00' N. lat., 120°40.42' W. long.;
- (251) 34°21.89' N. lat., 120°31.36' W. long.;
- (252) 34°20.79' N. lat., 120°21.58' W. long.;
- (253) 34°23.97' N. lat., 120°15.25' W. long.;
- (254) 34°22.11' N. lat., 119°56.63' W. long.;
- (255) 34°19.00' N. lat., 119°48.00' W. long.;
- (256) 34°15.00' N. lat., 119°48.00' W. long.;
- (257) 34°08.00' N. lat., 119°37.00' W. long.;
- (258) 34°08.39' N. lat., 119°54.78' W. long.;
- (259) 34°07.10' N. lat., 120°10.37' W. long.;
- (260) 34°10.08' N. lat., 120°22.98' W. long.;
- (261) 34°13.16' N. lat., 120°29.40' W. long.;
- (262) 34°09.41' N. lat., 120°37.75' W. long.;
- (263) 34°03.15' N. lat., 120°34.71' W. long.;
- (264) 33°57.09' N. lat., 120°27.76' W. long.;
- (265) 33°51.00' N. lat., 120°09.00' W. long.;
- (266) 33°38.16' N. lat., 119°59.23' W. long.;
- (267) 33°37.04' N. lat., 119°50.17' W. long.;
- (268) 33°42.28' N. lat., 119°48.85' W. long.;
- (269) 33°53.96' N. lat., 119°53.77' W. long.;
- (270) 33°59.94' N. lat., 119°19.57' W. long.;
- (271) 34°03.12' N. lat., 119°15.51' W. long.;
- (272) 34°01.97' N. lat., 119°07.28' W. long.;
- (273) 34°03.60' N. lat., 119°04.71' W. long.;
- (274) 33°59.30' N. lat., 119°03.73' W. long.;
- (275) 33°58.87' N. lat., 118°59.37' W. long.;
- (276) 33°58.08' N. lat., 118°41.14' W. long.;
- (277) 33°50.93' N. lat., 118°37.65' W. long.;
- (278) 33°39.54' N. lat., 118°18.70' W. long.;
- (279) 33°35.42' N. lat., 118°17.14' W. long.;
- (280) 33°32.15' N. lat., 118°10.84' W. long.;
- (281) 33°33.71' N. lat., 117°53.72' W. long.;
- (282) 33°31.17' N. lat., 117°49.11' W. long.;
- (283) 33°16.53' N. lat., 117°36.13' W. long.;
- (284) 33°06.77' N. lat., 117°22.92' W. long.;
- (285) 32°58.94' N. lat., 117°20.05' W. long.;
- (286) 32°55.83' N. lat., 117°20.15' W. long.;
- (287) 32°46.29' N. lat., 117°23.89' W. long.;
- (288) 32°42.00' N. lat., 117°22.16' W. long.;
- (289) 32°39.47' N. lat., 117°27.78' W. long.;
- (290) 32°34.83' N. lat., 117°24.69' W. long.

\* \* \* \* \*

23. In § 660.394, paragraph (a) is revised, paragraphs (f) through (m) are redesignated as (g) through (m), new

paragraphs (f), (n), (o), (p), (q) are added, and newly redesignated paragraphs (g), (l), (m) and (r) are revised to read as follows:

**§ 660.394 Latitude/longitude coordinates defining the 180–fm (329–m) through 250–fm (457–m) depth contours.**

\* \* \* \* \*

(a) The 180–fm (329–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.82' N. lat., 125°41.61' W. long.;  
 (2) 48°12.86' N. lat., 125°37.95' W. long.;  
 (3) 48°11.28' N. lat., 125°39.67' W. long.;  
 (4) 48°10.13' N. lat., 125°42.62' W. long.;  
 (5) 48°08.86' N. lat., 125°41.92' W. long.;  
 (6) 48°08.15' N. lat., 125°44.95' W. long.;  
 (7) 48°07.18' N. lat., 125°45.67' W. long.;  
 (8) 48°05.79' N. lat., 125°44.64' W. long.;  
 (9) 48°06.04' N. lat., 125°41.84' W. long.;  
 (10) 48°04.26' N. lat., 125°40.09' W. long.;  
 (11) 48°04.18' N. lat., 125°36.94' W. long.;  
 (12) 48°03.02' N. lat., 125°36.24' W. long.;  
 (13) 48°01.75' N. lat., 125°37.42' W. long.;  
 (14) 48°01.39' N. lat., 125°39.42' W. long.;  
 (15) 47°57.08' N. lat., 125°36.51' W. long.;  
 (16) 47°55.20' N. lat., 125°36.62' W. long.;  
 (17) 47°54.33' N. lat., 125°34.98' W. long.;  
 (18) 47°54.73' N. lat., 125°31.95' W. long.;  
 (19) 47°56.39' N. lat., 125°30.22' W. long.;  
 (20) 47°55.86' N. lat., 125°28.54' W. long.;  
 (21) 47°58.07' N. lat., 125°25.72' W. long.;  
 (22) 48°00.81' N. lat., 125°24.39' W. long.;  
 (23) 48°01.81' N. lat., 125°23.76' W. long.;  
 (24) 48°02.16' N. lat., 125°22.71' W. long.;  
 (25) 48°03.46' N. lat., 125°22.01' W. long.;  
 (26) 48°04.21' N. lat., 125°20.40' W. long.;  
 (27) 48°03.15' N. lat., 125°19.50' W. long.;

(28) 48°01.92' N. lat., 125°18.69' W. long.;  
 (29) 48°00.85' N. lat., 125°20.02' W. long.;  
 (30) 48°00.12' N. lat., 125°20.04' W. long.;  
 (31) 47°58.18' N. lat., 125°18.78' W. long.;  
 (32) 47°58.24' N. lat., 125°17.26' W. long.;  
 (33) 47°52.47' N. lat., 125°15.30' W. long.;  
 (34) 47°52.13' N. lat., 125°12.95' W. long.;  
 (35) 47°50.60' N. lat., 125°10.65' W. long.;  
 (36) 47°49.39' N. lat., 125°10.59' W. long.;  
 (37) 47°48.74' N. lat., 125°06.07' W. long.;  
 (38) 47°47.03' N. lat., 125°06.95' W. long.;  
 (39) 47°47.46' N. lat., 125°05.20' W. long.;  
 (40) 47°45.88' N. lat., 125°04.50' W. long.;  
 (41) 47°44.51' N. lat., 125°06.64' W. long.;  
 (42) 47°42.22' N. lat., 125°04.86' W. long.;  
 (43) 47°38.49' N. lat., 125°06.32' W. long.;  
 (44) 47°34.93' N. lat., 125°04.34' W. long.;  
 (45) 47°30.85' N. lat., 124°57.42' W. long.;  
 (46) 47°28.80' N. lat., 124°56.51' W. long.;  
 (47) 47°29.25' N. lat., 124°53.92' W. long.;  
 (48) 47°28.29' N. lat., 124°51.32' W. long.;  
 (49) 47°24.04' N. lat., 124°47.38' W. long.;  
 (50) 47°18.24' N. lat., 124°45.97' W. long.;  
 (51) 47°19.36' N. lat., 124°50.96' W. long.;  
 (52) 47°18.07' N. lat., 124°53.38' W. long.;  
 (53) 47°17.73' N. lat., 124°52.83' W. long.;  
 (54) 47°17.77' N. lat., 124°51.56' W. long.;  
 (55) 47°16.84' N. lat., 124°50.94' W. long.;  
 (56) 47°16.01' N. lat., 124°53.36' W. long.;  
 (57) 47°14.32' N. lat., 124°52.73' W. long.;  
 (58) 47°11.97' N. lat., 124°56.81' W. long.;  
 (59) 47°12.93' N. lat., 124°58.47' W. long.;  
 (60) 47°09.43' N. lat., 124°57.99' W. long.;  
 (61) 47°09.36' N. lat., 124°59.29' W. long.;  
 (62) 47°05.88' N. lat., 124°59.06' W. long.;

(63) 47°03.64' N. lat., 124°56.07' W. long.;  
 (64) 47°01.00' N. lat., 124°59.69' W. long.;  
 (65) 46°58.72' N. lat., 124°59.17' W. long.;  
 (66) 46°58.30' N. lat., 125°00.60' W. long.;  
 (67) 46°55.61' N. lat., 125°01.19' W. long.;  
 (68) 46°56.96' N. lat., 124°58.85' W. long.;  
 (69) 46°55.91' N. lat., 124°54.98' W. long.;  
 (70) 46°54.55' N. lat., 124°54.21' W. long.;  
 (71) 46°56.80' N. lat., 124°50.55' W. long.;  
 (72) 46°54.87' N. lat., 124°49.59' W. long.;  
 (73) 46°54.63' N. lat., 124°53.48' W. long.;  
 (74) 46°52.33' N. lat., 124°54.75' W. long.;  
 (75) 46°45.12' N. lat., 124°51.82' W. long.;  
 (76) 46°39.20' N. lat., 124°47.02' W. long.;  
 (77) 46°33.45' N. lat., 124°36.61' W. long.;  
 (78) 46°33.37' N. lat., 124°30.21' W. long.;  
 (79) 46°31.67' N. lat., 124°31.41' W. long.;  
 (80) 46°27.87' N. lat., 124°32.04' W. long.;  
 (81) 46°21.01' N. lat., 124°37.63' W. long.;  
 (82) 46°18.58' N. lat., 124°38.92' W. long.;  
 (83) 46°16.00' N. lat., 124°23.57' W. long.;  
 (84) 46°12.85' N. lat., 124°35.52' W. long.;  
 (85) 46°12.27' N. lat., 124°38.69' W. long.;  
 (86) 46°08.71' N. lat., 124°41.27' W. long.;  
 (87) 46°05.80' N. lat., 124°42.11' W. long.;  
 (88) 46°02.84' N. lat., 124°48.05' W. long.;  
 (89) 46°02.41' N. lat., 124°48.16' W. long.;  
 (90) 45°58.96' N. lat., 124°43.97' W. long.;  
 (91) 45°47.05' N. lat., 124°43.25' W. long.;  
 (92) 45°46.00' N. lat., 124°43.31' W. long.;  
 (93) 45°44.22' N. lat., 124°44.55' W. long.;  
 (94) 45°34.97' N. lat., 124°31.95' W. long.;  
 (95) 45°20.25' N. lat., 124°25.18' W. long.;  
 (96) 45°13.09' N. lat., 124°21.61' W. long.;  
 (97) 45°09.59' N. lat., 124°22.78' W. long.;

- (98) 45°03.83' N. lat., 124°26.21' W. long.;
- (99) 45°00.22' N. lat., 124°28.31' W. long.;
- (100) 44°53.53' N. lat., 124°32.98' W. long.;
- (101) 44°40.79' N. lat., 124°45.76' W. long.;
- (102) 44°41.35' N. lat., 124°48.03' W. long.;
- (103) 44°40.27' N. lat., 124°49.11' W. long.;
- (104) 44°38.52' N. lat., 124°49.11' W. long.;
- (105) 44°38.25' N. lat., 124°46.47' W. long.;
- (106) 44°28.84' N. lat., 124°47.09' W. long.;
- (107) 44°23.24' N. lat., 124°49.96' W. long.;
- (108) 44°13.07' N. lat., 124°58.34' W. long.;
- (109) 44°08.30' N. lat., 124°58.23' W. long.;
- (110) 43°57.99' N. lat., 124°57.83' W. long.;
- (111) 43°51.43' N. lat., 124°52.02' W. long.;
- (112) 43°50.72' N. lat., 124°39.23' W. long.;
- (113) 43°39.04' N. lat., 124°37.82' W. long.;
- (114) 43°27.76' N. lat., 124°39.76' W. long.;
- (115) 43°20.83' N. lat., 124°42.70' W. long.;
- (116) 43°20.22' N. lat., 124°42.92' W. long.;
- (117) 43°13.07' N. lat., 124°46.03' W. long.;
- (118) 43°10.43' N. lat., 124°50.27' W. long.;
- (119) 43°08.83' N. lat., 124°50.93' W. long.;
- (120) 43°05.89' N. lat., 124°51.60' W. long.;
- (121) 43°04.60' N. lat., 124°53.01' W. long.;
- (122) 43°02.64' N. lat., 124°52.01' W. long.;
- (123) 43°00.39' N. lat., 124°51.77' W. long.;
- (124) 42°58.00' N. lat., 124°52.99' W. long.;
- (125) 42°57.56' N. lat., 124°54.10' W. long.;
- (126) 42°53.82' N. lat., 124°55.76' W. long.;
- (127) 42°53.20' N. lat., 124°53.56' W. long.;
- (128) 42°50.00' N. lat., 124°52.36' W. long.;
- (129) 42°49.43' N. lat., 124°52.03' W. long.;
- (130) 42°47.68' N. lat., 124°47.72' W. long.;
- (131) 42°46.17' N. lat., 124°44.05' W. long.;
- (132) 42°41.67' N. lat., 124°44.36' W. long.;
- (133) 42°40.50' N. lat., 124°43.86' W. long.;
- (134) 42°38.79' N. lat., 124°42.88' W. long.;
- (135) 42°32.39' N. lat., 124°45.38' W. long.;
- (136) 42°32.08' N. lat., 124°43.44' W. long.;
- (137) 42°30.98' N. lat., 124°43.84' W. long.;
- (138) 42°28.37' N. lat., 124°48.91' W. long.;
- (139) 42°20.07' N. lat., 124°41.59' W. long.;
- (140) 42°15.05' N. lat., 124°38.07' W. long.;
- (141) 42°13.67' N. lat., 124°37.77' W. long.;
- (142) 42°07.37' N. lat., 124°37.25' W. long.;
- (143) 42°04.93' N. lat., 124°36.79' W. long.;
- (144) 42°00.00' N. lat., 124°36.26' W. long.;
- (145) 41°47.60' N. lat., 124°29.75' W. long.;
- (146) 41°22.07' N. lat., 124°29.55' W. long.;
- (147) 41°13.58' N. lat., 124°24.17' W. long.;
- (148) 41°06.51' N. lat., 124°23.07' W. long.;
- (149) 40°55.20' N. lat., 124°27.46' W. long.;
- (150) 40°49.76' N. lat., 124°27.17' W. long.;
- (151) 40°45.79' N. lat., 124°30.37' W. long.;
- (152) 40°40.31' N. lat., 124°32.47' W. long.;
- (153) 40°37.42' N. lat., 124°37.20' W. long.;
- (154) 40°36.03' N. lat., 124°39.97' W. long.;
- (155) 40°31.48' N. lat., 124°40.95' W. long.;
- (156) 40°30.00' N. lat., 124°38.50' W. long.;
- (157) 40°24.81' N. lat., 124°35.82' W. long.;
- (158) 40°22.00' N. lat., 124°30.01' W. long.;
- (159) 40°16.84' N. lat., 124°29.87' W. long.;
- (160) 40°17.06' N. lat., 124°35.51' W. long.;
- (161) 40°16.41' N. lat., 124°39.10' W. long.;
- (162) 40°10.00' N. lat., 124°23.56' W. long.;
- (163) 40°06.67' N. lat., 124°19.08' W. long.;
- (164) 40°08.10' N. lat., 124°16.71' W. long.;
- (165) 40°05.90' N. lat., 124°17.77' W. long.;
- (166) 40°02.80' N. lat., 124°16.28' W. long.;
- (167) 40°01.98' N. lat., 124°12.99' W. long.;
- (168) 40°01.53' N. lat., 124°09.82' W. long.;
- (169) 39°58.28' N. lat., 124°12.93' W. long.;
- (170) 39°57.06' N. lat., 124°12.03' W. long.;
- (171) 39°56.31' N. lat., 124°08.98' W. long.;
- (172) 39°55.20' N. lat., 124°07.98' W. long.;
- (173) 39°52.57' N. lat., 124°09.04' W. long.;
- (174) 39°42.78' N. lat., 124°02.11' W. long.;
- (175) 39°34.76' N. lat., 123°58.51' W. long.;
- (176) 39°34.22' N. lat., 123°56.82' W. long.;
- (177) 39°32.98' N. lat., 123°56.43' W. long.;
- (178) 39°32.14' N. lat., 123°58.83' W. long.;
- (179) 39°07.79' N. lat., 123°58.72' W. long.;
- (180) 39°00.99' N. lat., 123°57.56' W. long.;
- (181) 39°00.05' N. lat., 123°56.83' W. long.;
- (182) 38°57.50' N. lat., 123°57.22' W. long.;
- (183) 38°56.28' N. lat., 123°57.53' W. long.;
- (184) 38°56.01' N. lat., 123°58.72' W. long.;
- (185) 38°52.41' N. lat., 123°56.38' W. long.;
- (186) 38°46.81' N. lat., 123°51.46' W. long.;
- (187) 38°45.56' N. lat., 123°51.32' W. long.;
- (188) 38°43.24' N. lat., 123°49.91' W. long.;
- (189) 38°41.42' N. lat., 123°47.22' W. long.;
- (190) 38°40.97' N. lat., 123°47.80' W. long.;
- (191) 38°38.58' N. lat., 123°46.07' W. long.;
- (192) 38°37.38' N. lat., 123°43.80' W. long.;
- (193) 38°33.86' N. lat., 123°41.51' W. long.;
- (194) 38°29.45' N. lat., 123°38.42' W. long.;
- (195) 38°28.20' N. lat., 123°38.17' W. long.;
- (196) 38°24.09' N. lat., 123°35.26' W. long.;
- (197) 38°16.72' N. lat., 123°31.42' W. long.;
- (198) 38°15.32' N. lat., 123°29.33' W. long.;
- (199) 38°14.45' N. lat., 123°26.15' W. long.;
- (200) 38°10.26' N. lat., 123°25.43' W. long.;
- (201) 38°12.61' N. lat., 123°28.08' W. long.;
- (202) 38°11.98' N. lat., 123°29.35' W. long.;

- (203) 38°08.23' N. lat., 123°28.04' W. long.;
- (204) 38°06.39' N. lat., 123°30.59' W. long.;
- (205) 38°04.25' N. lat., 123°31.81' W. long.;
- (206) 38°02.08' N. lat., 123°31.27' W. long.;
- (207) 38°00.17' N. lat., 123°29.43' W. long.;
- (208) 38°00.00' N. lat., 123°28.55' W. long.;
- (209) 37°58.24' N. lat., 123°26.91' W. long.;
- (210) 37°55.32' N. lat., 123°27.19' W. long.;
- (211) 37°51.52' N. lat., 123°25.01' W. long.;
- (212) 37°44.21' N. lat., 123°11.38' W. long.;
- (213) 37°35.67' N. lat., 123°01.86' W. long.;
- (214) 37°14.29' N. lat., 122°52.99' W. long.;
- (215) 37°11.00' N. lat., 122°49.28' W. long.;
- (216) 37°07.00' N. lat., 122°44.65' W. long.;
- (217) 37°00.86' N. lat., 122°37.55' W. long.;
- (218) 36°59.71' N. lat., 122°33.73' W. long.;
- (219) 36°57.98' N. lat., 122°27.80' W. long.;
- (220) 36°59.83' N. lat., 122°25.17' W. long.;
- (221) 36°57.21' N. lat., 122°25.17' W. long.;
- (222) 36°57.79' N. lat., 122°22.28' W. long.;
- (223) 36°55.86' N. lat., 122°21.99' W. long.;
- (224) 36°52.06' N. lat., 122°12.12' W. long.;
- (225) 36°47.63' N. lat., 122°07.40' W. long.;
- (226) 36°47.26' N. lat., 122°03.23' W. long.;
- (227) 36°49.53' N. lat., 121°59.35' W. long.;
- (228) 36°44.81' N. lat., 121°58.29' W. long.;
- (229) 36°38.95' N. lat., 122°02.02' W. long.;
- (230) 36°23.43' N. lat., 121°59.76' W. long.;
- (231) 36°19.66' N. lat., 122°06.25' W. long.;
- (232) 36°14.78' N. lat., 122°01.52' W. long.;
- (233) 36°13.64' N. lat., 121°57.83' W. long.;
- (234) 36°09.99' N. lat., 121°43.48' W. long.;
- (235) 36°00.00' N. lat., 121°36.95' W. long.;
- (236) 35°57.09' N. lat., 121°34.16' W. long.;
- (237) 35°52.71' N. lat., 121°32.32' W. long.;
- (238) 35°51.23' N. lat., 121°30.54' W. long.;
- (239) 35°46.07' N. lat., 121°29.75' W. long.;
- (240) 35°34.08' N. lat., 121°19.83' W. long.;
- (241) 35°31.41' N. lat., 121°14.80' W. long.;
- (242) 35°15.42' N. lat., 121°03.47' W. long.;
- (243) 35°07.70' N. lat., 120°59.31' W. long.;
- (244) 34°57.27' N. lat., 120°56.93' W. long.;
- (245) 34°44.27' N. lat., 120°57.65' W. long.;
- (246) 34°32.75' N. lat., 120°50.08' W. long.;
- (247) 34°27.00' N. lat., 120°41.50' W. long.;
- (248) 34°20.00' N. lat., 120°30.99' W. long.;
- (249) 34°19.15' N. lat., 120°19.78' W. long.;
- (250) 34°23.24' N. lat., 120°14.17' W. long.;
- (251) 34°21.35' N. lat., 119°54.89' W. long.;
- (252) 34°09.79' N. lat., 119°44.51' W. long.;
- (253) 34°07.34' N. lat., 120°06.71' W. long.;
- (254) 34°09.74' N. lat., 120°19.78' W. long.;
- (255) 34°13.95' N. lat., 120°29.78' W. long.;
- (256) 34°09.41' N. lat., 120°37.75' W. long.;
- (257) 34°03.39' N. lat., 120°35.26' W. long.;
- (258) 33°56.82' N. lat., 120°28.30' W. long.;
- (259) 33°50.71' N. lat., 120°09.24' W. long.;
- (260) 33°38.21' N. lat., 119°59.90' W. long.;
- (261) 33°35.35' N. lat., 119°51.95' W. long.;
- (262) 33°35.99' N. lat., 119°49.13' W. long.;
- (263) 33°42.74' N. lat., 119°47.80' W. long.;
- (264) 33°53.65' N. lat., 119°53.29' W. long.;
- (265) 33°57.85' N. lat., 119°31.05' W. long.;
- (266) 33°56.78' N. lat., 119°27.44' W. long.;
- (267) 33°58.03' N. lat., 119°27.82' W. long.;
- (268) 33°59.31' N. lat., 119°20.02' W. long.;
- (269) 34°02.91' N. lat., 119°15.38' W. long.;
- (270) 33°59.04' N. lat., 119°03.02' W. long.;
- (271) 33°57.88' N. lat., 118°41.69' W. long.;
- (272) 33°50.89' N. lat., 118°37.78' W. long.;
- (273) 33°39.54' N. lat., 118°18.70' W. long.;
- (274) 33°35.42' N. lat., 118°17.15' W. long.;
- (275) 33°31.26' N. lat., 118°10.84' W. long.;
- (276) 33°32.71' N. lat., 117°52.05' W. long.;
- (277) 32°58.94' N. lat., 117°20.05' W. long.;
- (278) 32°46.45' N. lat., 117°24.37' W. long.;
- (279) 32°42.25' N. lat., 117°22.87' W. long.;
- (280) 32°39.50' N. lat., 117°27.80' W. long.;
- (281) 32°34.83' N. lat., 117°24.67' W. long.
- \* \* \* \* \*
- (f) The 180-fm (329-m) depth contour between 42° N. lat. and the U.S. border with Mexico, modified to allow fishing in petrale sole areas, is defined by straight lines connecting all of the following points in the order stated:
- (1) 42°00.00' N. lat., 124°36.37' W. long.;
- (2) 41°47.79' N. lat., 124°29.48' W. long.;
- (3) 41°21.16' N. lat., 124°28.97' W. long.;
- (4) 41°13.44' N. lat., 124°24.10' W. long.;
- (5) 41°11.00' N. lat., 124°22.99' W. long.;
- (6) 41°06.51' N. lat., 124°23.07' W. long.;
- (7) 40°55.20' N. lat., 124°27.46' W. long.;
- (8) 40°53.95' N. lat., 124°26.04' W. long.;
- (9) 40°49.96' N. lat., 124°26.04' W. long.;
- (10) 40°44.49' N. lat., 124°30.81' W. long.;
- (11) 40°40.58' N. lat., 124°32.05' W. long.;
- (12) 40°37.36' N. lat., 124°29.41' W. long.;
- (13) 40°35.67' N. lat., 124°30.43' W. long.;
- (14) 40°37.44' N. lat., 124°37.16' W. long.;
- (15) 40°36.03' N. lat., 124°39.97' W. long.;
- (16) 40°31.42' N. lat., 124°40.85' W. long.;
- (17) 40°30.00' N. lat., 124°36.82' W. long.;
- (18) 40°27.56' N. lat., 124°37.24' W. long.;
- (19) 40°24.81' N. lat., 124°35.82' W. long.;
- (20) 40°22.00' N. lat., 124°30.01' W. long.;
- (21) 40°16.84' N. lat., 124°29.87' W. long.;
- (22) 40°17.00' N. lat., 124°34.96' W. long.;

- (23) 40°16.03' N. lat., 124°36.02' W. long.;
- (24) 40°11.93' N. lat., 124°28.21' W. long.;
- (25) 40°10.00' N. lat., 124°23.56' W. long.;
- (26) 40°06.67' N. lat., 124°19.08' W. long.;
- (27) 40°08.10' N. lat., 124°16.71' W. long.;
- (28) 40°05.90' N. lat., 124°17.77' W. long.;
- (29) 40°02.80' N. lat., 124°16.28' W. long.;
- (30) 40°01.98' N. lat., 124°12.99' W. long.;
- (31) 40°01.53' N. lat., 124°09.82' W. long.;
- (32) 39°58.54' N. lat., 124°12.43' W. long.;
- (33) 39°55.72' N. lat., 124°07.44' W. long.;
- (34) 39°42.78' N. lat., 124°02.11' W. long.;
- (35) 39°34.76' N. lat., 123°58.51' W. long.;
- (36) 39°34.22' N. lat., 123°56.82' W. long.;
- (37) 39°32.98' N. lat., 123°56.43' W. long.;
- (38) 39°32.14' N. lat., 123°58.83' W. long.;
- (39) 39°07.79' N. lat., 123°58.72' W. long.;
- (40) 39°00.99' N. lat., 123°57.56' W. long.;
- (41) 39°00.05' N. lat., 123°56.83' W. long.;
- (42) 38°57.50' N. lat., 123°56.96' W. long.;
- (43) 38°52.22' N. lat., 123°56.22' W. long.;
- (44) 38°46.81' N. lat., 123°51.46' W. long.;
- (45) 38°45.56' N. lat., 123°51.32' W. long.;
- (46) 38°43.24' N. lat., 123°49.91' W. long.;
- (47) 38°41.41' N. lat., 123°46.74' W. long.;
- (48) 38°38.48' N. lat., 123°45.88' W. long.;
- (49) 38°37.38' N. lat., 123°43.80' W. long.;
- (50) 38°35.26' N. lat., 123°41.99' W. long.;
- (51) 38°34.44' N. lat., 123°41.89' W. long.;
- (52) 38°29.45' N. lat., 123°38.42' W. long.;
- (53) 38°28.20' N. lat., 123°38.17' W. long.;
- (54) 38°24.09' N. lat., 123°35.26' W. long.;
- (55) 38°19.95' N. lat., 123°32.90' W. long.;
- (56) 38°14.38' N. lat., 123°25.51' W. long.;
- (57) 38°09.39' N. lat., 123°24.39' W. long.;
- (58) 38°10.09' N. lat., 123°27.21' W. long.;
- (59) 38°03.98' N. lat., 123°31.74' W. long.;
- (60) 38°02.08' N. lat., 123°31.27' W. long.;
- (61) 38°00.17' N. lat., 123°29.43' W. long.;
- (62) 38°00.00' N. lat., 123°28.55' W. long.;
- (63) 37°58.24' N. lat., 123°26.91' W. long.;
- (64) 37°55.32' N. lat., 123°27.19' W. long.;
- (65) 37°51.52' N. lat., 123°25.01' W. long.;
- (66) 37°44.21' N. lat., 123°11.38' W. long.;
- (67) 37°35.67' N. lat., 123°01.86' W. long.;
- (68) 37°23.42' N. lat., 122°56.78' W. long.;
- (69) 37°23.23' N. lat., 122°53.78' W. long.;
- (70) 37°13.97' N. lat., 122°49.91' W. long.;
- (71) 37°11.00' N. lat., 122°45.61' W. long.;
- (72) 37°08.28' N. lat., 122°46.13' W. long.;
- (73) 37°07.00' N. lat., 122°44.45' W. long.;
- (74) 37°00.86' N. lat., 122°37.55' W. long.;
- (75) 36°59.71' N. lat., 122°33.73' W. long.;
- (76) 36°57.98' N. lat., 122°27.80' W. long.;
- (77) 36°59.83' N. lat., 122°25.17' W. long.;
- (78) 36°57.21' N. lat., 122°25.17' W. long.;
- (79) 36°57.79' N. lat., 122°22.28' W. long.;
- (80) 36°55.86' N. lat., 122°21.99' W. long.;
- (81) 36°52.06' N. lat., 122°12.12' W. long.;
- (82) 36°47.63' N. lat., 122°07.40' W. long.;
- (83) 36°47.27' N. lat., 122°03.23' W. long.;
- (84) 36°49.53' N. lat., 121°59.35' W. long.;
- (85) 36°44.81' N. lat., 121°58.29' W. long.;
- (86) 36°38.95' N. lat., 122°02.02' W. long.;
- (87) 36°30.86' N. lat., 122°00.82' W. long.;
- (88) 36°23.43' N. lat., 121°59.76' W. long.;
- (89) 36°22.00' N. lat., 122°01.02' W. long.;
- (90) 36°19.01' N. lat., 122°05.01' W. long.;
- (91) 36°14.78' N. lat., 122°01.52' W. long.;
- (92) 36°09.99' N. lat., 121°43.48' W. long.;
- (93) 36°00.00' N. lat., 121°36.04' W. long.;
- (94) 35°58.19' N. lat., 121°34.63' W. long.;
- (95) 35°52.71' N. lat., 121°32.32' W. long.;
- (96) 35°51.23' N. lat., 121°30.54' W. long.;
- (97) 35°46.07' N. lat., 121°29.75' W. long.;
- (98) 35°34.08' N. lat., 121°19.83' W. long.;
- (99) 35°31.41' N. lat., 121°14.80' W. long.;
- (100) 35°15.42' N. lat., 121°03.47' W. long.;
- (101) 35°07.21' N. lat., 120°59.05' W. long.;
- (102) 35°07.45' N. lat., 120°57.09' W. long.;
- (103) 34°44.29' N. lat., 120°54.28' W. long.;
- (104) 34°44.24' N. lat., 120°57.64' W. long.;
- (105) 34°32.75' N. lat., 120°50.08' W. long.;
- (106) 34°27.00' N. lat., 120°41.50' W. long.;
- (107) 34°20.00' N. lat., 120°30.99' W. long.;
- (108) 34°19.15' N. lat., 120°19.78' W. long.;
- (109) 34°23.24' N. lat., 120°14.17' W. long.;
- (110) 34°21.35' N. lat., 119°54.89' W. long.;
- (111) 34°09.79' N. lat., 119°44.51' W. long.;
- (112) 34°07.34' N. lat., 120°06.71' W. long.;
- (113) 34°09.74' N. lat., 120°19.78' W. long.;
- (114) 34°13.95' N. lat., 120°29.78' W. long.;
- (115) 34°09.41' N. lat., 120°37.75' W. long.;
- (116) 34°03.39' N. lat., 120°35.26' W. long.;
- (117) 33°56.82' N. lat., 120°28.30' W. long.;
- (118) 33°50.71' N. lat., 120°09.24' W. long.;
- (119) 33°38.21' N. lat., 119°59.90' W. long.;
- (120) 33°35.35' N. lat., 119°51.95' W. long.;
- (121) 33°35.99' N. lat., 119°49.13' W. long.;
- (122) 33°42.74' N. lat., 119°47.81' W. long.;
- (123) 33°53.65' N. lat., 119°53.29' W. long.;
- (124) 33°57.85' N. lat., 119°31.05' W. long.;
- (125) 33°56.78' N. lat., 119°27.44' W. long.;
- (126) 33°58.03' N. lat., 119°27.82' W. long.;
- (127) 33°59.31' N. lat., 119°20.02' W. long.;



(128) 34°02.91' N. lat., 119°15.38' W. long.;

(129) 33°59.04' N. lat., 119°03.02' W. long.;

(130) 33°57.88' N. lat., 118°41.69' W. long.;

(131) 33°50.89' N. lat., 118°37.78' W. long.;

(132) 33°39.54' N. lat., 118°18.70' W. long.;

(133) 33°35.42' N. lat., 118°17.15' W. long.;

(134) 33°31.26' N. lat., 118°10.84' W. long.;

(135) 33°32.71' N. lat., 117°52.05' W. long.;

(136) 32°58.94' N. lat., 117°20.06' W. long.;

(137) 32°46.45' N. lat., 117°24.37' W. long.;

(138) 32°42.25' N. lat., 117°22.87' W. long.;

(139) 32°39.50' N. lat., 117°27.80' W. long.; and

(140) 32°33.00' N. lat., 117°24.67' W. long.

(g) The 200-fm (366-m) depth contour between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.75 N. lat., 125°41.73 W. long.;

(2) 48°12.85 N. lat., 125°38.06 W. long.;

(3) 48°07.10 N. lat., 125°45.65 W. long.;

(4) 48°05.71 N. lat., 125°44.70 W. long.;

(5) 48°04.07 N. lat., 125°36.96 W. long.;

(6) 48°03.05 N. lat., 125°36.38 W. long.;

(7) 48°01.98 N. lat., 125°37.41 W. long.;

(8) 48°01.46 N. lat., 125°39.61 W. long.;

(9) 47°56.94 N. lat., 125°36.65 W. long.;

(10) 47°55.11 N. lat., 125°36.92 W. long.;

(11) 47°54.10 N. lat., 125°34.98 W. long.;

(12) 47°54.50 N. lat., 125°32.01 W. long.;

(13) 47°55.77 N. lat., 125°30.13 W. long.;

(14) 47°55.65 N. lat., 125°28.46 W. long.;

(15) 47°58.11 N. lat., 125°26.60 W. long.;

(16) 48°00.40 N. lat., 125°24.83 W. long.;

(17) 48°03.60 N. lat., 125°21.84 W. long.;

(18) 48°03.98 N. lat., 125°20.65 W. long.;

(19) 48°03.26 N. lat., 125°19.76 W. long.;

(20) 48°01.50 N. lat., 125°18.80 W. long.;

(21) 48°01.03 N. lat., 125°20.12 W. long.;

(22) 48°00.04 N. lat., 125°20.26 W. long.;

(23) 47°58.10 N. lat., 125°18.91 W. long.;

(24) 47°58.17 N. lat., 125°17.50 W. long.;

(25) 47°52.33 N. lat., 125°15.78 W. long.;

(26) 47°49.20 N. lat., 125°10.67 W. long.;

(27) 47°48.27 N. lat., 125°07.38 W. long.;

(28) 47°47.24 N. lat., 125°05.38 W. long.;

(29) 47°45.95 N. lat., 125°04.61 W. long.;

(30) 47°44.58 N. lat., 125°07.12 W. long.;

(31) 47°42.24 N. lat., 125°05.15 W. long.;

(32) 47°38.54 N. lat., 125°06.76 W. long.;

(33) 47°35.03 N. lat., 125°04.28 W. long.;

(34) 47°28.82 N. lat., 124°56.24 W. long.;

(35) 47°29.15 N. lat., 124°54.10 W. long.;

(36) 47°28.43 N. lat., 124°51.58 W. long.;

(37) 47°24.13 N. lat., 124°47.50 W. long.;

(38) 47°18.31 N. lat., 124°46.17 W. long.;

(39) 47°19.57 N. lat., 124°51.00 W. long.;

(40) 47°18.12 N. lat., 124°53.66 W. long.;

(41) 47°17.60 N. lat., 124°52.94 W. long.;

(42) 47°17.71 N. lat., 124°51.63 W. long.;

(43) 47°16.90 N. lat., 124°51.23 W. long.;

(44) 47°16.10 N. lat., 124°53.67 W. long.;

(45) 47°14.24 N. lat., 124°53.02 W. long.;

(46) 47°12.16 N. lat., 124°56.77 W. long.;

(47) 47°13.35 N. lat., 124°58.70 W. long.;

(48) 47°09.53 N. lat., 124°58.32 W. long.;

(49) 47°09.54 N. lat., 124°59.50 W. long.;

(50) 47°05.87 N. lat., 124°59.30 W. long.;

(51) 47°03.65 N. lat., 124°56.26 W. long.;

(52) 47°00.87 N. lat., 124°59.52 W. long.;

(53) 46°56.80 N. lat., 125°00.00 W. long.;

(54) 46°51.55 N. lat., 125°00.00 W. long.;

(55) 46°50.07 N. lat., 124°53.90 W. long.;

(56) 46°44.88 N. lat., 124°51.97 W. long.;

(57) 46°33.45 N. lat., 124°36.11 W. long.;

(58) 46°33.20 N. lat., 124°30.64 W. long.;

(59) 46°27.85 N. lat., 124°31.95 W. long.;

(60) 46°18.27 N. lat., 124°39.28 W. long.;

(61) 46°16.00 N. lat., 124°24.88 W. long.;

(62) 46°14.22 N. lat., 124°26.29 W. long.;

(63) 46°11.53 N. lat., 124°39.58 W. long.;

(64) 46°08.77 N. lat., 124°41.71 W. long.;

(65) 46°05.86 N. lat., 124°42.26 W. long.;

(66) 46°03.85 N. lat., 124°48.20 W. long.;

(67) 46°02.33 N. lat., 124°48.51 W. long.;

(68) 45°58.99 N. lat., 124°44.42 W. long.;

(69) 45°46.90 N. lat., 124°43.50 W. long.;

(70) 45°46.00 N. lat., 124°44.27 W. long.;

(71) 45°44.98 N. lat., 124°44.93 W. long.;

(72) 45°43.46 N. lat., 124°44.93 W. long.;

(73) 45°34.88 N. lat., 124°32.59 W. long.;

(74) 45°20.25 N. lat., 124°25.47 W. long.;

(75) 45°13.06 N. lat., 124°22.25 W. long.;

(76) 45°03.83 N. lat., 124°27.13 W. long.;

(77) 45°00.17 N. lat., 124°29.29 W. long.;

(78) 44°55.60 N. lat., 124°32.36 W. long.;

(79) 44°48.25 N. lat., 124°40.61 W. long.;

(80) 44°42.24 N. lat., 124°48.05 W. long.;

(81) 44°41.35 N. lat., 124°48.03 W. long.;

(82) 44°40.27 N. lat., 124°49.11 W. long.;

(83) 44°38.52 N. lat., 124°49.11 W. long.;

(84) 44°23.30 N. lat., 124°50.17 W. long.;

(85) 44°13.19 N. lat., 124°58.66 W. long.;

(86) 44°08.30 N. lat., 124°58.50 W. long.;

(87) 43°57.89 N. lat., 124°58.13 W. long.;

(88) 43°50.59 N. lat., 124°52.80 W. long.;

(89) 43°50.10 N. lat., 124°40.27 W. long.;

- (90) 43°39.05 N. lat., 124°38.56 W. long.;
- (91) 43°28.85 N. lat., 124°40.00 W. long.;
- (92) 43°20.83 N. lat., 124°42.84 W. long.;
- (93) 43°20.22 N. lat., 124°43.05 W. long.;
- (94) 43°13.29 N. lat., 124°47.00 W. long.;
- (95) 43°13.15 N. lat., 124°52.61 W. long.;
- (96) 43°04.60 N. lat., 124°53.01 W. long.;
- (97) 42°57.56 N. lat., 124°54.10 W. long.;
- (98) 42°53.82 N. lat., 124°55.76 W. long.;
- (99) 42°53.41 N. lat., 124°54.35 W. long.;
- (100) 42°49.52 N. lat., 124°53.16 W. long.;
- (101) 42°47.47 N. lat., 124°50.24 W. long.;
- (102) 42°47.57 N. lat., 124°48.13 W. long.;
- (103) 42°46.19 N. lat., 124°44.52 W. long.;
- (104) 42°41.75 N. lat., 124°44.69 W. long.;
- (105) 42°40.50 N. lat., 124°44.02 W. long.;
- (106) 42°38.81 N. lat., 124°43.09 W. long.;
- (107) 42°31.82 N. lat., 124°46.24 W. long.;
- (108) 42°31.96 N. lat., 124°44.32 W. long.;
- (109) 42°30.95 N. lat., 124°44.50 W. long.;
- (110) 42°28.39 N. lat., 124°49.56 W. long.;
- (111) 42°23.34 N. lat., 124°44.91 W. long.;
- (112) 42°19.72 N. lat., 124°41.60 W. long.;
- (113) 42°15.12 N. lat., 124°38.34 W. long.;
- (114) 42°13.67 N. lat., 124°38.22 W. long.;
- (115) 42°12.35 N. lat., 124°38.09 W. long.;
- (116) 42°04.35 N. lat., 124°37.23 W. long.;
- (117) 42°00.00 N. lat., 124°36.80 W. long.;
- (118) 41°47.84 N. lat., 124°30.48 W. long.;
- (119) 41°43.33 N. lat., 124°29.96 W. long.;
- (120) 41°23.46 N. lat., 124°30.36 W. long.;
- (121) 41°21.29 N. lat., 124°29.43 W. long.;
- (122) 41°13.52 N. lat., 124°24.48 W. long.;
- (123) 41°06.71 N. lat., 124°23.37 W. long.;
- (124) 40°54.66 N. lat., 124°28.20 W. long.;
- (125) 40°51.52 N. lat., 124°27.47 W. long.;
- (126) 40°40.62 N. lat., 124°32.75 W. long.;
- (127) 40°36.08 N. lat., 124°40.18 W. long.;
- (128) 40°32.90 N. lat., 124°41.90 W. long.;
- (129) 40°31.30 N. lat., 124°41.00 W. long.;
- (130) 40°30.00 N. lat., 124°37.35 W. long.;
- (131) 40°27.29 N. lat., 124°37.34 W. long.;
- (132) 40°24.98 N. lat., 124°36.44 W. long.;
- (133) 40°22.22 N. lat., 124°31.85 W. long.;
- (134) 40°16.94 N. lat., 124°32.00 W. long.;
- (135) 40°17.58 N. lat., 124°45.30 W. long.;
- (136) 40°13.24 N. lat., 124°32.43 W. long.;
- (137) 40°10.00 N. lat., 124°24.64 W. long.;
- (138) 40°06.43 N. lat., 124°19.26 W. long.;
- (139) 40°07.06 N. lat., 124°17.82 W. long.;
- (140) 40°04.70 N. lat., 124°18.17 W. long.;
- (141) 40°02.34 N. lat., 124°16.64 W. long.;
- (142) 40°01.52 N. lat., 124°09.89 W. long.;
- (143) 39°58.27 N. lat., 124°13.58 W. long.;
- (144) 39°56.59 N. lat., 124°12.09 W. long.;
- (145) 39°55.19 N. lat., 124°08.03 W. long.;
- (146) 39°52.54 N. lat., 124°09.47 W. long.;
- (147) 39°42.67 N. lat., 124°02.59 W. long.;
- (148) 39°35.95 N. lat., 123°59.56 W. long.;
- (149) 39°34.61 N. lat., 123°59.66 W. long.;
- (150) 39°33.77 N. lat., 123°56.89 W. long.;
- (151) 39°33.01 N. lat., 123°57.14 W. long.;
- (152) 39°32.20 N. lat., 123°59.20 W. long.;
- (153) 39°07.84 N. lat., 123°59.14 W. long.;
- (154) 39°01.11 N. lat., 123°57.97 W. long.;
- (155) 39°00.51 N. lat., 123°56.96 W. long.;
- (156) 38°57.50 N. lat., 123°57.57 W. long.;
- (157) 38°56.57 N. lat., 123°57.80 W. long.;
- (158) 38°56.39 N. lat., 123°59.48 W. long.;
- (159) 38°50.22 N. lat., 123°55.55 W. long.;
- (160) 38°46.76 N. lat., 123°51.56 W. long.;
- (161) 38°45.27 N. lat., 123°51.63 W. long.;
- (162) 38°42.76 N. lat., 123°49.83 W. long.;
- (163) 38°41.53 N. lat., 123°47.83 W. long.;
- (164) 38°40.97 N. lat., 123°48.14 W. long.;
- (165) 38°38.02 N. lat., 123°45.85 W. long.;
- (166) 38°37.19 N. lat., 123°44.08 W. long.;
- (167) 38°33.43 N. lat., 123°41.82 W. long.;
- (168) 38°29.44 N. lat., 123°38.49 W. long.;
- (169) 38°28.08 N. lat., 123°38.33 W. long.;
- (170) 38°23.68 N. lat., 123°35.47 W. long.;
- (171) 38°19.63 N. lat., 123°34.05 W. long.;
- (172) 38°16.23 N. lat., 123°31.90 W. long.;
- (173) 38°14.79 N. lat., 123°29.98 W. long.;
- (174) 38°14.12 N. lat., 123°26.36 W. long.;
- (175) 38°10.85 N. lat., 123°25.84 W. long.;
- (176) 38°13.15 N. lat., 123°28.25 W. long.;
- (177) 38°12.28 N. lat., 123°29.88 W. long.;
- (178) 38°10.19 N. lat., 123°29.11 W. long.;
- (179) 38°07.94 N. lat., 123°28.52 W. long.;
- (180) 38°06.51 N. lat., 123°30.96 W. long.;
- (181) 38°04.21 N. lat., 123°32.03 W. long.;
- (182) 38°02.07 N. lat., 123°31.37 W. long.;
- (183) 38°00.00 N. lat., 123°29.62 W. long.;
- (184) 37°58.13 N. lat., 123°27.28 W. long.;
- (185) 37°55.01 N. lat., 123°27.53 W. long.;
- (186) 37°51.40°N. lat., 123°25.25 W. long.;
- (187) 37°43.97 N. lat., 123°11.56 W. long.;
- (188) 37°35.67 N. lat., 123°02.32 W. long.;
- (189) 37°13.65 N. lat., 122°54.25 W. long.;
- (190) 37°11.00 N. lat., 122°50.97 W. long.;
- (191) 37°07.00 N. lat., 122°45.90 W. long.;
- (192) 37°00.66 N. lat., 122°37.91 W. long.;
- (193) 36°57.40°N. lat., 122°28.32 W. long.;
- (194) 36°59.25 N. lat., 122°25.61 W. long.;

- (195) 36°56.88 N. lat., 122°25.49 W. long.;
- (196) 36°57.40' N. lat., 122°22.69 W. long.;
- (197) 36°55.43 N. lat., 122°22.49 W. long.;
- (198) 36°52.29 N. lat., 122°13.25 W. long.;
- (199) 36°47.12 N. lat., 122°07.62 W. long.;
- (200) 36°47.10 N. lat., 122°02.17 W. long.;
- (201) 36°43.76 N. lat., 121°59.17 W. long.;
- (202) 36°38.85 N. lat., 122°02.26 W. long.;
- (203) 36°23.41 N. lat., 122°00.17 W. long.;
- (204) 36°19.68 N. lat., 122°06.99 W. long.;
- (205) 36°14.75 N. lat., 122°01.57 W. long.;
- (206) 36°09.74 N. lat., 121°45.06 W. long.;
- (207) 36°06.75 N. lat., 121°40.79 W. long.;
- (208) 35°58.18 N. lat., 121°34.69 W. long.;
- (209) 35°52.31 N. lat., 121°32.51 W. long.;
- (210) 35°51.21 N. lat., 121°30.97 W. long.;
- (211) 35°46.32 N. lat., 121°30.36 W. long.;
- (212) 35°33.74 N. lat., 121°20.16 W. long.;
- (213) 35°31.37 N. lat., 121°15.29 W. long.;
- (214) 35°23.32 N. lat., 121°11.50 W. long.;
- (215) 35°15.28 N. lat., 121°04.51 W. long.;
- (216) 35°07.08 N. lat., 121°00.36 W. long.;
- (217) 34°57.46 N. lat., 120°58.29 W. long.;
- (218) 34°44.25 N. lat., 120°58.35 W. long.;
- (219) 34°32.30 N. lat., 120°50.28 W. long.;
- (220) 34°27.00 N. lat., 120°42.61 W. long.;
- (221) 34°19.08 N. lat., 120°31.27 W. long.;
- (222) 34°17.72 N. lat., 120°19.32 W. long.;
- (223) 34°22.45 N. lat., 120°12.87 W. long.;
- (224) 34°21.36 N. lat., 119°54.94 W. long.;
- (225) 34°09.95 N. lat., 119°46.24 W. long.;
- (226) 34°09.08 N. lat., 119°57.59 W. long.;
- (227) 34°07.53 N. lat., 120°06.41 W. long.;
- (228) 34°10.54 N. lat., 120°19.13 W. long.;
- (229) 34°14.68 N. lat., 120°29.54 W. long.;
- (230) 34°09.51 N. lat., 120°38.38 W. long.;
- (231) 34°03.06 N. lat., 120°35.60 W. long.;
- (232) 33°56.39 N. lat., 120°28.53 W. long.;
- (233) 33°50.25 N. lat., 120°09.49 W. long.;
- (234) 33°37.96 N. lat., 120°00.14 W. long.;
- (235) 33°34.52 N. lat., 119°51.90 W. long.;
- (236) 33°35.51 N. lat., 119°48.55 W. long.;
- (237) 33°42.76 N. lat., 119°47.83 W. long.;
- (238) 33°53.62 N. lat., 119°53.34 W. long.;
- (239) 33°57.61 N. lat., 119°31.32 W. long.;
- (240) 33°56.34 N. lat., 119°26.46 W. long.;
- (241) 33°57.79 N. lat., 119°26.91 W. long.;
- (242) 33°58.88 N. lat., 119°20.12 W. long.;
- (243) 34°02.65 N. lat., 119°15.17 W. long.;
- (244) 33°59.02 N. lat., 119°03.05 W. long.;
- (245) 33°57.61 N. lat., 118°42.13 W. long.;
- (246) 33°50.76 N. lat., 118°38.03 W. long.;
- (247) 33°38.41 N. lat., 118°17.08 W. long.;
- (248) 33°37.14 N. lat., 118°18.44 W. long.;
- (249) 33°35.51 N. lat., 118°18.08 W. long.;
- (250) 33°30.68 N. lat., 118°10.40 W. long.;
- (251) 33°32.49 N. lat., 117°51.90 W. long.;
- (252) 32°58.87 N. lat., 117°20.41 W. long.; and
- (253) 32°35.53 N. lat., 117°29.72 W. long.
- \* \* \* \* \*
- (l) The 200–fm (366–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico, modified to allow fishing in petrale sole areas, is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°14.75' N. lat., 125°41.73' W. long.;
- (2) 48°12.85' N. lat., 125°38.06' W. long.;
- (3) 48°07.10' N. lat., 125°45.65' W. long.;
- (4) 48°05.71' N. lat., 125°44.70' W. long.;
- (5) 48°04.07' N. lat., 125°36.96' W. long.;
- (6) 48°03.05' N. lat., 125°36.38' W. long.;
- (7) 48°01.98' N. lat., 125°37.41' W. long.;
- (8) 48°01.46' N. lat., 125°39.61' W. long.;
- (9) 47°56.94' N. lat., 125°36.65' W. long.;
- (10) 47°55.77' N. lat., 125°30.13' W. long.;
- (11) 47°55.65' N. lat., 125°28.46' W. long.;
- (12) 47°58.11' N. lat., 125°26.60' W. long.;
- (13) 48°00.40' N. lat., 125°24.83' W. long.;
- (14) 48°03.60' N. lat., 125°21.84' W. long.;
- (15) 48°03.98' N. lat., 125°20.65' W. long.;
- (16) 48°03.26' N. lat., 125°19.76' W. long.;
- (17) 48°01.50' N. lat., 125°18.80' W. long.;
- (18) 48°01.03' N. lat., 125°20.12' W. long.;
- (19) 48°00.04' N. lat., 125°20.26' W. long.;
- (20) 47°58.10' N. lat., 125°18.91' W. long.;
- (21) 47°58.17' N. lat., 125°17.50' W. long.;
- (22) 47°52.33' N. lat., 125°15.78' W. long.;
- (23) 47°49.20' N. lat., 125°10.67' W. long.;
- (24) 47°48.27' N. lat., 125°07.38' W. long.;
- (25) 47°47.24' N. lat., 125°05.38' W. long.;
- (26) 47°45.95' N. lat., 125°04.61' W. long.;
- (27) 47°44.58' N. lat., 125°07.12' W. long.;
- (28) 47°42.24' N. lat., 125°05.15' W. long.;
- (29) 47°38.54' N. lat., 125°06.76' W. long.;
- (30) 47°35.03' N. lat., 125°04.28' W. long.;
- (31) 47°28.82' N. lat., 124 56.24' W. long.;
- (32) 47°29.15' N. lat., 124 54.10' W. long.;
- (33) 47°28.43' N. lat., 124 51.58' W. long.;
- (34) 47°24.13' N. lat., 124 47.50' W. long.;
- (35) 47°18.31' N. lat., 124 46.17' W. long.;
- (36) 47°19.57' N. lat., 124 51.00' W. long.;
- (37) 47°18.12' N. lat., 124 53.66' W. long.;
- (38) 47°17.60' N. lat., 124 52.94' W. long.;
- (39) 47°17.71' N. lat., 124 51.63' W. long.;
- (40) 47°16.90' N. lat., 124 51.23' W. long.;
- (41) 47°16.10' N. lat., 124 53.67' W. long.;

- (42) 47°14.24' N. lat., 124 53.02' W. long.;
- (43) 47°12.16' N. lat., 124 56.77' W. long.;
- (44) 47°13.35' N. lat., 124 58.70' W. long.;
- (45) 47°09.53' N. lat., 124 58.32' W. long.;
- (46) 47°09.54' N. lat., 124 59.50' W. long.;
- (47) 47°05.87' N. lat., 124 59.30' W. long.;
- (48) 47°03.65' N. lat., 124 56.26' W. long.;
- (49) 47°00.87' N. lat., 124 59.52' W. long.;
- (50) 46°56.80' N. lat., 125°00.00' W. long.;
- (51) 46°51.55' N. lat., 125°00.00' W. long.;
- (52) 46°50.07' N. lat., 124°53.90' W. long.;
- (53) 46°44.88' N. lat., 124°51.97' W. long.;
- (54) 46°33.45' N. lat., 124°36.11' W. long.;
- (55) 46°33.20' N. lat., 124°30.64' W. long.;
- (56) 46°27.85' N. lat., 124°31.95' W. long.;
- (57) 46°18.27' N. lat., 124°39.28' W. long.;
- (58) 46°16.00' N. lat., 124°24.88' W. long.;
- (59) 46°14.22' N. lat., 124°26.28' W. long.;
- (60) 46°11.53' N. lat., 124°39.58' W. long.;
- (61) 46°08.77' N. lat., 124°41.71' W. long.;
- (62) 46°05.86' N. lat., 124°42.27' W. long.;
- (63) 46°03.85' N. lat., 124°48.20' W. long.;
- (64) 46°02.34' N. lat., 124°48.51' W. long.;
- (65) 45°58.99' N. lat., 124°44.42' W. long.;
- (66) 45°46.00' N. lat., 124°41.82' W. long.;
- (67) 45°49.74' N. lat., 124°43.69' W. long.;
- (68) 45°49.68' N. lat., 124°42.37' W. long.;
- (69) 45°40.83' N. lat., 124°40.90' W. long.;
- (70) 45°34.88' N. lat., 124°32.58' W. long.;
- (71) 45°20.25' N. lat., 124°25.47' W. long.;
- (72) 45°13.04' N. lat., 124°21.92' W. long.;
- (73) 45°03.83' N. lat., 124°27.13' W. long.;
- (74) 45°00.17' N. lat., 124°29.28' W. long.;
- (75) 44°50.99' N. lat., 124°35.40' W. long.;
- (76) 44°46.87' N. lat., 124°38.20' W. long.;
- (77) 44°48.25' N. lat., 124°40.62' W. long.;
- (78) 44°41.34' N. lat., 124°49.20' W. long.;
- (79) 44°23.30' N. lat., 124°50.17' W. long.;
- (80) 44°13.19' N. lat., 124°58.66' W. long.;
- (81) 44°08.30' N. lat., 124°58.72' W. long.;
- (82) 43°57.37' N. lat., 124°58.71' W. long.;
- (83) 43°52.32' N. lat., 124°49.43' W. long.;
- (84) 43°51.35' N. lat., 124°37.94' W. long.;
- (85) 43°49.73' N. lat., 124°40.26' W. long.;
- (86) 43°39.06' N. lat., 124°38.55' W. long.;
- (87) 43°28.85' N. lat., 124°39.99' W. long.;
- (88) 43°20.83' N. lat., 124°42.89' W. long.;
- (89) 43°20.22' N. lat., 124°43.05' W. long.;
- (90) 43°13.29' N. lat., 124°47.00' W. long.;
- (91) 43°10.64' N. lat., 124°49.95' W. long.;
- (92) 43°04.26' N. lat., 124°53.05' W. long.;
- (93) 42°53.93' N. lat., 124°54.60' W. long.;
- (94) 42°50.00' N. lat., 124°50.60' W. long.;
- (95) 42°47.57' N. lat., 124°48.12' W. long.;
- (96) 42°46.19' N. lat., 124°44.52' W. long.;
- (97) 42°41.75' N. lat., 124°44.69' W. long.;
- (98) 42°40.50' N. lat., 124°44.02' W. long.;
- (99) 42°38.81' N. lat., 124°43.09' W. long.;
- (100) 42°31.83' N. lat., 124°46.23' W. long.;
- (101) 42°32.08' N. lat., 124°43.58' W. long.;
- (102) 42°30.96' N. lat., 124°43.84' W. long.;
- (103) 42°28.41' N. lat., 124°49.17' W. long.;
- (104) 42°24.80' N. lat., 124°45.93' W. long.;
- (105) 42°19.71' N. lat., 124°41.60' W. long.;
- (106) 42°15.12' N. lat., 124°38.34' W. long.;
- (107) 42°13.67' N. lat., 124°38.28' W. long.;
- (108) 42°12.35' N. lat., 124°38.09' W. long.;
- (109) 42°00.00' N. lat., 124°36.83' W. long.;
- (110) 41°47.78' N. lat., 124°29.55' W. long.;
- (111) 41°21.15' N. lat., 124°29.04' W. long.;
- (112) 41°13.50' N. lat., 124°24.40' W. long.;
- (113) 41°11.00' N. lat., 124°22.99' W. long.;
- (114) 41°06.69' N. lat., 124°23.30' W. long.;
- (115) 40°54.73' N. lat., 124°28.15' W. long.;
- (116) 40°53.94' N. lat., 124°26.11' W. long.;
- (117) 40°50.31' N. lat., 124°26.15' W. long.;
- (118) 40°44.49' N. lat., 124°30.89' W. long.;
- (119) 40°40.62' N. lat., 124°32.16' W. long.;
- (120) 40°38.87' N. lat., 124°29.79' W. long.;
- (121) 40°35.67' N. lat., 124°30.43' W. long.;
- (122) 40°37.41' N. lat., 124°37.06' W. long.;
- (123) 40°36.09' N. lat., 124°40.11' W. long.;
- (124) 40°31.33' N. lat., 124°41.01' W. long.;
- (125) 40°30.00' N. lat., 124°37.40' W. long.;
- (126) 40°27.34' N. lat., 124°37.28' W. long.;
- (127) 40°25.01' N. lat., 124°36.36' W. long.;
- (128) 40°22.28' N. lat., 124°31.35' W. long.;
- (129) 40°14.00' N. lat., 124°33.02' W. long.;
- (130) 40°10.00' N. lat., 124°24.55' W. long.;
- (131) 40°06.45' N. lat., 124°19.24' W. long.;
- (132) 40°07.08' N. lat., 124°17.80' W. long.;
- (133) 40°05.55' N. lat., 124°18.11' W. long.;
- (134) 40°04.74' N. lat., 124°18.11' W. long.;
- (135) 40°02.35' N. lat., 124°16.54' W. long.;
- (136) 40°01.51' N. lat., 124°09.89' W. long.;
- (137) 39°58.54' N. lat., 124°12.43' W. long.;
- (138) 39°55.72' N. lat., 124°07.45' W. long.;
- (139) 39°42.64' N. lat., 124°02.52' W. long.;
- (140) 39°35.96' N. lat., 123°59.47' W. long.;
- (141) 39°34.61' N. lat., 123°59.59' W. long.;
- (142) 39°33.79' N. lat., 123°56.77' W. long.;
- (143) 39°33.03' N. lat., 123°57.06' W. long.;
- (144) 39°32.21' N. lat., 123°59.12' W. long.;
- (145) 39°07.81' N. lat., 123°59.06' W. long.;
- (146) 38°57.50' N. lat., 123°57.32' W. long.;

- (147) 38°52.26' N. lat., 123°56.18' W. long.;
- (148) 38°50.21' N. lat., 123°55.48' W. long.;
- (149) 38°46.81' N. lat., 123°51.49' W. long.;
- (150) 38°45.29' N. lat., 123°51.55' W. long.;
- (151) 38°42.76' N. lat., 123°49.73' W. long.;
- (152) 38°41.42' N. lat., 123°47.45' W. long.;
- (153) 38°35.74' N. lat., 123°43.82' W. long.;
- (154) 38°34.92' N. lat., 123°42.53' W. long.;
- (155) 38°19.65' N. lat., 123°31.95' W. long.;
- (156) 38°14.38' N. lat., 123°25.51' W. long.;
- (157) 38°09.39' N. lat., 123°24.40' W. long.;
- (158) 38°10.06' N. lat., 123°26.84' W. long.;
- (159) 38°04.58' N. lat., 123°31.91' W. long.;
- (160) 38°02.06' N. lat., 123°31.26' W. long.;
- (161) 38°00.00' N. lat., 123°29.56' W. long.;
- (162) 37°58.07' N. lat., 123°27.21' W. long.;
- (163) 37°50.77' N. lat., 123°24.52' W. long.;
- (164) 37°43.94' N. lat., 123°11.49' W. long.;
- (165) 37°35.67' N. lat., 123°02.23' W. long.;
- (166) 37°23.48' N. lat., 122°57.77' W. long.;
- (167) 37°23.23' N. lat., 122°53.85' W. long.;
- (168) 37°13.96' N. lat., 122°49.97' W. long.;
- (169) 37°11.00' N. lat., 122°45.68' W. long.;
- (170) 37°07.00' N. lat., 122°43.37' W. long.;
- (171) 37°01.04' N. lat., 122°37.94' W. long.;
- (172) 36°57.40' N. lat., 122°28.36' W. long.;
- (173) 36°59.21' N. lat., 122°25.64' W. long.;
- (174) 36°56.90' N. lat., 122°25.42' W. long.;
- (175) 36°57.60' N. lat., 122°21.95' W. long.;
- (176) 36°55.92' N. lat., 122°21.71' W. long.;
- (177) 36°55.06' N. lat., 122°17.07' W. long.;
- (178) 36°52.27' N. lat., 122°13.17' W. long.;
- (179) 36°47.38' N. lat., 122°07.62' W. long.;
- (180) 36°47.27' N. lat., 122°03.77' W. long.;
- (181) 36°24.12' N. lat., 121 59.74' W. long.;
- (182) 36°21.99' N. lat., 122°01.01' W. long.;
- (183) 36°19.56' N. lat., 122°05.88' W. long.;
- (184) 36°14.63' N. lat., 122°01.10' W. long.;
- (185) 36°09.74' N. lat., 121°45.01' W. long.;
- (186) 36°06.69' N. lat., 121°40.77' W. long.;
- (187) 36°00.00' N. lat., 121°36.01' W. long.;
- (188) 35°56.54' N. lat., 121°33.27' W. long.;
- (189) 35°52.21' N. lat., 121°32.46' W. long.;
- (190) 35°51.21' N. lat., 121°30.94' W. long.;
- (191) 35°46.28' N. lat., 121°30.29' W. long.;
- (192) 35°33.68' N. lat., 121°20.09' W. long.;
- (193) 35°31.33' N. lat., 121°15.22' W. long.;
- (194) 35°23.29' N. lat., 121°11.41' W. long.;
- (195) 35°15.26' N. lat., 121°04.49' W. long.;
- (196) 35°07.05' N. lat., 121°00.26' W. long.;
- (197) 35°07.46' N. lat., 120°57.10' W. long.;
- (198) 34°44.29' N. lat., 120°54.28' W. long.;
- (199) 34°44.24' N. lat., 120°57.69' W. long.;
- (200) 34°39.06' N. lat., 120°55.01' W. long.;
- (201) 34°19.08' N. lat., 120°31.21' W. long.;
- (202) 34°17.72' N. lat., 120°19.26' W. long.;
- (203) 34°22.45' N. lat., 120°12.81' W. long.;
- (204) 34°21.36' N. lat., 119°54.88' W. long.;
- (205) 34°09.95' N. lat., 119°46.18' W. long.;
- (206) 34°09.08' N. lat., 119°57.53' W. long.;
- (207) 34°07.53' N. lat., 120°06.35' W. long.;
- (208) 34°10.37' N. lat., 120°18.40' W. long.;
- (209) 34°12.50' N. lat., 120°18.40' W. long.;
- (210) 34°12.50' N. lat., 120°24.96' W. long.;
- (211) 34°14.68' N. lat., 120°29.48' W. long.;
- (212) 34°09.51' N. lat., 120°38.32' W. long.;
- (213) 34°04.66' N. lat., 120°36.29' W. long.;
- (214) 34°02.21' N. lat., 120°36.29' W. long.;
- (215) 34°02.21' N. lat., 120°34.65' W. long.;
- (216) 33°56.39' N. lat., 120°28.47' W. long.;
- (217) 33°50.40' N. lat., 120°10.00' W. long.;
- (218) 33°37.96' N. lat., 120°00.08' W. long.;
- (219) 33°34.52' N. lat., 119°51.84' W. long.;
- (220) 33°35.51' N. lat., 119°48.49' W. long.;
- (221) 33°42.76' N. lat., 119°47.77' W. long.;
- (222) 33°51.63' N. lat., 119°53.00' W. long.;
- (223) 33°51.62' N. lat., 119°48.00' W. long.;
- (224) 33°54.59' N. lat., 119°48.00' W. long.;
- (225) 33°57.69' N. lat., 119°31.00' W. long.;
- (226) 33°54.11' N. lat., 119°31.00' W. long.;
- (227) 33°54.11' N. lat., 119°26.00' W. long.;
- (228) 33°57.94' N. lat., 119°26.00' W. long.;
- (229) 33°58.88' N. lat., 119°20.06' W. long.;
- (230) 34°02.65' N. lat., 119°15.11' W. long.;
- (231) 33°59.02' N. lat., 119°02.99' W. long.;
- (232) 33°57.61' N. lat., 118°42.07' W. long.;
- (233) 33°50.76' N. lat., 118°37.98' W. long.;
- (234) 33°39.17' N. lat., 118°18.47' W. long.;
- (235) 33°37.14' N. lat., 118°18.39' W. long.;
- (236) 33°35.51' N. lat., 118°18.03' W. long.;
- (237) 33°30.68' N. lat., 118°10.35' W. long.;
- (238) 33°32.49' N. lat., 117°51.85' W. long.;
- (239) 32°58.87' N. lat., 117°20.36' W. long.;
- (240) 32°35.56' N. lat., 117°29.66' W. long.
- (m) The 250–fm (457–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:
- (1) 48°14.71' N. lat., 125°41.95' W. long.;
- (2) 48°13.00' N. lat., 125°39.00' W. long.;
- (3) 48°08.50' N. lat., 125°45.00' W. long.;
- (4) 48°06.00' N. lat., 125°46.50' W. long.;
- (5) 48°03.50' N. lat., 125°37.00' W. long.;
- (6) 48°01.50' N. lat., 125°40.00' W. long.;
- (7) 47°57.00' N. lat., 125°37.00' W. long.;
- (8) 47°55.20' N. lat., 125°37.26' W. long.;

- (9) 47°54.02' N. lat., 125°36.60' W. long.;
- (10) 47°53.70' N. lat., 125°35.09' W. long.;
- (11) 47°54.16' N. lat., 125°32.38' W. long.;
- (12) 47°55.50' N. lat., 125°28.50' W. long.;
- (13) 47°58.00' N. lat., 125°25.00' W. long.;
- (14) 48°00.50' N. lat., 125°24.50' W. long.;
- (15) 48°03.50' N. lat., 125°21.00' W. long.;
- (16) 48°02.00' N. lat., 125°19.50' W. long.;
- (17) 48°00.00' N. lat., 125°21.00' W. long.;
- (18) 47°58.00' N. lat., 125°20.00' W. long.;
- (19) 47°58.00' N. lat., 125°18.00' W. long.;
- (20) 47°52.00' N. lat., 125°16.50' W. long.;
- (21) 47°46.00' N. lat., 125°06.00' W. long.;
- (22) 47°44.50' N. lat., 125°07.50' W. long.;
- (23) 47°42.00' N. lat., 125°06.00' W. long.;
- (24) 47°37.96' N. lat., 125°07.17' W. long.;
- (25) 47°28.00' N. lat., 124°58.50' W. long.;
- (26) 47°28.88' N. lat., 124°54.70' W. long.;
- (27) 47°27.70' N. lat., 124°51.87' W. long.;
- (28) 47°24.84' N. lat., 124°48.45' W. long.;
- (29) 47°21.76' N. lat., 124°47.42' W. long.;
- (30) 47°18.84' N. lat., 124°46.75' W. long.;
- (31) 47°19.82' N. lat., 124°51.43' W. long.;
- (32) 47°18.13' N. lat., 124°54.25' W. long.;
- (33) 47°13.50' N. lat., 124°54.70' W. long.;
- (34) 47°15.00' N. lat., 125°01.10' W. long.;
- (35) 47°08.77' N. lat., 125°00.91' W. long.;
- (36) 47°05.80' N. lat., 125°01.00' W. long.;
- (37) 47°03.34' N. lat., 124°57.50' W. long.;
- (38) 47°01.00' N. lat., 125°00.00' W. long.;
- (39) 46°55.00' N. lat., 125°02.00' W. long.;
- (40) 46°53.32' N. lat., 125°00.00' W. long.;
- (41) 46°51.55' N. lat., 125°00.00' W. long.;
- (42) 46°50.80' N. lat., 124°56.90' W. long.;
- (43) 46°47.00' N. lat., 124°55.00' W. long.;
- (44) 46°34.00' N. lat., 124°38.00' W. long.;
- (45) 46°30.50' N. lat., 124°41.00' W. long.;
- (46) 46°33.00' N. lat., 124°32.00' W. long.;
- (47) 46°29.00' N. lat., 124°32.00' W. long.;
- (48) 46°20.00' N. lat., 124°39.00' W. long.;
- (49) 46°18.16' N. lat., 124°40.00' W. long.;
- (50) 46°16.00' N. lat., 124°27.00' W. long.;
- (51) 46°16.00' N. lat., 124°27.01' W. long.;
- (52) 46°15.00' N. lat., 124°30.96' W. long.;
- (53) 46°13.17' N. lat., 124°37.87' W. long.;
- (54) 46°13.17' N. lat., 124°38.75' W. long.;
- (55) 46°10.50' N. lat., 124°42.00' W. long.;
- (56) 46°06.21' N. lat., 124°41.85' W. long.;
- (57) 46°03.02' N. lat., 124°50.27' W. long.;
- (58) 45°57.00' N. lat., 124°45.52' W. long.;
- (59) 45°46.85' N. lat., 124°45.91' W. long.;
- (60) 45°45.81' N. lat., 124°47.05' W. long.;
- (61) 45°44.87' N. lat., 124°45.98' W. long.;
- (62) 45°43.44' N. lat., 124°46.03' W. long.;
- (63) 45°35.82' N. lat., 124°45.72' W. long.;
- (64) 45°35.70' N. lat., 124°42.89' W. long.;
- (65) 45°24.45' N. lat., 124°38.21' W. long.;
- (66) 45°11.68' N. lat., 124°39.38' W. long.;
- (67) 44°57.94' N. lat., 124°37.02' W. long.;
- (68) 44°44.28' N. lat., 124°50.79' W. long.;
- (69) 44°32.63' N. lat., 124°54.21' W. long.;
- (70) 44°23.36' N. lat., 124°50.53' W. long.;
- (71) 44°13.30' N. lat., 124°59.03' W. long.;
- (72) 43°57.85' N. lat., 124°58.57' W. long.;
- (73) 43°50.12' N. lat., 124°53.36' W. long.;
- (74) 43°49.53' N. lat., 124°43.96' W. long.;
- (75) 43°42.76' N. lat., 124°41.40' W. long.;
- (76) 43°24.00' N. lat., 124°42.61' W. long.;
- (77) 43°19.74' N. lat., 124°45.12' W. long.;
- (78) 43°19.62' N. lat., 124°52.95' W. long.;
- (79) 43°17.41' N. lat., 124°53.02' W. long.;
- (80) 42°56.41' N. lat., 124°54.59' W. long.;
- (81) 42°53.82' N. lat., 124°55.76' W. long.;
- (82) 42°53.54' N. lat., 124°54.88' W. long.;
- (83) 42°49.26' N. lat., 124°55.17' W. long.;
- (84) 42°46.74' N. lat., 124°53.39' W. long.;
- (85) 42°43.76' N. lat., 124°51.64' W. long.;
- (86) 42°45.41' N. lat., 124°49.35' W. long.;
- (87) 42°43.92' N. lat., 124°45.92' W. long.;
- (88) 42°38.84' N. lat., 124°43.51' W. long.;
- (89) 42°34.78' N. lat., 124°46.56' W. long.;
- (90) 42°31.47' N. lat., 124°46.89' W. long.;
- (91) 42°31.59' N. lat., 124°44.85' W. long.;
- (92) 42°31.12' N. lat., 124°44.82' W. long.;
- (93) 42°28.48' N. lat., 124°49.96' W. long.;
- (94) 42°26.28' N. lat., 124°47.99' W. long.;
- (95) 42°19.58' N. lat., 124°43.21' W. long.;
- (96) 42°13.75' N. lat., 124°40.06' W. long.;
- (97) 42°05.12' N. lat., 124°39.06' W. long.;
- (98) 42°00.00' N. lat., 124°37.76' W. long.;
- (99) 41°47.93' N. lat., 124°31.79' W. long.;
- (100) 41°21.35' N. lat., 124°30.35' W. long.;
- (101) 41°07.11' N. lat., 124°25.25' W. long.;
- (102) 40°57.37' N. lat., 124°30.25' W. long.;
- (103) 40°48.77' N. lat., 124°30.69' W. long.;
- (104) 40°41.03' N. lat., 124°33.21' W. long.;
- (105) 40°37.40' N. lat., 124°38.96' W. long.;
- (106) 40°33.70' N. lat., 124°42.50' W. long.;
- (107) 40°31.31' N. lat., 124°41.59' W. long.;
- (108) 40°30.00' N. lat., 124°40.50' W. long.;
- (109) 40°25.00' N. lat., 124°36.65' W. long.;
- (110) 40°22.42' N. lat., 124°32.19' W. long.;
- (111) 40°17.17' N. lat., 124°32.21' W. long.;
- (112) 40°18.68' N. lat., 124°50.44' W. long.;
- (113) 40°13.55' N. lat., 124°34.26' W. long.;

- (114) 40°10.00' N. lat., 124°28.25' W. long.;
- (115) 40°06.72' N. lat., 124°21.40' W. long.;
- (116) 40°01.63' N. lat., 124°17.25' W. long.;
- (117) 40°00.68' N. lat., 124°11.19' W. long.;
- (118) 39°59.09' N. lat., 124°14.92' W. long.;
- (119) 39°51.85' N. lat., 124°10.33' W. long.;
- (120) 39°36.90' N. lat., 124°00.63' W. long.;
- (121) 39°32.41' N. lat., 124°00.01' W. long.;
- (122) 39°05.40' N. lat., 124°00.52' W. long.;
- (123) 39°04.32' N. lat., 123°59.00' W. long.;
- (124) 38°58.02' N. lat., 123°58.18' W. long.;
- (125) 38°57.50' N. lat., 124°01.90' W. long.;
- (126) 38°50.27' N. lat., 123°56.26' W. long.;
- (127) 38°46.73' N. lat., 123°51.93' W. long.;
- (128) 38°44.64' N. lat., 123°51.77' W. long.;
- (129) 38°32.97' N. lat., 123°41.84' W. long.;
- (130) 38°14.56' N. lat., 123°32.18' W. long.;
- (131) 38°13.85' N. lat., 123°29.94' W. long.;
- (132) 38°11.88' N. lat., 123°30.57' W. long.;
- (133) 38°08.72' N. lat., 123°29.56' W. long.;
- (134) 38°05.62' N. lat., 123°32.38' W. long.;
- (135) 38°01.90' N. lat., 123°32.00' W. long.;
- (136) 38°00.00' N. lat., 123°30.00' W. long.;
- (137) 37°58.07' N. lat., 123°27.35' W. long.;
- (138) 37°54.97' N. lat., 123°27.69' W. long.;
- (139) 37°51.32' N. lat., 123°25.40' W. long.;
- (140) 37°43.82' N. lat., 123°11.69' W. long.;
- (141) 37°35.67' N. lat., 123°02.62' W. long.;
- (142) 37°11.00' N. lat., 122°54.50' W. long.;
- (143) 37°07.00' N. lat., 122°48.59' W. long.;
- (144) 36°59.99' N. lat., 122°38.49' W. long.;
- (145) 36°56.64' N. lat., 122°28.78' W. long.;
- (146) 36°58.93' N. lat., 122°25.67' W. long.;
- (147) 36°56.19' N. lat., 122°25.67' W. long.;
- (148) 36°57.09' N. lat., 122°22.85' W. long.;
- (149) 36°54.95' N. lat., 122°22.63' W. long.;
- (150) 36°52.25' N. lat., 122°13.94' W. long.;
- (151) 36°46.94' N. lat., 122°07.90' W. long.;
- (152) 36°46.86' N. lat., 122°02.24' W. long.;
- (153) 36°43.73' N. lat., 121°59.33' W. long.;
- (154) 36°38.93' N. lat., 122°02.46' W. long.;
- (155) 36°30.77' N. lat., 122°01.40' W. long.;
- (156) 36°23.78' N. lat., 122°00.52' W. long.;
- (157) 36°19.98' N. lat., 122°07.63' W. long.;
- (158) 36°15.36' N. lat., 122°03.50' W. long.;
- (159) 36°09.47' N. lat., 121°45.37' W. long.;
- (160) 36°06.42' N. lat., 121°41.34' W. long.;
- (161) 36°00.00' N. lat., 121°37.68' W. long.;
- (162) 35°52.25' N. lat., 121°33.21' W. long.;
- (163) 35°51.09' N. lat., 121°31.83' W. long.;
- (164) 35°46.47' N. lat., 121°31.19' W. long.;
- (165) 35°33.97' N. lat., 121°21.69' W. long.;
- (166) 35°30.94' N. lat., 121°18.36' W. long.;
- (167) 35°23.08' N. lat., 121°15.56' W. long.;
- (168) 35°13.67' N. lat., 121°05.79' W. long.;
- (169) 35°06.77' N. lat., 121°02.45' W. long.;
- (170) 34°53.32' N. lat., 121°01.46' W. long.;
- (171) 34°49.36' N. lat., 121°03.04' W. long.;
- (172) 34°44.12' N. lat., 121°01.28' W. long.;
- (173) 34°32.38' N. lat., 120°51.78' W. long.;
- (174) 34°27.00' N. lat., 120°44.25' W. long.;
- (175) 34°17.93' N. lat., 120°35.43' W. long.;
- (176) 34°16.02' N. lat., 120°28.70' W. long.;
- (177) 34°09.84' N. lat., 120°38.85' W. long.;
- (178) 34°03.22' N. lat., 120°36.12' W. long.;
- (179) 33°55.98' N. lat., 120°28.81' W. long.;
- (180) 33°49.88' N. lat., 120°10.07' W. long.;
- (181) 33°37.75' N. lat., 120°00.35' W. long.;
- (182) 33°33.91' N. lat., 119°51.74' W. long.;
- (183) 33°35.07' N. lat., 119°48.14' W. long.;
- (184) 33°42.60' N. lat., 119°47.40' W. long.;
- (185) 33°53.25' N. lat., 119°52.58' W. long.;
- (186) 33°57.48' N. lat., 119°31.27' W. long.;
- (187) 33°55.47' N. lat., 119°24.96' W. long.;
- (188) 33°57.60' N. lat., 119°26.68' W. long.;
- (189) 33°58.68' N. lat., 119°20.13' W. long.;
- (190) 34°02.02' N. lat., 119°14.62' W. long.;
- (191) 33°58.73' N. lat., 119°03.21' W. long.;
- (192) 33°57.33' N. lat., 118°43.08' W. long.;
- (193) 33°50.71' N. lat., 118°38.33' W. long.;
- (194) 33°39.27' N. lat., 118°18.76' W. long.;
- (195) 33°35.16' N. lat., 118°18.33' W. long.;
- (196) 33°28.82' N. lat., 118°08.73' W. long.;
- (197) 33°31.44' N. lat., 117°51.34' W. long.;
- (198) 32°58.76' N. lat., 117°20.85' W. long.; and
- (199) 32°35.61' N. lat., 117°30.15' W. long.
- (n) The 250-fm (457-m) depth contour used around San Clemente Island is defined by straight lines connecting all of the following points in the order stated:
- (1) 33°06.10' N. lat., 118°39.07' W. long.;
  - (2) 33°05.31' N. lat., 118°40.88' W. long.;
  - (3) 33°03.03' N. lat., 118°41.72' W. long.;
  - (4) 32°46.62' N. lat., 118°32.23' W. long.;
  - (5) 32°40.81' N. lat., 118°23.85' W. long.;
  - (6) 32°47.55' N. lat., 118°17.59' W. long.;
  - (7) 32°57.35' N. lat., 118°28.83' W. long.;
  - (8) 33°02.79' N. lat., 118°32.85' W. long.; and
  - (9) 33°06.10' N. lat., 118°39.07' W. long.
- (o) The 250-fm (457-m) depth contour used around Santa Catalina Island is defined by straight lines connecting all of the following points in the order stated:
- (1) 33°13.37' N. lat., 118°08.39' W. long.;
  - (2) 33°20.86' N. lat., 118°14.39' W. long.;
  - (3) 33°26.49' N. lat., 118°21.17' W. long.;
  - (4) 33°28.14' N. lat., 118°26.68' W. long.;
  - (5) 33°30.36' N. lat., 118°30.55' W. long.;

(6) 33°31.65' N. lat., 118°35.33' W. long.;

(7) 33°32.89' N. lat., 118°42.97' W. long.;

(8) 33°32.64' N. lat., 118°49.44' W. long.;

(9) 33°38.02' N. lat., 118°57.35' W. long.;

(10) 33°37.08' N. lat., 118°57.93' W. long.;

(11) 33°30.76' N. lat., 118°49.96' W. long.;

(12) 33°23.24' N. lat., 118°32.88' W. long.;

(13) 33°20.91' N. lat., 118°34.67' W. long.;

(14) 33°17.04' N. lat., 118°28.21' W. long.; and

(15) 33°13.37' N. lat., 118°08.39' W. long.

(p) The 250-fm (457-m) depth contour used around Lasuen Knoll is defined by straight lines connecting all of the following points in the order stated:

(1) 33°26.76' N. lat., 118°00.77' W. long.;

(2) 33°25.30' N. lat., 117°57.88' W. long.;

(3) 33°23.37' N. lat., 117°56.14' W. long.;

(4) 33°22.06' N. lat., 117°57.06' W. long.;

(5) 33°22.85' N. lat., 117°59.47' W. long.;

(6) 33°23.97' N. lat., 118°00.72' W. long.;

(7) 33°25.98' N. lat., 118°01.63' W. long.; and

(8) 33°26.76' N. lat., 118°00.77' W. long.

(q) The 250-fm (457-m) depth contour used around San Diego Rise is defined by straight lines connecting all of the following points in the order stated:

(1) 32°51.58' N. lat., 117°51.00' W. long.;

(2) 32°44.69' N. lat., 117°44.55' W. long.;

(3) 32°37.05' N. lat., 117°42.02' W. long.;

(4) 32°36.07' N. lat., 117°44.29' W. long.;

(5) 32°47.03' N. lat., 117°50.97' W. long.;

(6) 32°51.50' N. lat., 117°51.47' W. long.; and

(7) 32°51.58' N. lat., 117°51.00' W. long.

(r) The 250-fm (457-m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico, modified to allow fishing in petrale sole areas, is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.71' N. lat., 125°41.95' W. long.;

(2) 48°13.00' N. lat., 125°39.00' W. long.;

(3) 48°08.50' N. lat., 125°45.00' W. long.;

(4) 48°06.00' N. lat., 125°46.50' W. long.;

(5) 48°03.50' N. lat., 125°37.00' W. long.;

(6) 48°01.50' N. lat., 125°37.26' W. long.;

(7) 47°55.20' N. lat., 125°36.60' W. long.;

(8) 48°05.00' N. lat., 125°24.50' W. long.;

(9) 48°03.50' N. lat., 125°21.00' W. long.;

(10) 48°02.00' N. lat., 125°19.50' W. long.;

(11) 48°00.00' N. lat., 125°21.00' W. long.;

(12) 47°58.00' N. lat., 125°20.00' W. long.;

(13) 47°58.00' N. lat., 125°18.00' W. long.;

(14) 47°52.00' N. lat., 125°16.50' W. long.;

(15) 47°46.00' N. lat., 125°06.00' W. long.;

(16) 47°44.50' N. lat., 125°07.50' W. long.;

(17) 47°46.00' N. lat., 125°06.00' W. long.;

(18) 47°44.50' N. lat., 125°07.50' W. long.;

(19) 47°42.00' N. lat., 125°06.00' W. long.;

(20) 47°37.96' N. lat., 125°07.17' W. long.;

(21) 47°28.00' N. lat., 124°58.50' W. long.;

(22) 47°28.88' N. lat., 124°54.70' W. long.;

(23) 47°27.70' N. lat., 124°51.87' W. long.;

(24) 47°24.84' N. lat., 124°48.45' W. long.;

(25) 47°21.76' N. lat., 124°47.42' W. long.;

(26) 47°18.84' N. lat., 124°46.75' W. long.;

(27) 47°19.82' N. lat., 124°51.43' W. long.;

(28) 47°18.13' N. lat., 124°54.25' W. long.;

(29) 47°13.50' N. lat., 124°54.70' W. long.;

(30) 47°15.00' N. lat., 125°01.10' W. long.;

(31) 47°08.77' N. lat., 125°00.91' W. long.;

(32) 47°05.80' N. lat., 125°01.00' W. long.;

(33) 47°03.34' N. lat., 124°57.50' W. long.;

(34) 47°01.00' N. lat., 125°00.00' W. long.;

(35) 46°55.00' N. lat., 125°02.00' W. long.;

(36) 46°53.32' N. lat., 125°00.00' W. long.;

(37) 46°51.55' N. lat., 125°00.00' W. long.;

(38) 46°50.80' N. lat., 124°56.90' W. long.;

(39) 46°47.00' N. lat., 124°55.00' W. long.;

(40) 46°34.00' N. lat., 124°38.00' W. long.;

(41) 46°30.50' N. lat., 124°41.00' W. long.;

(42) 46°33.00' N. lat., 124°32.00' W. long.;

(43) 46°29.00' N. lat., 124°32.00' W. long.;

(44) 46°20.00' N. lat., 124°39.00' W. long.;

(45) 46°18.16' N. lat., 124°40.00' W. long.;

(46) 46°16.00' N. lat., 124°27.00' W. long.;

(47) 46°15.00' N. lat., 124°30.96' W. long.;

(48) 46°13.17' N. lat., 124°38.76' W. long.;

(49) 46°10.51' N. lat., 124°41.99' W. long.;

(50) 46°06.24' N. lat., 124°41.81' W. long.;

(51) 46°03.04' N. lat., 124°50.26' W. long.;

(52) 45°56.99' N. lat., 124°45.45' W. long.;

(53) 45°49.94' N. lat., 124°45.75' W. long.;

(54) 45°49.94' N. lat., 124°42.33' W. long.;

(55) 45°45.73' N. lat., 124°42.18' W. long.;

(56) 45°45.73' N. lat., 124°43.82' W. long.;

(57) 45°41.94' N. lat., 124°43.61' W. long.;

(58) 45°41.58' N. lat., 124°39.86' W. long.;

(59) 45°38.45' N. lat., 124°39.94' W. long.;

(60) 45°35.75' N. lat., 124°42.91' W. long.;

(61) 45°24.49' N. lat., 124°38.20' W. long.;

(62) 45°14.43' N. lat., 124°39.05' W. long.;

(63) 45°14.30' N. lat., 124°34.19' W. long.;

(64) 45°08.98' N. lat., 124°34.26' W. long.;

(65) 45°09.02' N. lat., 124°38.81' W. long.;

(66) 44°57.98' N. lat., 124°36.98' W. long.;

(67) 44°56.62' N. lat., 124°38.32' W. long.;

(68) 44°50.82' N. lat., 124°35.52' W. long.;

(69) 44°46.89' N. lat., 124°38.32' W. long.;

(70) 44°50.78' N. lat., 124°44.24' W. long.;

(71) 44°44.27' N. lat., 124°50.78' W. long.;



- (72) 44°32.63' N. lat., 124°54.24' W. long.;
- (73) 44°23.25' N. lat., 124°49.78' W. long.;
- (74) 44°13.16' N. lat., 124°58.81' W. long.;
- (75) 43°57.88' N. lat., 124°58.25' W. long.;
- (76) 43°56.89' N. lat., 124°57.33' W. long.;
- (77) 43°53.41' N. lat., 124°51.95' W. long.;
- (78) 43°51.56' N. lat., 124°47.38' W. long.;
- (79) 43°51.49' N. lat., 124°37.77' W. long.;
- (80) 43°48.02' N. lat., 124°43.31' W. long.;
- (81) 43°42.77' N. lat., 124°41.39' W. long.;
- (82) 43°24.09' N. lat., 124°42.57' W. long.;
- (83) 43°19.73' N. lat., 124°45.09' W. long.;
- (84) 43°15.98' N. lat., 124°47.76' W. long.;
- (85) 43°04.14' N. lat., 124°52.55' W. long.;
- (86) 43°04.00' N. lat., 124°53.88' W. long.;
- (87) 42°54.69' N. lat., 124°54.54' W. long.;
- (88) 42°45.46' N. lat., 124°49.37' W. long.;
- (89) 42°43.91' N. lat., 124°45.90' W. long.;
- (90) 42°38.84' N. lat., 124°43.36' W. long.;
- (91) 42°34.82' N. lat., 124°46.56' W. long.;
- (92) 42°31.57' N. lat., 124°46.86' W. long.;
- (93) 42°30.98' N. lat., 124°44.27' W. long.;
- (94) 42°29.21' N. lat., 124°46.93' W. long.;
- (95) 42°28.52' N. lat., 124°49.40' W. long.;
- (96) 42°26.06' N. lat., 124°46.61' W. long.;
- (97) 42°21.82' N. lat., 124°43.76' W. long.;
- (98) 42°17.47' N. lat., 124°38.89' W. long.;
- (99) 42°13.67' N. lat., 124°37.51' W. long.;
- (100) 42°13.76' N. lat., 124°40.03' W. long.;
- (101) 42°05.12' N. lat., 124°39.06' W. long.;
- (102) 42°02.67' N. lat., 124°38.41' W. long.;
- (103) 42°02.67' N. lat., 124°35.95' W. long.;
- (104) 42°00.00' N. lat., 124°36.83' W. long.;
- (105) 41°47.79' N. lat., 124°29.48' W. long.;
- (106) 41°21.01' N. lat., 124°29.01' W. long.;
- (107) 41°13.50' N. lat., 124°24.40' W. long.;
- (108) 41°11.00' N. lat., 124°22.99' W. long.;
- (109) 41°06.69' N. lat., 124°23.30' W. long.;
- (110) 40°54.73' N. lat., 124°28.15' W. long.;
- (111) 40°53.95' N. lat., 124°26.04' W. long.;
- (112) 40°50.27' N. lat., 124°26.20' W. long.;
- (113) 40°44.49' N. lat., 124°30.81' W. long.;
- (114) 40°40.63' N. lat., 124°32.14' W. long.;
- (115) 40°38.96' N. lat., 124°30.04' W. long.;
- (116) 40°35.67' N. lat., 124°30.43' W. long.;
- (117) 40°37.41' N. lat., 124°37.06' W. long.;
- (118) 40°36.09' N. lat., 124°40.11' W. long.;
- (119) 40°31.35' N. lat., 124°40.98' W. long.;
- (120) 40°30.00' N. lat., 124°37.48' W. long.;
- (121) 40°27.34' N. lat., 124°37.28' W. long.;
- (122) 40°25.01' N. lat., 124°36.36' W. long.;
- (123) 40°22.28' N. lat., 124°31.83' W. long.;
- (124) 40°13.68' N. lat., 124°33.10' W. long.;
- (125) 40°10.00' N. lat., 124°24.55' W. long.;
- (126) 40°06.45' N. lat., 124°19.24' W. long.;
- (127) 40°07.08' N. lat., 124°17.80' W. long.;
- (128) 40°05.55' N. lat., 124°18.11' W. long.;
- (129) 40°04.74' N. lat., 124°18.11' W. long.;
- (130) 40°02.35' N. lat., 124°16.53' W. long.;
- (131) 40°01.13' N. lat., 124°12.98' W. long.;
- (132) 40°01.52' N. lat., 124°09.83' W. long.;
- (133) 39°58.54' N. lat., 124°12.43' W. long.;
- (134) 39°55.72' N. lat., 124°07.44' W. long.;
- (135) 39°42.64' N. lat., 124°02.52' W. long.;
- (136) 39°35.96' N. lat., 123°59.47' W. long.;
- (137) 39°34.61' N. lat., 123°59.58' W. long.;
- (138) 39°33.79' N. lat., 123°56.77' W. long.;
- (139) 39°33.03' N. lat., 123°57.06' W. long.;
- (140) 39°32.21' N. lat., 123°59.12' W. long.;
- (141) 39°07.81' N. lat., 123°59.06' W. long.;
- (142) 38°57.50' N. lat., 123°57.25' W. long.;
- (143) 38°52.26' N. lat., 123°56.18' W. long.;
- (144) 38°50.21' N. lat., 123°55.48' W. long.;
- (145) 38°46.81' N. lat., 123°51.49' W. long.;
- (146) 38°45.29' N. lat., 123°51.55' W. long.;
- (147) 38°42.76' N. lat., 123°49.73' W. long.;
- (148) 38°41.26' N. lat., 123°47.28' W. long.;
- (149) 38°35.75' N. lat., 123°43.76' W. long.;
- (150) 38°34.93' N. lat., 123°42.46' W. long.;
- (151) 38°19.95' N. lat., 123°32.90' W. long.;
- (152) 38°14.38' N. lat., 123°25.51' W. long.;
- (153) 38°09.39' N. lat., 123°24.39' W. long.;
- (154) 38°10.18' N. lat., 123°27.11' W. long.;
- (155) 38°04.64' N. lat., 123°31.97' W. long.;
- (156) 38°02.06' N. lat., 123°31.26' W. long.;
- (157) 38°00.00' N. lat., 123°29.64' W. long.;
- (158) 37°58.19' N. lat., 123°27.40' W. long.;
- (159) 37°50.62' N. lat., 123°24.51' W. long.;
- (160) 37°43.82' N. lat., 123°11.69' W. long.;
- (161) 37°35.67' N. lat., 123°02.62' W. long.;
- (162) 37°23.53' N. lat., 122°58.65' W. long.;
- (163) 37°23.23' N. lat., 122°53.78' W. long.;
- (164) 37°13.97' N. lat., 122°49.91' W. long.;
- (165) 37°11.00' N. lat., 122°45.61' W. long.;
- (166) 37°07.00' N. lat., 122°44.76' W. long.;
- (167) 36°59.99' N. lat., 122°38.49' W. long.;
- (168) 36°56.64' N. lat., 122°28.78' W. long.;
- (169) 36°58.93' N. lat., 122°25.67' W. long.;
- (170) 36°56.19' N. lat., 122°25.67' W. long.;
- (171) 36°57.09' N. lat., 122°22.85' W. long.;
- (172) 36°54.95' N. lat., 122°22.63' W. long.;
- (173) 36°52.25' N. lat., 122°13.94' W. long.;
- (174) 36°46.94' N. lat., 122°07.90' W. long.;
- (175) 36°47.12' N. lat., 122°03.99' W. long.;
- (176) 36°23.87' N. lat., 122°00.00' W. long.;

- (177) 36°22.17' N. lat., 122°01.19' W. long.;
- (178) 36°19.61' N. lat., 122°06.29' W. long.;
- (179) 36°14.73' N. lat., 122°01.55' W. long.;
- (180) 36°09.47' N. lat., 121°45.37' W. long.;
- (181) 36°06.42' N. lat., 121°41.34' W. long.;
- (182) 36°00.07' N. lat., 121°37.68' W. long.;
- (183) 36°00.00' N. lat., 121°37.66' W. long.;
- (184) 35°52.25' N. lat., 121°33.21' W. long.;
- (185) 35°51.09' N. lat., 121°31.83' W. long.;
- (186) 35°46.47' N. lat., 121°31.19' W. long.;
- (187) 35°33.97' N. lat., 121°21.69' W. long.;
- (188) 35°30.94' N. lat., 121°18.36' W. long.;
- (189) 35°23.08' N. lat., 121°15.56' W. long.;
- (190) 35°13.67' N. lat., 121°05.79' W. long.;
- (191) 35°06.77' N. lat., 121°02.45' W. long.;
- (192) 35°07.46' N. lat., 120°57.10' W. long.;
- (193) 34°44.29' N. lat., 120°54.28' W. long.;
- (194) 34°44.24' N. lat., 120°57.62' W. long.;
- (195) 34°41.65' N. lat., 120°59.54' W. long.;
- (196) 34°17.97' N. lat., 120°35.54' W. long.;
- (197) 34°16.02' N. lat., 120°28.70' W. long.;
- (198) 34°09.84' N. lat., 120°38.85' W. long.;
- (199) 34°02.21' N. lat., 120°36.23' W. long.;
- (200) 33°55.98' N. lat., 120°28.81' W. long.;
- (201) 33°49.88' N. lat., 120°10.07' W. long.;
- (202) 33°37.75' N. lat., 120°00.35' W. long.;
- (203) 33°33.91' N. lat., 119° 51.74' W. long.;
- (204) 33°35.07' N. lat., 119°48.14' W. long.;
- (205) 33°42.60' N. lat., 119°47.40' W. long.;
- (206) 33°51.63' N. lat., 119°52.35' W. long.;
- (207) 33°51.62' N. lat., 119°47.94' W. long.;
- (208) 33°54.29' N. lat., 119°47.94' W. long.;
- (209) 33°57.52' N. lat., 119°30.94' W. long.;
- (210) 33°54.11' N. lat., 119°30.94' W. long.;
- (211) 33°54.11' N. lat., 119°25.94' W. long.;
- (212) 33°57.74' N. lat., 119°25.94' W. long.;
- (213) 33°58.68' N. lat., 119°20.13' W. long.;
- (214) 34°02.02' N. lat., 119°14.62' W. long.;
- (215) 33°58.73' N. lat., 119°03.21' W. long.;
- (216) 33°57.33' N. lat., 118°43.08' W. long.;
- (217) 33°50.71' N. lat., 118°38.33' W. long.;
- (218) 33°39.27' N. lat., 118°18.76' W. long.;
- (219) 33°35.16' N. lat., 118°18.33' W. long.;
- (220) 33°28.82' N. lat., 118°08.73' W. long.;
- (221) 33°31.44' N. lat., 117°51.34' W. long.;
- (222) 32°58.76' N. lat., 117°20.85' W. long.; and
- (223) 32°35.61' N. lat., 117°30.15' W. long.

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24. In part 660, subpart G, Tables 1–5 are revised to read as follows:

TABLE 1A.TO PART 660, SUBPART G—2007 SPECIFICATIONS OF ACCEPTABLE BIOLOGICAL CATCH (ABC), OPTIMUM YIELDS (OYS), HARVEST GUIDELINES (HGS), AND LIMITED ENTRY AND OPEN ACCESS ALLOCATIONS, BY MANAGEMENT AREA (WEIGHTS IN METRIC TONS).

Species	ABC Specifications					ABC	OY b/	HG b/	
	ABC Contributions by Area							Commercial	Recreational
	Van-cou-ver a/	Colum-bia	Eureka	Monterey	Conception				
<b>ROUND FISH:</b>									
Lingcod c/ north of 42°N. lat.	5,428		852		6,280	5,558			
south of 42°N. lat.						612			
Pacific Cod e/	3,200		d/		3,200	1,600	1,200		
Pacific Whiting f/	244,425 - 733,275					f/	f/		
Sablefish g/	6,210					6,210	5,934	5,362	
Cabezon h/ south of 42°N. lat.	d/	71		23	94	69	27		
<b>FLAT FISH:</b>									
Dover sole i/	28,522					28,522	16,500		
English sole j/	6,237					6,237	6,237		
Petrale sole k/	1,397	1,628			3,025	2,499			
Arrowtooth flounder l/	5,800					5,800	5,800		

TABLE 1A. TO PART 660, SUBPART G—2007 SPECIFICATIONS OF ACCEPTABLE BIOLOGICAL CATCH (ABC), OPTIMUM YIELDS (OYS), HARVEST GUIDELINES (HGS), AND LIMITED ENTRY AND OPEN ACCESS ALLOCATIONS, BY MANAGEMENT AREA (WEIGHTS IN METRIC TONS).—Continued

Species	ABC Specifications					ABC	OY b/	HG b/	
	ABC Contributions by Area							Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Starry Flounder m/	1,221					1,221	890		
Other flatfish n/	6,731					6,781	4,884		
ROCKFISH:									
Pacific Ocean Perch o/	900					900	150	111.3	
Shortbelly p/	13,900					13,900	13,900		
Widow q/	5,334					5,334	368	251.4	9.4
Canary r/	172					172	44	23.8	17.2
Chilipepper s/	d/		2,700			2,700	2,000		
Bocaccio t/	d/		602			602	218	80.2	66.3
Splitnose u/	d/		615			615	461		
Yellowtail v/	4,548			d/		4,548	4,548		
Shortspine thornyhead w/ north of 34°27' N. lat.	2,476					2,476	1,634		
south of 34°27' N. lat.							421		
Longspine thornyhead x/ north of 34°27' N. lat.	3,907					3,907	2,220		
south of 34°27' N. lat.							476		
Cowcod y/ north of 36° N. lat.	d/		19	--		19	4	3.1	0.3
south of 36° N. lat.	d/		--	17		17			
Darkblotched z/	456					456	290	259.8	
Yelloweye aa/	26					26	23	7.9	8.9
California Scorpionfish bb/					219	219	175	34	
Black cc/ north of 46°16' N. lat.	540					540	540		
south of 46°16' N. lat.			722			722	722		
Minor Rockfish north dd/	3,680			--		3,680	2,270	2,181	89
Minor Rockfish south ee/	--		3,403			3,403	1,904	1,418	486
Remaining Rockfish	1,612			1,105		--			
bank ff/	d/		350						
blackgill gg/	d/		292						
bocaccio north	318		--						
chilipepper north	32		--						
redstripe	576			d/					

TABLE 1A. TO PART 660, SUBPART G—2007 SPECIFICATIONS OF ACCEPTABLE BIOLOGICAL CATCH (ABC), OPTIMUM YIELDS (OYS), HARVEST GUIDELINES (HGS), AND LIMITED ENTRY AND OPEN ACCESS ALLOCATIONS, BY MANAGEMENT AREA (WEIGHTS IN METRIC TONS).—Continued

Species	ABC Specifications					ABC	OY b/	HG b/	
	ABC Contributions by Area							Commercial	Recreational
	Van-cou-ver a/	Colum-bia	Eureka	Monterey	Conception				
sharpchin	307			45					
silverygrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail south	--			116					
Gopher	d/			302					
Other rockfish hh/	2,068			2,298		--			
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Other fish ii/	2,500	7,000	1,200	3,900		14,600	7,300	--	

TABLE 1B. TO PART 660, SUBPART G—2007 OYS FOR MINOR ROCKFISH BY DEPTH SUB-GROUPS (WEIGHTS IN METRIC TONS).

Species	Total Catch ABC	Total Catch OY	Recreational HG	Commercial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
Minor Rockfish North dd/	3,680	2,270	89	2,181	2,000	91.7	181	8.3
Nearshore		142	79	63				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish South ee/	3,403	1,904	486	1,418	790	55.7	628	44.3
Nearshore		564	426	138				
Shelf		714	60	654				
Slope		626	0	626				

TABLE 1C. TO PART 660, SUBPART G— 2007 OPEN ACCESS AND LIMITED ENTRY ALLOCATIONS BY SPECIES OR SPECIES GROUP. (WEIGHTS IN METRIC TONS)

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Lingcod north of 42° N. lat. south of 42° N. lat.	--	--	81.0	--	19.0
Sablefish jj/ north of 36° N. lat.	5,151	4,667	90.6	484	9.4
Widow kk/	251.4	--	97.0	--	3.0
Canary kk/	23	--	87.7	--	12.3

TABLE 1C. TO PART 660, SUBPART G— 2007 OPEN ACCESS AND LIMITED ENTRY ALLOCATIONS BY SPECIES OR SPECIES GROUP. (WEIGHTS IN METRIC TONS)—Continued

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Chilipepper	2,000	1,114	55.7	886	44.3
Bocaccio kk/	80.2	--	55.7	--	44.3
Yellowtail	--	--	91.7	--	8.3
Shortspine thornyhead north of 34°27' N. lat.	1,634	1,193	99.7	441	0.27
Minor Rockfish north of 40°10' N. lat.	2,181	2,000	91.7	181	8.3
south of 40°10' N. lat.	1,418	790	55.7	628	44.3

a/ ABCs apply to the U.S. portion of the Vancouver area.

b/ Optimum Yields (OYs) and Harvest Guidelines (HG) are specified as total catch values. Though presented as harvest guidelines, the recreational values for widow rockfish, bocaccio, and cowcod are catch estimates. A harvest guideline is a specified harvest target and not a quota. The use of this term may differ from the use of similar terms in state regulation.

c/ Lingcod - A coastwide lingcod stock assessment was prepared in 2005. The lingcod biomass was estimated to be at 64 percent of its unfished biomass in 2005. The ABC was calculated using an  $F_{MSY}$  proxy of  $F_{45\%}$ . The ABC of 6,280 mt is a two year average ABC for 2007 and 2008. Because the stock is above  $B_{40\%}$  coastwide, the OY could be set equal to the ABC. Separate OYs are being adopted for the area north of 42° N. lat. and the area south of 42° N. lat. For that portion of the stock north of 42° N. lat. the OY of 5,558 mt is set equal to the ABC contribution for the area. The biomass in the area south of 42° N. lat. is estimated to be at 24 percent of the unfished biomass. As a precautionary measure, the OY for the southern portion of the stock is being set at 612 mt, which is lower than the ABC contribution for the area. An OY of 612 mt (equivalent to the 2006 OY) is expected to result in a biomass increase for the southern portion of the stock. The tribes do not have a specific allocation at this time, but are expected to take 30 mt of the commercial HG.

d/ "Other species", these species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, these species are included in the harvest guidelines of "other fish", "other rockfish" or "remaining rockfish".

e/ Pacific Cod - The 3,200 mt ABC for the Vancouver-Columbia area is based on historical landings data. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. A tribal harvest guideline of 400 mt is deducted from the OY resulting in a commercial OY of 1,200 mt.

f/ Pacific whiting - Final adoption of the Pacific whiting ABC and OY have been deferred until the Council's March 2007 meeting. Therefore, table 1a contains the ABC and OY range considered in the EIS and under the proposed rule. It is anticipated that a new assessment will be available in early 2007 and the results will be used to set the 2007 ABC and OY. The final ABC and OY will be published as a separate action following the Council's recommendation at its March 2007 meeting.

g/ Sablefish - A coastwide sablefish stock assessment was prepared in 2005. The coastwide sablefish biomass was estimated to be at 35.2 percent of its unfished biomass in 2005. Projections indicate that the biomass is increasing and will be near 42 percent of its unfished biomass by 2008. The coastwide ABC of 6,210 mt was based on the base-case assessment model with a  $F_{MSY}$  proxy of  $F_{45\%}$ . The coastwide OY of 5,934 mt is based on the application of the 40-10 harvest policy and is a two year average OY for 2007 and 2008. To apportion fishery allocations for the area north of 36° N. lat., 96.45 percent of the coastwide OY (5,723 mt) is attributed to the northern area. The tribal allocation for the area north of 36° N. lat. is 572 mt (10 percent of the OY north of 36° N. lat), which is further reduced by 1.9 percent (10.9 mt) for discards. The tribal landed catch value is 561.4 mt.

h/ Cabezon was assessed south of 42° N. lat. in 2005. In 2005, the stock was estimated to be at 28 percent of its unfished biomass north of 34° 27' N. lat. and 40 percent of its unfished biomass south of 34° 27' N. lat. The biomass is projected to be increasing in the northern area and decreasing in the southern area. The ABC of 94 mt (71 mt for the northern portion of the stock and 23 mt for the southern portion of the stock) is based on the new assessment with a harvest rate proxy of  $F_{50\%}$ . The OY of 69 mt is a constant harvest level that is consistent with the application of a 60-20 harvest rate policy specified in the California Nearshore Management Plan.

i/ Dover sole was assessed north of 34° 27' N. lat. in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and is projected to be increasing. The ABC of 28,522 mt is based on the results of the 2005 assessment with an  $F_{MSY}$  proxy of  $F_{40\%}$ . Because the stock is above  $B_{40\%}$  coastwide, the OY could be set equal to the ABC. The OY of 16,500 mt, which is less than the ABC, is the MSY harvest level and is considerably larger than the coastwide catches in any recent years.

j/ A coastwide English sole stock assessment was prepared in 2005 and the stock was estimated to be at 91.5 percent of its unfished biomass in 2005, but the stock biomass is believed to be declining. The ABC of 6,237 is a 2007-2008 two year average ABC based on the results of the 2005 assessment with an  $F_{MSY}$  proxy of  $F_{40\%}$ . Because the stock is above  $B_{40\%}$ , the OY was set equal to the ABC.

k/ A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock coastwide was estimated to be at 32 percent of its unfished biomass (34 percent in the northern assessment area and 29 percent in the southern assessment area). The petrale sole biomass is believed to be increasing. The ABC of 2,917 mt is based on the new assessment with a  $F_{40\%}$   $F_{MSY}$  proxy. To derive the OY, the 40-10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due to assessment uncertainty. The OY of 2,499 mt is the average coastwide OY value for 2007 and 2008.

l/ Arrowtooth flounder was last assessed in 1993 and was estimated to be above 40 percent of its unfished biomass, therefore the OY will be set equal to the ABC.

m/ Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent for the northern stock off Washington and Oregon, and 62 percent for the southern stock of California). The starry flounder biomass is believed to be declining, and will be below  $B_{40\%}$ . The starry flounder assessment was considered to be a data-poor assessment relative to other groundfish assessments. For 2007, the coastwide ABC of 1,221 mt is based on the new assessment with a  $F_{MSY}$  proxy of  $F_{40\%}$  and is an average ABC for 2007 and 2008. Because the stock is believed to be above  $B_{40\%}$ , the OY could be set equal to the ABC. To derive the OY, the 40-10 harvest policy was applied to the ABC for both the northern and southern assessment areas then an additional 25 percent reduction was made due to assessment uncertainty. Starry flounder was previously managed as part of the  $\geq$ other flatfish $\geq$  category. The OY of 890 mt is the average coastwide OY value for 2007 and 2008.

n/ "Other flatfish" are those flatfish species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. Starry flounder was assessed in 2005 and is being removed from other flatfish complex beginning in 2007. The ABC is based on historical catch levels. The ABC of 6,731 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981-2003 period and on the average landings from the 1994-1998 period for the remaining other flatfish species. The OY of 4,884 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species.

o/ A POP stock assessment was prepared in 2005 and the stock was estimated to be at 23.4 percent of its unfished biomass in 2005. The ABC of 900 mt for the Vancouver-Columbia area was projected from the 2005 stock assessment and is based on an  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 150 mt is based on a rebuilding plan with a target year to rebuild of 2017 and an SPR harvest rate of 86.4 percent. The OY is reduced by 3.6 mt for the amount anticipated to be taken during research activity.

p/ Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. A 1989 stock assessment provided two alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY are therefore set at the low end of the range projected in the stock assessment, 13,900 mt.

q/ Widow rockfish was assessed in 2005 and was estimated to be at 31.1 percent of its unfished biomass in 2004. The ABC of 5,334 mt is based on an  $F_{50\%}$   $F_{MSY}$  proxy. The OY of 368 mt is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR rate of 95 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch about 46.1 mt of widow rockfish in 2007, but do not have a specific allocation at this time. For the Pacific whiting fishery, 200 mt is being set aside and will be managed with bycatch limits.

r/ A canary rockfish stock assessment was completed in 2005 and the stock was estimated to be at 9.4 percent of its unfished biomass coastwide in 2005. The coastwide ABC of 172 mt is based on a  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 44 mt is based on a rebuilding plan with a target year to rebuild of 2063 and an SPR harvest rate of 88.7 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch about 5 mt of canary rockfish under the 2007 commercial HG, but do not have a specific allocation at this time. South of 42° N. lat., the canary rockfish recreational fishery HG is 9.0 mt and north of 42° N. lat., the canary rockfish recreational fishery HG 8.2 mt.

s/ Chilipepper rockfish was last assessed in 1998. The ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a  $F_{50\%}$   $F_{MSY}$  proxy. Because the unfished biomass is estimated to be above 40 percent the unfished biomass, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage fishing on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of chilipepper rockfish to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2007 was considered to be conservative and based on the best available data. Open access is allocated 44.3 percent (886 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,114 mt) of the commercial HG.

t/ A bocaccio stock assessment update and a rebuilding analysis were prepared in 2005. The bocaccio stock was estimated to be at 10.7 percent of its unfished biomass in 2005. The ABC of 602 mt for the Monterey and Conception areas is based on a  $F_{50\%}$   $F_{MSY}$  proxy. The OY of 218 mt is based on a rebuilding plan with a target year to rebuild of 2026 and a SPR harvest rate of 77.7 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity.

u/ Splitnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2007 was considered to be conservative and based on the best available data.

v/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2005 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 4,548 mt is a 2 year average ABC for 2007 and 2008 and is based on the 2005 stock assessment with the  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 4,548 mt was set equal to the ABC, because the stock is above the precautionary threshold of  $B_{40\%}$ . Tribal vessels are estimated to catch about 539 mt of yellowtail rockfish in 2007, but do not have a specific allocation at this time.

w/ Shortspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. The ABC of 2,476 mt is based on a  $F_{50\%}$   $F_{MSY}$  proxy and is the two year average ABC for 2007 and 2008. For that portion of the stock (66 percent of the biomass) north of Pt. Conception (34° 27' N. lat.), the OY of 1,634 mt was set at equal to the ABC because the stock is estimated to be above the precautionary threshold. For that portion of the stock south of Pt. Conception (34 percent of the biomass), the OY of 421 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area. Tribal vessels are estimated to catch about 13 mt of shortspine thornyhead in 2007, but do not have a specific allocation at this time.

x/ Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. The coastwide ABC of 3,907 mt is based on a  $F_{50\%}$   $F_{MSY}$  proxy and is the two year average OY for the 2007 and 2008 period. The OY is set equal to the ABC because the stock is above the precautionary threshold. Separate OYs are being established for the areas north and south of 34° 27' N. lat. (Point Conception). The OY for that portion of the stock in the northern area (79 percent) is set equal to the ABC. For that portion of the stock in the southern area (21 percent), the OY of 476 mt was the portion of the ABC for the area reduced by 25 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

y/ Cowcod in the Conception area was assessed in 2005 and was estimated to be between 14 and 21 percent of its unfished biomass. The ABC of in the area south of 36° N. lat., the Conception area, is 17 mt and is based on the 2005 stock assessment with a  $F_{50\%}$   $F_{MSY}$  proxy. The ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. A OY of 4 mt is being set for the combined areas. The OY is based on a rebuilding plan with a target year to rebuilding of 2039 and an SPR harvest rate 90 percent. The OY is reduced by 0.1 mt for the amount anticipated to be taken during research activity.

z/ Darkblotched rockfish was assessed in 2005 and was estimated to be at 16 percent of its unfished biomass in 2005. The ABC is projected to be 456 mt and is based on the 2005 stock assessment with an  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 290 mt is based on a rebuilding plan with a target year to rebuild of 2011 and an SPR harvest rate of 64.1 percent in 2007. The OY is reduced by 3.8 mt for the amount anticipated to be taken during research activity.

aa/ Yelloweye rockfish was assessed in 2006 and is estimated to be at 17.7 percent of its unfished biomass coastwide. The 26 mt coastwide ABC is based on the new stock assessment and an  $F_{MSY}$  proxy of  $F_{50\%}$ . The 23 mt OY is based on a rebuilding plan with a target year to rebuild of 2084 an SPR harvest rate of 55.4 percent in 2007. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch 2.3 mt of yelloweye rockfish of the commercial HG in 2007, but do not have a specific allocation at this time. South of 42° N. lat. the yelloweye rockfish recreational fishery HG is 2.1 mt and north of 42° N. lat. the yelloweye rockfish recreational fishery HG 6.8 mt.

bb/ California Scorpionfish south of 34° 27' N. lat. was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 219 mt is based on the new assessment with a harvest rate proxy of  $F_{50\%}$  and is an average ABC for 2007 and 2008. Because the stock is above  $B_{40\%}$  coastwide, the OY could be set equal to the ABC. The OY of 175 mt, which is lower than the ABC, reflects the highest historical catch levels.

cc/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of 46°16' N. lat. is 540 mt and the ABC for the area south of 46°16' N. lat. is 722 mt which is the average ABC for the 2007 and 2008 period. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an  $F_{MSY}$  proxy of  $F_{50\%}$ . Because the unfished biomass is estimated to be above 40 percent, the OYs were set equal to the ABCs. For the area north of 46°16' N. lat., the OY is 540 mt. The following tribal harvest guidelines are being set: 20,000 lb (9.1 mt) north of Cape Alava, WA (48° 09.50' N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47° 40' N. lat.) and Leadbetter Point, WA (46° 38.17' N. lat.). For the area south of 46°16' N. lat., the OY is 722 mt. The black rockfish OY in the area south of 46°16' N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat (419 mt/58 percent) and for the area south of 42° N. lat (303 mt/42 percent). For the southern area north of 42° N. lat., a range is presented for the recreational estimate (289-350 mt) and commercial HG (91 -111 mt). Specific values will be specified in the final rule. Of the 303 mt of black rockfish attributed to the area south of 42° N. lat., 168 mt is estimated to be taken in the recreational fisheries, resulting in a commercial HG of 135 mt.

dd/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ( $F=0.75M$ ) as a precautionary adjustment. To obtain the total catch OY of 2,270 mt, the remaining rockfish ABC was reduced by 25 percent and other rockfish ABC was reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. Tribal vessels are estimated to catch about 38 mt of minor rockfish in 2007, but do not have a specific allocation at this time.

ee/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,403 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. California scorpionfish is being removed from this category in 2007. Gopher rockfish is being moved from the "other rockfish" group to the remaining rockfish group in 2007. The remaining rockfish ABCs continue to be reduced by 25 percent ( $F=0.75M$ ) as a precautionary adjustment. The remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote gg). The other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The resulting minor rockfish OY is 1,904 mt.

ff/ Bank rockfish - The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

gg/ Blackgill rockfish in the Monterey and Conception areas was assessed in 2005 and is estimated to be at 50.6 percent of its unfished biomass in 2005. The ABC of 292 mt for Monterey and Conception areas is based on the 2005 stock assessment with an  $F_{MSY}$  proxy of  $F_{50\%}$  and is the two year average ABC for the 2007 and 2008 periods. This stock contributes 292 mt towards minor rockfish south.

hh/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302. California scorpionfish and gopher rockfish were assessed in 2005 and are being removed from this category. The California Scorpionfish contribution of 163 mt and the gopher rockfish contribution of 97 mt were removed from the ABC value. The ABC for the remaining species is based on the 1996 review of commercial *Sebastes* landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

ii/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling and other groundfish species noted above in footnote d.

jj/ Sablefish allocation north of 36° N. lat. - The limited entry allocation is further divided with 58 percent allocated to the trawl fishery and 42 percent allocated to the fixed-gear fishery.

kk/ Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

TABLE 2A. TO PART 660, SUBPART G—2008, AND BEYOND, SPECIFICATIONS OF ACCEPTABLE BIOLOGICAL CATCH (ABC), OPTIMUM YIELDS (OYS), HARVEST GUIDELINES (HGS), BY MANAGEMENT AREA (WEIGHTS IN METRIC TONS).

Species	ABC Specifications					HG b/		
	ABC Contributions by Area					OY b/	Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception			
ROUND FISH:								
Lingcod c/ north of 42°N. lat.	5,428			852		6,280	5,558	
south of 42°N. lat.							612	
Pacific Cod e/	3,200			d/		3,200	1,600	1,200
Pacific Whiting f/				244,425 - 733,275		244,425-733,275	134,534-403,604	
Sablefish g/				6,058		6,058	5,934	5,362
Cabezon h/ south of 42°N. lat.	c/			71	23	94	69	27
FLAT FISH:								
Dover sole i/				28,442		28,442	16,500	
English sole j/				6,237		6,237	6,237	
Petrale sole k/	1,475			1,444		2,919	2,499	
Arrowtooth flounder l/				5,800		5,800	5,800	

TABLE 2A. TO PART 660, SUBPART G—2008, AND BEYOND, SPECIFICATIONS OF ACCEPTABLE BIOLOGICAL CATCH (ABC), OPTIMUM YIELDS (OYS), HARVEST GUIDELINES (HGs), BY MANAGEMENT AREA (WEIGHTS IN METRIC TONS).—Continued

Species	ABC Specifications					ABC	OY b/	HG b/	
	ABC Contributions by Area							Commercial	Rec-reational
	Van-cou-ver a/	Colum-bia	Eureka	Monterey	Conception				
Starry Flounder m/	1,221					1,221	890		
Other flatfish n/	6,731					6,731	4,884		
ROCKFISH:									
Pacific Ocean Perch o/	911					911	150	111.3	
Shortbelly p/	13,900					13,900	13,900		
Widow q/	5,144					5,144	368	251.4	9.4
Canary r/	179					179	44	23.8	17.2
Chilipepper s/	c/			2,700		2,700	2,000		
Bocaccio t/	c/			618		618	218	80.2	66.3
Splitnose u/	c/			615		615	461		
Yellowtail v/	4,548			c/		4,548	4,548		
Shortspine thornyhead w/ north of 34°27' N. lat.	2,476					2,476	1,634		
south of 34°27' N. lat.							421		
Longspine thornyhead x/ north of 34°27' N. lat.	3,907					3,907	2,220		
south of 34°27' N. lat.							476		
Cowcod y/	c/			19	--	19	4	3.1	0.3
	c/			--	17	17			
Darkblotched z/							290	259.8	
Yelloweye aa/							20	7.8	8.9
California Scorpionfish bb/						219	219	175	34
Black cc/ north of 46°16' N. lat.	540					540	540		
south of 46°16' N. lat.			722			722	722		
Minor Rockfish north dd/	3,680			--		3,680	2,270	2,181	89
Minor Rockfish south ee/	--		3,403			3,403	1,904	1,418	486
Remaining Rockfish	1,612			1,105					
bank ff/	d/			350					
blackgill gg/	d/			292					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					



TABLE 2A. TO PART 660, SUBPART G—2008, AND BEYOND, SPECIFICATIONS OF ACCEPTABLE BIOLOGICAL CATCH (ABC), OPTIMUM YIELDS (OYS), HARVEST GUIDELINES (HGs), BY MANAGEMENT AREA (WEIGHTS IN METRIC TONS).—Continued

Species	ABC Specifications					ABC	OY b/	HG b/	
	ABC Contributions by Area							Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
silvergrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail south	--			116					
Gopher	d/			302					
Other rockfish hh/	2,068			2,298					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Other fish ii/	2,500	7,000	1,200	3,900		14,600	7,300	--	

TABLE 2B. TO PART 660, SUBPART G—2008, AND BEYOND, HARVEST GUIDELINES FOR MINOR ROCKFISH BY DEPTH SUBGROUPS (WEIGHTS IN METRIC TONS).

Species	Total Catch ABC	Total Catch OY	Recreational HG	Commercial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
Minor Rockfish North dd/	3,680	2,270	89	2,181	2,000	91.7	181	8.3
Nearshore		142	79	63				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish South ee/	3,403	1,904	486	1,418	790	55.7	628	44.3
Nearshore		564	426	138				
Shelf		714	60	654				
Slope		626	0	626				

TABLE 2C. TO PART 660, SUBPART G—2008, AND BEYOND, OPEN ACCESS AND LIMITED ENTRY ALLOCATIONS BY SPECIES OR SPECIES GROUP. (WEIGHTS IN METRIC TONS).

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Lingcod north of 42° N. lat. south of 42° N. lat.	--	--	81.0	--	19.0
Sablefish jj/ north of 36° N. lat.	5,151	4,667	90.6	484	9.4
Widow kk/	251.4	--	97.0	--	3.0
Canary kk/	23	--	87.7	--	12.3
Chilipepper	2,000	1,114	55.7	886	44.3

TABLE 2C. TO PART 660, SUBPART G— 2008, AND BEYOND, OPEN ACCESS AND LIMITED ENTRY ALLOCATIONS BY SPECIES OR SPECIES GROUP. (WEIGHTS IN METRIC TONS).—Continued

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Bocaccio kk/	80.2	--	55.7	--	44.3
Yellowtail	--	--	91.7	--	8.3
Shortspine thornyhead north of 34°27' N. lat.	1,634	1,193	99.7	441	0.27
Minor Rockfish north of 40°10' N. lat.	2,181	2,000	91.7	181	8.3
south of 40°10' N. lat.	1,418	790	55.7	628	44.3

a/ ABCs apply to the U.S. portion of the Vancouver area.

b/ Optimum Yields (OYs) and Harvest Guidelines (HG) are specified as total catch values. Though presented as harvest guidelines, the recreational values for widow rockfish, bocaccio, and cowcod are catch estimates. A harvest guideline is a specified harvest target and not a quota. The use of this term may differ from the use of similar terms in state regulation.

c/ Lingcod- A coastwide lingcod stock assessment was prepared in 2005. The lingcod biomass was estimated to be at 64 percent of its unfished biomass in 2005. The ABC was calculated using an  $F_{MSY}$  proxy of  $F_{45\%}$ . The ABC of 6,280 mt is a two year average ABC for 2007 and 2008. Because the stock is above  $B_{40\%}$  coastwide, the OY could be set equal to the ABC. Separate OYs are being adopted for the area north of 42° N. lat. and the area south of 42° N. lat. For that portion of the stock north of 42° N. lat. the OY of 5,558 mt is set equal to the ABC contribution for the area. The biomass in the area south of 42° N. lat. is estimated to be at 24 percent of the unfished biomass. As a precautionary measure, the OY for the southern portion of the stock is being set at 612 mt, which is lower than the ABC contribution for the area. An OY of 612 mt (equivalent to the 2006 OY) is expected to result in a biomass increase for the southern portion of the stock. The tribes do not have a specific allocation at this time, but are expected to take 30 mt of the commercial HG.

d/ "Other species", these species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, these species are included in the harvest guidelines of "other fish", "other rockfish" or "remaining rockfish".

e/ Pacific Cod - The 3,200 mt ABC for the Vancouver-Columbia area is based on historical landings data. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. A tribal harvest guideline of 400 mt is deducted from the OY resulting in a commercial OY of 1,200 mt.

f/ Pacific whiting - Final adoption of the Pacific whiting ABC and OY have been deferred until the Council's March 2008 meeting. Therefore, table 1a contains the ABC and OY range considered in the EIS and under the proposed rule. It is anticipated that a new assessment will be available in early 2008 and the results will be used to set the 2008 ABC and OY. The final ABC and OY will be published as a separate action following the Council's recommendation at its March 2008 meeting.

g/ Sablefish - A coastwide sablefish stock assessment was prepared in 2005. The coastwide sablefish biomass was estimated to be at 35.2 percent of its unfished biomass in 2005. Projections indicate that the biomass is increasing and will be near 42 percent of its unfished biomass by 2008. The coastwide ABC of 6,058 mt was based on the base-case assessment model with a  $F_{MSY}$  proxy of  $F_{45\%}$ . The coastwide OY of 5,934 mt is based on the application of the 40-10 harvest policy and is a two year average OY for 2007 and 2008. To apportion fishery allocations for the area north of 36° N. lat., 96.45 percent of the coastwide OY (5,723 mt) is attributed to the northern area. The tribal allocation for the area north of 36° N. lat. is 572 mt (10 percent of the OY north of 36° N. lat), which is further reduced by 1.9 percent (10.9 mt) for discards. The tribal landed catch value is 561.4 mt.

h/ Cabezon south of 42° N. lat. was assessed in 2005. In 2005, the Cabezon stock was estimated to be at 28 percent of its unfished biomass north of 34° 27' N. lat. and 40 percent of its unfished biomass south of 34° 27' N. lat. The stock biomass is projected to be increasing in the northern area and decreasing in the southern area. The ABC of 94 mt (71 mt for the northern portion of the stock and 23 mt for the southern portion of the stock) is based on a harvest rate proxy of  $F_{50\%}$ . The OY of 69 mt is a constant harvest level that is consistent with the application of a 60-20 harvest rate policy specified in the California Nearshore Management Plan.

i/ Dover sole was assessed north of 34° 27' N. lat. in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and is projected to be increasing. The ABC of 28,522 mt is based on the results of the 2005 assessment with an  $F_{MSY}$  proxy of  $F_{40\%}$ . Because the stock is above  $B_{40\%}$  coastwide, the OY could be set equal to the ABC. The OY of 16,500 mt, which is less than the ABC, is the MSY harvest level and is considerably larger than the coastwide catches in any recent years.

j/ A coastwide English sole stock assessment was prepared in 2005 and the stock was estimated to be at 91.5 percent of its unfished biomass in 2005, but the stock biomass is believed to be declining. The ABC of 6,237 is a two year average ABC for 2007 and 2008 based on the the results of the 2005 assessment with an  $F_{MSY}$  proxy of  $F_{40\%}$ . Because the stock is above  $BF_{40\%}$ , the OY was set equal to the ABC.

k/ A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock coastwide was estimated to be at 32 percent of its unfished biomass (34 percent in the northern assessment area and 29 percent in the southern assessment area). The petrale sole biomass is believed to be increasing. The ABC of 2,917 mt is based on the new assessment with a  $F_{40\%}$   $F_{MSY}$  proxy. To derive the OY, the 40-10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due to assessment uncertainty. The OY of 2,499 mt is the average coastwide OY value for 2007 and 2008.

l/ Arrowtooth flounder was last assessed in 1993 and was estimated to be above 40 percent of its unfished biomass, therefore the OY will be set equal to the ABC.

m/ Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent for the northern stock off Washington and Oregon, and 62 percent for the southern stock of California). The starry flounder biomass is believed to be declining, and will be below  $B_{40\%}$ . The starry flounder assessment was considered to be a data-poor assessment relative to other groundfish assessments. For 2007, the coastwide ABC of 1,221 mt is based on the new assessment with a  $F_{MSY}$  proxy of  $F_{40\%}$  and is an average ABC for 2007 and 2008. Because the stock is believed to be above  $B_{40\%}$ , the OY could be set equal to the ABC. To derive the OY, the 40-10 harvest policy was applied to the ABC for both the northern and southern assessment areas then an additional 25 percent reduction was made due to assessment uncertainty. Starry flounder was previously managed as part of the "other flatfish" category. The OY of 890 mt is the average coastwide OY value for 2007 and 2008.

n/ "Other flatfish" are those flatfish species that do not have individual ABC/OYs and include butter sole, curffin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. Starry flounder was assessed in 2005 and is being removed from other flatfish complex beginning in 2007. The ABC is based on historical catch levels. The ABC of 6,731 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981-2003 period and on the average landings from the 1994-1998 period for the remaining other flatfish species. The OY of 4,884 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species.

o/ A POP stock assessment was prepared in 2005 and the stock was estimated to be at 23.4 percent of its unfished biomass in 2005. The ABC of 900 mt for the Vancouver-Columbia area was projected from the 2005 stock assessment and is based on an  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 150 mt is based on a rebuilding plan with a target year to rebuild of 2017 and an SPR harvest rate of 86.4 percent. The OY is reduced by 3.6 mt for the amount anticipated to be taken during research activity.

p/ Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. A 1989 stock assessment provided two alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY are therefore set at the low end of the range projected in the stock assessment, 13,900 mt.

q/ Widow rockfish was assessed in 2005 and was estimated to be at 31.1 percent of its unfished biomass in 2004. The ABC of 5,334 mt is based on an  $F_{50\%}$   $F_{MSY}$  proxy. The OY of 368 mt is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR rate of 95 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch about 46.1 mt of widow rockfish in 2007, but do not have a specific allocation at this time. For the Pacific whiting fishery, 200 mt is being set aside and will be managed with bycatch limits.

r/ A canary rockfish stock assessment was completed in 2005 and the stock was estimated to be at 9.4 percent of its unfished biomass coastwide in 2005. The coastwide ABC of 172 mt is based on a  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 44 mt is based on a rebuilding plan with a target year to rebuild of 2063 and an SPR harvest rate of 88.7 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch about 5 mt of canary rockfish under the 2007 commercial HG, but do not have a specific allocation at this time. South of 42° N. lat., the canary rockfish recreational fishery HG is 9.0 mt and north of 42° N. lat., the canary rockfish recreational fishery HG 8.2 mt.

s/ Chilipepper rockfish was last assessed in 1998. The ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a  $F_{50\%}$   $F_{MSY}$  proxy. Because the unfished biomass is estimated to be above 40 percent the unfished biomass, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage fishing on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of chilipepper rockfish to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2007 was considered to be conservative and based on the best available data. Open access is allocated 44.3 percent (886 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,114 mt) of the commercial HG.

t/ A bocaccio stock assessment update and a rebuilding analysis were prepared in 2005. The bocaccio stock was estimated to be at 10.7 percent of its unfished biomass in 2005. The ABC of 618 mt for the Monterey and Conception areas is based on a  $F_{50\%}$   $F_{MSY}$  proxy. The OY of 218 mt is based on a rebuilding plan with a target year to rebuild of 2026 and a SPR harvest rate of 77.7 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity.

u/ Splittnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2008 was considered to be conservative and based on the best available data.

v/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2005 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 4,548 mt is a 2 year average ABC for 2007 and 2008 and is based on the 2005 stock assessment with the  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 4,548 mt was set equal to the ABC, because the stock is above the precautionary threshold of  $B_{40\%}$ . Tribal vessels are estimated to catch about 539 mt of yellowtail rockfish in 2007, but do not have a specific allocation at this time. Tribal vessels are estimated to catch about 539 mt of yellowtail rockfish in 2008, but do not have a specific allocation at this time.

w/ Shortspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. The ABC of 2,476 mt is based on a  $F_{50\%}$   $F_{MSY}$  proxy and is the two year average ABC for 2007 and 2008. For that portion of the stock (66 percent of the biomass) north of Pt. Conception (34° 27' N. lat.), the OY of 1,634 mt was set at equal to the ABC because the stock is estimated to be above the precautionary threshold. For that portion of the stock south of Pt. Conception (34 percent of the biomass), the OY of 421 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount of survey data for that area. Tribal vessels are estimated to catch about 13 mt of shortspine thornyhead in 2008, but do not have a specific allocation at this time.

x/ Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. The coastwide ABC of 3,907 mt is based on a  $F_{50\%}$   $F_{MSY}$  proxy and is the two year average OY for the 2007 and 2008 period. The OY is set equal to the ABC because the stock is above the precautionary threshold. Separate OYs are being established for the areas north and south of 34° 27' N. lat. (Point Conception). The OY for that portion of the stock in the northern area (79 percent) is set equal to the ABC. For that portion of the stock in the southern area (21 percent), the OY of 476 mt was the portion of the ABC for the area reduced by 25 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

y/ Cowcod in the Conception area was assessed in 2005 and was estimated to be between 14 and 21 percent of its unfished biomass. The ABC of in the area south of 36° N. lat., the Conception area, is 17 mt and is based on the 2005 stock assessment with a  $F_{50\%}$   $F_{MSY}$  proxy. The ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. A OY of 4 mt is being set for the combined areas. The OY is based on a rebuilding plan with a target year to rebuilding of 2039 and an SPR harvest rate 90.0 percent. The OY is reduced by 0.1 mt for the amount anticipated to be taken during research activity.

z/ Darkblotched rockfish was assessed in 2005 and was estimated to be at 16 percent of its unfished biomass in 2005. The ABC is projected to be 487 mt and is based on the 2005 stock assessment with an  $F_{MSY}$  proxy of  $F_{50\%}$ . The OY of 330 mt is based on a rebuilding plan with a target year to rebuild of 2011 and an SPR harvest rate of 60.7 percent in 2008. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity.

aa/ Yelloweye rockfish was assessed in 2006 and is estimated to be at 17.7 percent of its unfished biomass coastwide. The 26 mt coastwide ABC is based on the new stock assessment and an  $F_{MSY}$  proxy of  $F_{50\%}$ . The 20 mt OY is based on a rebuilding plan with a target year to rebuild of 2084 an SPR harvest rate of 60.8 percent in 2008. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch 2.3 mt of yelloweye rockfish of the commercial HG in 2008, but do not have a specific allocation at this time. South of 42° N. lat. the yelloweye rockfish recreational fishery HG is 2.1 mt and north of 42° N. lat. the yelloweye rockfish recreational fishery HG 6.8 mt.

bb/ California Scorpionfish south of 34° 27' N. lat. was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 219 mt is based on the new assessment with a harvest rate proxy of  $F_{50\%}$  and is an average ABC for 2007 and 2008. Because the stock is above  $B_{40\%}$  coastwide, the OY could be set equal to the ABC. The OY of 175 mt, which is lower than the ABC, reflects the highest historical catch levels.

cc/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of 46°16' N. lat. is 540 mt and the ABC for the area south of 46°16' N. lat. is 722 mt which is the average ABC for the 2007 and 2008 period. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an  $F_{MSY}$  proxy of  $F_{50\%}$ . Because the unfished biomass is estimated to be above 40 percent, the OYs were set equal to the ABCs. For the area north of 46°16' N. lat., the OY is 540 mt. The following tribal harvest guidelines are being set: 20,000 lb (9.1 mt) north of Cape Alava, WA (48° 09.50' N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47° 40' N. lat.) and Leadbetter Point, WA (46° 38.17' N. lat.). For the area south of 46°16' N. lat., the OY is 722 mt. The black rockfish OY in the area south of 46°16' N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat. (419 mt/58 percent) and for the area south of 42° N. lat. (303 mt/42 percent). For the southern area north of 42° N. lat., a range is presented for the recreational estimate (289-350 mt) and commercial HG (91 -111 mt). Specific values will be specified in the final rule. Of the 303 mt of black rockfish attributed to the area south of 42° N. lat., 168 mt is estimated to be taken in the recreational fisheries, resulting in a commercial HG of 135 mt.

dd/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ( $F=0.75M$ ) as a precautionary adjustment. To obtain the total catch OY of 2,270 mt, the remaining rockfish ABC was reduced by 25 percent and other rockfish ABC was reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. Tribal vessels are estimated to catch about 38 mt of minor rockfish in 2008, but do not have a specific allocation at this time.

ee/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,403 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ( $F=0.75M$ ) as a precautionary adjustment. The remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote gg). The other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The resulting minor rockfish OY is 1,904 mt.

ff/ Bank rockfish - The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

gg/ Blackgill rockfish in the Monterey and Conception areas was assessed in 2005 and is estimated to be at 49.9 percent of its unfished biomass in 2008. The ABC of 292 mt for Monterey and Conception areas is based on the 2005 stock assessment with an  $F_{MSY}$  proxy of  $F_{50\%}$  and is the two year average ABC for the 2007 and 2008 periods. This stock contributes 292 mt towards minor rockfish south.

hh/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302. California scorpionfish and gopher rockfish were assessed in 2005 and are being removed from this category. The California Scorpionfish contribution of 163 mt and the gopher rockfish contribution of 97 mt were removed from the ABC value. The ABC for the remaining species is based on the 1996 review of commercial *Sebastes* landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

ii/ "Other fish" includes sharks, skates, rays, rattfish, morids, grenadiers, kelp greenling and other groundfish species noted above in footnote d/

jj/ Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

kk/ Sablefish allocation north of 36° N. lat. - The limited entry allocation is further divided with 58 percent allocated to the trawl fishery and 42 percent allocated to the fixed-gear fishery.

**Table 3 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.**

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

82006

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA) <sup>6/</sup> :</b>						
North of 40°10' N. lat.	75 fm - modified 250 fm <sup>7/</sup>	75 fm - 250 fm	75 fm - 200 fm	100 fm - 200 fm	75 fm - 200 fm	75 fm - modified 250 fm <sup>7/</sup>

Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.  
See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

1	Minor slope rockfish <sup>2/</sup> & Darkblotched rockfish	4,000 lb/ 2 months				
2	Pacific ocean perch	3,000 lb/ 2 months				
3	DTS complex					
4	Sablefish					
5	large & small footrope gear	13,000 lb/ 2 months	15,000 lb/ 2 months			13,000 lb/ 2 months
6	selective flatfish trawl gear	5,000 lb/ 2 months	8,000 lb/ 2 months			5,000 lb/ 2 months
7	multiple bottom trawl gear <sup>8/</sup>	5,000 lb/ 2 months	8,000 lb/ 2 months			5,000 lb/ 2 months
8	Longspine thornyhead					
9	large & small footrope gear	22,000 lb/ 2 months				
10	selective flatfish trawl gear	3,000 lb/ 2 months				
11	multiple bottom trawl gear <sup>8/</sup>	3,000 lb/ 2 months				
12	Shortspine thomyhead					
13	large & small footrope gear	7,500 lb/ 2 months				
14	selective flatfish trawl gear	3,000 lb/ 2 months				
15	multiple bottom trawl gear <sup>8/</sup>	3,000 lb/ 2 months				
16	Dover sole					
17	large & small footrope gear	80,000 lb/ 2 months	60,000 lb/ 2 months			80,000 lb/ 2 months
18	selective flatfish trawl gear	40,000 lb/ 2 months				
19	multiple bottom trawl gear <sup>8/</sup>	40,000 lb/ 2 months				
20	Whiting					
21	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.				
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.				
23	Flatfish (except Dover sole)					
24	Arrowtooth flounder					
25	large & small footrope gear	100,000 lb/ 2 months				
26	selective flatfish trawl gear	90,000 lb/ 2 months				
27	multiple bottom trawl gear <sup>8/</sup>	90,000 lb/ 2 months				

TABLE 3 (North)

Table 3 (North). Continued

28	<b>Flatfish (except Dover sole) (cont')</b>			
29	Other flatfish <sup>3/</sup> , English sole, starry flounder, & Petrale sole			
30	large & small footrope gear for Other flatfish <sup>3/</sup> , English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.	
31	large & small footrope gear for Petrale sole	80,000 lb/ 2 months	80,000 lb/ 2 months	
32	selective flatfish trawl gear for Other flatfish <sup>3/</sup> , English sole, & starry flounder	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	
33	selective flatfish trawl gear for Petrale sole	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	
34	multiple bottom trawl gear <sup>8/</sup>	90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	
35	<b>Minor shelf rockfish<sup>1/</sup>, Shortbelly, Widow &amp; Yelloweye rockfish</b>			
36	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.		
37	large & small footrope gear	300 lb/ 2 months		
38	selective flatfish trawl gear	300 lb/ month	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month
39	multiple bottom trawl gear <sup>8/</sup>	300 lb/ month	300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month
40	<b>Canary rockfish</b>			
41	large & small footrope gear	CLOSED		
42	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month
43	multiple bottom trawl gear <sup>8/</sup>	CLOSED		
44	<b>Yellowtail</b>			
45	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting; combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.		
46	large & small footrope gear	300 lb/ 2 months		
47	selective flatfish trawl gear	2,000 lb/ 2 months		
48	multiple bottom trawl gear <sup>8/</sup>	300 lb/ 2 months		
49	<b>Minor nearshore rockfish &amp; Black rockfish</b>			
50	large & small footrope gear	CLOSED		
51	selective flatfish trawl gear	300 lb/ month		
52	multiple bottom trawl gear <sup>8/</sup>	CLOSED		
53	<b>Lingcod<sup>4/</sup></b>			
54	large & small footrope gear	1,200 lb/ 2 months		
55	selective flatfish trawl gear	1,200 lb/ 2 months		
56	multiple bottom trawl gear <sup>8/</sup>	1,200 lb/ 2 months		
57	<b>Pacific cod</b>	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months
58	<b>Spiny dogfish</b>	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months
59	<b>Other Fish<sup>5/</sup></b>	Not limited		

TABLE 3 (North) cont

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.  
 2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.  
 3/ "Other flatfish" are defined at § 660.302 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.  
 4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.  
 5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."  
 6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.  
 7/ The "modified 250 fm" line is modified to exclude certain petrale sole areas from the RCA.  
 8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 3 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.**

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

82006

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA)<sup>6/</sup>:</b>						
40°10' - 38° N. lat.	100 fm - modified 200 fm <sup>7/</sup>	100 fm - 150 fm				100 fm - modified 200 fm <sup>7/</sup>
38° - 34°27' N. lat.	100 fm - 150 fm					
South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands					
Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA.						
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
<b>1</b>	<b>Minor slope rockfish<sup>2/</sup> &amp; Darkblotched rockfish</b>					
<b>2</b>	40°10' - 38° N. lat.	15,000 lb/ 2 months		10,000 lb/ 2 months		15,000 lb/ 2 months
<b>3</b>	South of 38° N. lat.	40,000 lb/ 2 months				
<b>4</b>	<b>Splitnose</b>					
<b>5</b>	40°10' - 38° N. lat.	15,000 lb/ 2 months		10,000 lb/ 2 months		15,000 lb/ 2 months
<b>6</b>	South of 38° N. lat.	40,000 lb/ 2 months				
<b>7</b>	<b>DTS complex</b>					
<b>8</b>	Sablefish 14,000 lb/ 2 months					
<b>9</b>	Longspine thornyhead 22,000 lb/ 2 months					
<b>10</b>	Shortspine thornyhead 7,500 lb/ 2 months					
<b>11</b>	Dover sole 70,000 lb/ 2 months					
<b>12</b>	<b>Flatfish (except Dover sole)</b>					
<b>13</b>	Other flatfish <sup>3/</sup> , English sole, & starry flounder					
<b>14</b>	40°10' - 38° N. lat.	110,000 lb/ 2 months	Other flatfish, English sole, starry flounder & Petrale sole:			110,000 lb/ 2 months
<b>15</b>	South of 38° N. lat.	110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.				80,000 lb/ 2 months
<b>16</b>	Petrable sole	80,000 lb/ 2 months				80,000 lb/ 2 months
<b>17</b>	Arrowtooth flounder					
<b>18</b>	40°10' - 38° N. lat.	10,000 lb/ 2 months				
<b>19</b>	South of 38° N. lat.					
<b>20</b>	<b>Whiting</b>					
<b>21</b>	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.				
<b>22</b>	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.				

TABLE 3 (South)

Table 3 (South). Continued

23	Minor shelf rockfish <sup>1/</sup> , Chilipepper, Shortbelly, Widow, & Yelloweye rockfish			
24	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month		
25	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months
26	large footrope or midwater trawl for Widow & Yelloweye	CLOSED		
27	small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye	300 lb/ month		
28	small footrope trawl for Chilipepper	500 lb/ month		
29	<b>Bocaccio</b>			
30	large footrope or midwater trawl	300 lb/ 2 months		
31	small footrope trawl	CLOSED		
32	<b>Canary rockfish</b>			
33	large footrope or midwater trawl	CLOSED		
34	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month
35	<b>Cowcod</b>	CLOSED		
36	<b>Minor nearshore rockfish &amp; Black rockfish</b>			
37	large footrope or midwater trawl	CLOSED		
38	small footrope trawl	300 lb/ month		
39	<b>Lingcod<sup>4/</sup></b>			
40	large footrope or midwater trawl	1,200 lb/ 2 months		
41	small footrope trawl			
42	<b>Pacific cod</b>	30,000 lb/ 2 months	70,000 lb/ 2 months	30,000 lb/ 2 months
43	<b>Spiny dogfish</b>	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months
44	<b>Other Fish<sup>5/</sup> &amp; Cabezon</b>	Not limited		

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish.

2/ POP is included in the trip limits for minor slope rockfish

3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.



**Table 4 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.**  
**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 82006

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA)<sup>6/</sup>:</b>						
North of 46°16' N. lat.	shoreline - 100 fm					
46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1 Minor slope rockfish <sup>2/</sup> & Darkblotched rockfish	4,000 lb/ 2 months					
2 Pacific ocean perch	1,800 lb/ 2 months					
3 Sablefish	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months					
4 Longspine thornyhead	10,000 lb/ 2 months					
5 Shortspine thornyhead	2,000 lb/ 2 months					
6 Dover sole	5,000 lb/ month					
7 Arrowtooth flounder	South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
8 Petrale sole						
9 English sole						
10 Starry flounder						
11 Other flatfish <sup>1/</sup>						
12 Whiting	10,000 lb/ trip					
13 Minor shelf rockfish <sup>2/</sup> , Shortbelly, Widow, & Yellowtail rockfish	200 lb/ month					
14 Canary rockfish	CLOSED					
15 Yelloweye rockfish	CLOSED					
16 Minor nearshore rockfish & Black rockfish						
17 North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish <sup>3/</sup>					
18 42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish <sup>3/</sup>					
19 Lingcod <sup>4/</sup>	CLOSED	800 lb/ 2 months			400 lb/ month	CLOSED
20 Pacific cod	1,000 lb/ 2 months					
21 Spiny dogfish	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months			
22 Other fish <sup>5/</sup>	Not limited					

**TABLE 4 (North)**

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length south of 42° N. lat.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 4 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.**

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

82006

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
<b>Rockfish Conservation Area (RCA)<sup>5/</sup>:</b>								
40°10' - 34°27' N. lat.		30 fm - 150 fm						
South of 34°27' N. lat.		60 fm - 150 fm (also applies around islands)						
See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).								
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.								
1	Minor slope rockfish <sup>2/</sup> & Darkblotched rockfish	40,000 lb/ 2 months						
2	Splitnose	40,000 lb/ 2 months						
3	Sablefish							
4	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months						
5	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb						
6	Longspine thornyhead	10,000 lb / 2 months						
7	Shortspine thornyhead	2,000 lb/ 2 months						
8	Dover sole	5,000 lb/ month South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.						
9	Arrowtooth flounder							
10	Petrale sole							
11	English sole							
12	Starry flounder							
13	Other flatfish <sup>1/</sup>							
14	Whiting	10,000 lb/ trip						
15	Minor shelf rockfish <sup>2/</sup> , Shortbelly, & Widow rockfish							
16	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months	300 lb/ 2 months			
17	South of 34°27' N. lat.	3,000 lb/ 2 months		3,000 lb/ 2 months				
18	Chilipepper rockfish	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA						
19	Canary rockfish	CLOSED						
20	Yelloweye rockfish	CLOSED						
21	Cowcod	CLOSED						
22	Bocaccio							
23	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months	300 lb/ 2 months			
24	South of 34°27' N. lat.	300 lb/ 2 months		300 lb/ 2 months				
25	Minor nearshore rockfish & Black rockfish							
26	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months	
27	Deeper nearshore							
28	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months	
29	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
30	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months	
31	Lingcod <sup>3/</sup>	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
32	Pacific cod	1,000 lb/ 2 months						
33	Spiny dogfish	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
34	Other fish <sup>4/</sup> & Cabezon	Not limited						

TABLE 4 (South)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by

lat/long coordinates set out at § 660.390, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

**Table 5 (North) to Part 660, Subpart G -- 2007-2008 Trip Limits for Open Access Gears North of 40°10' N. Lat.**

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

82006

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA) <sup>6/</sup>:</b>							
North of 46°16' N. lat.		shoreline - 100 fm					
46°16' N. lat. - 40°10' N. lat.		30 fm - 100 fm					
<p>See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.                      See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).</p>							
<p>State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.</p>							
1	Minor slope rockfish <sup>1/</sup> & Darkblotched rockfish	Per trip, no more than 25% of weight of the sablefish landed					
2	Pacific ocean perch	100 lb/ month					
3	Sablefish	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 3,000 lb/ 2 months					
4	Thornyheads	CLOSED					
5	Dover sole	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
6	Arrowtooth flounder						
7	Petrale sole						
8	English sole						
9	Starry flounder						
10	Other flatfish <sup>2/</sup>						
11	Whiting	300 lb/ month					
12	Minor shelf rockfish <sup>1/</sup> , Shortbelly, Widow, & Yellowtail rockfish	200 lb/ month					
13	Canary rockfish	CLOSED					
14	Yelloweye rockfish	CLOSED					
15	Minor nearshore rockfish & Black rockfish						
16	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish <sup>3/</sup>					
17	42° - 40°10' N. lat.	6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish <sup>3/</sup>					
18	Lingcod <sup>4/</sup>	CLOSED	400 lb/ month				CLOSED
19	Pacific cod	1,000 lb/ 2 months					
20	Spiny dogfish	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months			
21	Other Fish <sup>5/</sup>	Not limited					
22	<b>PINK SHRIMP NON-GROUNDFISH TRAWL</b> (not subject to RCAs)						
23	North	<p><b>Effective April 1 - October 31:</b> Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.</p>					
24	<b>SALMON TROLL</b>						
25	North	<p>Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.</p>					

TABLE 5 (North)

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish.

Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.302 and include butter sole, curffin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length south of 42° N. lat.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, rattfish, morids, grenadiers, and kelp greenling.

Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2007-2008 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

82006

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
<b>Rockfish Conservation Area (RCA)<sup>5/</sup>:</b>							
40°10' - 34°27' N. lat.		30 fm - 150 fm					
South of 34°27' N. lat.		60 fm - 150 fm (also applies around islands)					
<p>See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.                      See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).</p>							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
1	<b>Minor slope rockfish<sup>1/</sup> &amp; Darkblotched rockfish</b>						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	<b>Splitnose</b>	200 lb/ month					
5	<b>Sablefish</b>						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 3,000 lb/ 2 months					
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	<b>Thornyheads</b>						
9	40°10' - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	<b>Dover sole</b>						
12	<b>Arrowtooth flounder</b>	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42o N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	<b>Petrале sole</b>						
14	<b>English sole</b>						
15	<b>Starry flounder</b>						
16	<b>Other flatfish<sup>2/</sup></b>						
17	<b>Whiting</b>	300 lb/ month					
18	<b>Minor shelf rockfish<sup>1/</sup>, Shortbelly, Widow &amp; Chilipepper rockfish</b>						
19	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months	300 lb/ 2 months		
20	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months			
21	<b>Canary rockfish</b>	CLOSED					
22	<b>Yelloweye rockfish</b>	CLOSED					
23	<b>Cowcod</b>	CLOSED					
24	<b>Bocaccio</b>						
25	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months	200 lb/ 2 months		
26	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			
27	<b>Minor nearshore rockfish &amp; Black rockfish</b>						
28	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	600 lb/ 2 months
29	Deeper nearshore						
30	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		600 lb/ 2 months	700 lb/ 2 months
31	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
32	California scorpionfish	600 lb/ 2 months	CLOSED	600 lb/ 2 months	800 lb/ 2 months		600 lb/ 2 months
33	<b>Lingcod<sup>3/</sup></b>	CLOSED		400 lb/ month			CLOSED
34	<b>Pacific cod</b>	1,000 lb/ 2 months					
35	<b>Spiny dogfish</b>	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
36	<b>Other Fish<sup>4/</sup> &amp; Cabezon</b>	Not limited					

TABLE 5 (South)

Table 5 (South). Continued

37	<b>RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL</b>		
38	<b>NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber &amp; Ridgeback Prawn:</b>		
39	40°10' - 38° N. lat.	100 fm - modified 200 fm <sup>6/</sup>	100 fm - 150 fm  100 fm - modified 200 fm <sup>6/</sup>
40	38° - 34°27' N. lat.	100 fm - 150 fm	
41	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	
42		Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curffin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).	
43	<b>PINK SHRIMP NON-GROUNDFISH TRAWL GEAR (not subject to RCAs)</b>		
44	South	<b>Effective April 1 - October 31:</b> Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.	

TABLE 5 (South) cont

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.  
 2/ "Other flatfish" are defined at § 660.302 and include butter sole, curffin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.  
 3/ The size limit for lingcod is 24 inches (61 cm) total length.  
 4/ "Other fish" are defined at § 660.302 and include sharks, skates, rattfish, morids, grenadiers, and kelp greenling.  
 5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390, except that the 20-fm depth contour off California is defined by the depth contour and not coordinates.  
 6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.  
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

\* \* \* \* \*  
 25. In § 660.405, paragraph (c) is added to read as follows:

**§ 660.405 Prohibitions.**

\* \* \* \* \*  
 (c) Under the Pacific Coast groundfish regulations at § 660.383, fishing with salmon troll gear is prohibited within the Salmon Troll Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for commercial salmon troll

vessels to take and retain, possess, or land fish within the Salmon Troll YRCA. The Salmon Troll YRCA is an area off the northern Washington coast. The Salmon Troll YRCA is intended to protect yelloweye rockfish. The Salmon Troll YRCA is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:  
 (1) 48°00.00' N. lat., 125°14.00' W. long.;

- (2) 48°02.00' N. lat., 125°14.00' W. long.;
  - (3) 48°00.00' N. lat., 125°16.50' W. long.;
  - (4) 48°02.00' N. lat., 125°16.50' W. long.;
- and connecting back to 48°00.00' N. lat., 125°14.00' W. long.

[FR Doc. 06-8373 Filed 9-28-06; 8:45 am]  
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# Federal Register

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**Friday,  
September 29, 2006**

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**Part VII**

## **The President**

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**Presidential Determination No. 2006–24 of  
September 15, 2006—Presidential  
Determination on Major Drug Transit or  
Major Illicit Drug Producing Countries for  
Fiscal Year 2007**



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# Presidential Documents

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Title 3—

Presidential Determination No. 2006–24 of September 15, 2006

The President

## Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2007

### Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, FY03 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug transit or major illicit drug producing countries: Afghanistan, The Bahamas, Bolivia, Brazil, Burma, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, and Venezuela.

A country's presence on the Majors List is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (FAA), one of the reasons that major drug transit or illicit drug producing countries are placed on the list is the combination of geographical, commercial, and economic factors that allow drugs to transit or be produced despite the concerned government's most assiduous enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Burma and Venezuela as countries that have failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Attached to this report (Tab A) are justifications for the determinations on Burma and Venezuela, as required by section 706(2)(B).

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that support for programs to aid Venezuela's democratic institutions is vital to the national interests of the United States.

Although President Karzai has strongly attacked narcotrafficking as the greatest threat to Afghanistan, one third of the Afghan economy remains opium-based, which contributes to widespread public corruption. The government at all levels must be held accountable to deter and eradicate poppy cultivation; remove and prosecute corrupt officials; and investigate, prosecute, or extradite narcotraffickers and those financing their activities. We are concerned that failure to act decisively now could undermine security, compromise democratic legitimacy, and imperil international support for vital assistance.

My Administration is concerned with the decline in Bolivian counternarcotics cooperation since October 2005. Bolivia, the world's third largest producer of cocaine, has undertaken policies that have allowed the expansion of coca cultivation and slowed the pace of eradication until mid-year, when it picked up. The Government of Bolivia's (GOB) policy of "zero cocaine, but not zero coca" has focused primarily on interdiction, to the near exclusion of its necessary complements, eradication and alternative development. However, the GOB has been supportive of interdiction initiatives and has had positive results in seizing cocaine and decommissioning rustic labs. We would encourage the GOB to refocus its efforts on eliminating excess coca, the source of cocaine. This would include eradicating at least 5,000 hectares, including in the Chapare region; eliminating the "cato" exemption to Bolivian law; rescinding Ministerial Resolution 112, Administrative Resolution 083,



and establishing tight controls on the sale of licit coca leaf for traditional use; and implementing strong precursor chemical control measures to prevent conversion of coca to cocaine. My Administration plans to review Bolivia's performance in these specific areas within 6 months.

The Government of Canada (GOC) continued to effectively curb the diversion of precursor chemicals that are required for methamphetamine production to feed U.S. illegal markets. The GOC also continued to seize laboratories that produce MDMA/Ecstasy consumed in both Canada and the United States. The principal drug concern was the continuing large-scale production of high-potency, indoor-grown marijuana for export to the United States. The United States enjoyed excellent cooperation with Canada across a broad range of law enforcement issues and shared goals.

The Government of Ecuador (GOE) has made considerable progress in combating narcotics trafficking destined for the United States. However, a dramatic increase in the quantity of cocaine transported toward the United States using Ecuadorian-flagged ships and indications of increased illegal armed group activity along Ecuador's northern border with Colombia remain areas of serious concern. Effective cooperation and streamlined maritime operational procedures between the U.S. Coast Guard and the Ecuadorian Navy are resulting in an increase in the amount of cocaine interdicted. Building on that cooperation, we will work with Ecuador to change the circumstances that make Ecuadorian-flagged vessels and Ecuadorian citizenship so attractive to drug traffickers.

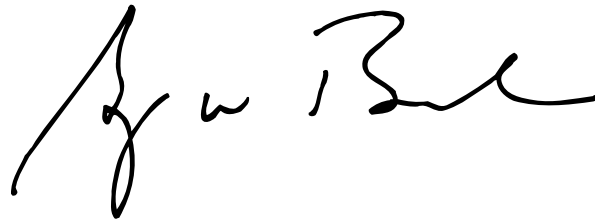
As a result of the elections in Haiti, the new government now has a clear mandate from the Haitian people to bring crime, violent gangs, and drug trafficking under control. We urge the new government to strengthen and accelerate ongoing efforts to rebuild and reform Haiti's law enforcement and judicial institutions and to consult closely with the United States to define achievable and verifiable steps to accomplish these goals.

While the Government of Nigeria continues to take substantive steps to curb official corruption, it remains a major challenge in Nigeria. We strongly encourage the government to continue to adequately fund and support the anti-corruption bodies that have been established there in order to fully address Nigeria's ongoing fight against corruption. We urge Nigeria to continue improving the effectiveness of the National Drug and Law Enforcement Agency and, in particular, improve enforcement operations at major airports/seaports and against major drug kingpins, to include targeting their financial assets. We look forward to working with Nigerian officials to increase extraditions and assisting in drug enforcement operations.

Although there have not been any drug seizures or apprehensions of drug traffickers with a connection to the Democratic People's Republic of Korea (DPRK) since 2004, we remain concerned about DPRK state-directed criminal activity. The United States Government has made clear to the DPRK that an end to all involvement in criminal activity is a necessary prerequisite to entry into the international community.

Under provisions of the Combat Methamphetamine Epidemic Act (CMEA), which modified section 489(a) of the Foreign Assistance Act of 1961, as amended, and section 490(a) of the FAA, a report will be made to the Congress on March 1, 2007, naming the five countries that legally exported the largest amount of methamphetamine precursor chemicals, as well as the top five methamphetamine precursor importers with the highest rate of diversion for illicit drug production. This report will be sent concurrently with the International Narcotics Control Strategy Report, which will also contain additional reporting on methamphetamine precursor chemicals pursuant to the CMEA.

You are hereby authorized and directed to submit this report under section 706 of the FRAA, transmit it to the Congress, and publish it in the **Federal Register**.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

THE WHITE HOUSE,  
*Washington, September 15, 2006.*

MEMORANDUM OF JUSTIFICATION FOR PRESIDENTIAL DETERMINATION ON MAJOR DRUG TRANSIT OR ILLICIT DRUG PRODUCING COUNTRIES FOR FY 2007

Burma

Burma failed demonstrably to make sufficient efforts during the last 12 months to meet its obligations under international counternarcotics agreements and U.S. domestic counternarcotics requirements as set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended.

Burma remains the world's second largest producer of illicit opium. Burmese opiates continue to pose a threat in Asia. Additionally, amphetamine-type stimulants (ATS) produced and trafficked from Burmese territory continue to threaten the entire region. Burma has not taken decisive action against drug gangs, such as the United Wa State Army (UWSA), which continue to operate freely along Burma's borders with China and Thailand. These criminal organizations increasingly threaten Asia with the crystalline form of methamphetamine called "Ice".

The efforts of the Government of Burma (GOB) to combat the production and trafficking of methamphetamine have been unsatisfactory. Even as methamphetamine production and trafficking have increased in recent years, seizures continue to be disappointing, and the GOB has not been forthcoming with verifiable statistics. It failed to establish a mechanism for the reliable measurement of ATS production and, once again, did not cooperate in the joint United States/Burma crop survey.

The GOB continued to take no action in response to the indictments in January 2005 by the U.S. Justice Department against eight leaders of the UWSA. The failure to take action against these accused ringleaders, responsible for a good deal of human misery in Asia and beyond, demonstrates the Burmese Government's failure to take serious action against drug activity on its territory.

The Government of Burma has failed to indict and prosecute any Burmese military official above the rank of colonel for drug-related corruption.

Burma has failed to expand demand-reduction, prevention, and drug-treatment programs to reduce drug use and control the spread of HIV/AIDS. The Global Fund for Aids, TB and Malaria had approved grants totaling \$98.5 million for Burma but withdrew in late 2005 due to the Government's onerous restrictions and lack of full cooperation.

The international Financial Action Task Force (FATF) continues to list Burma as one of only two "Non-cooperative Countries." At the heart of Burma's problems with international financial authorities is its weak implementation of anti-money laundering controls, with the result that narcotics traffickers and other criminal elements are still able to launder the proceeds of their crimes through Burmese financial institutions.

While the picture of Burma's counternarcotics efforts remains overwhelmingly negative, there were some positive aspects. The GOB, with the U.S. Drug Enforcement Administration and the Australian Federal Police, disrupted two international trafficking syndicates that are associated with the United Wa State Army (UWSA), a kingpin organization, and have ties throughout Asia, India, and North America. In September 2005, the GOB seized a UWSA-related shipment of approximately 496 kilograms of heroin bound for China via Laos. The seizure led to the arrest of 80 suspects, including two of UWSA Chairman Bao Yu Xiang's family members, and the seizure of assets, including \$1.3 million in cash. A second, related investigation from December 2005 through April 2006 culminated in the arrest of 30 subjects and the seizure of \$2.2 million in assets and significant quantities of morphine base, heroin, opium, weapons, methamphetamine tablets and powder, crystal methamphetamine, pill presses, and precursor chemicals.

## MEMORANDUM OF JUSTIFICATION FOR PRESIDENTIAL DETERMINATION ON MAJOR DRUG TRANSIT OR ILLICIT DRUG PRODUCING COUNTRIES FOR FY 2007

## Venezuela

Venezuela failed demonstrably to make sufficient efforts during the last 12 months to meet its obligations under international counternarcotics agreements and U.S. domestic counternarcotics requirements as set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended.

This determination comes as the result of Venezuela's lack of effective response to specific United States Government requests for counternarcotics cooperation as well as the country's continued lack of action against drug trafficking within and through its borders commensurate with its responsibilities to the international community.

Venezuela's importance as a transshipment point for drugs bound for the United States and Europe has continued to increase in the past 12 months, a situation both enabled and exploited by corrupt Venezuelan officials. The Venezuelan media provided an example of this corruption when they reported that Venezuelan police re-sold the vast majority of a 9,400 kilogram cocaine seizure to drug traffickers in July of this year (Venezuela does not allow independent verification of seizure amounts). Seizures of illegal drugs transiting the country have fallen, according to DEA estimates. The volume of cocaine transiting the country is expected to continue to rise substantially in 2006. The most dramatic increase in cocaine departing Venezuela was to non-U.S. destinations, primarily Europe. The vast majority of cocaine going to the United States or Europe goes by sea. However, an increasing proportion is being moved by non-commercial air through the Caribbean toward the United States. The number of suspected drug flights departing Venezuela and going to Hispaniola and the Caribbean more than doubled in 2005 and has continued that rising trend in the first half of 2006.

Venezuela has not used available tools to counter the growing drug threat. It has not strengthened inspections or security along its border with Colombia; it has not utilized judicial wiretap orders to investigate drug cases; it has not attempted meaningful prosecution of corrupt officials; and it has not renewed formal counternarcotics cooperation agreements with the United States Government. The role and status of the DEA in Venezuela remains in limbo since the host country refuses to sign a memorandum of understanding authorizing Drug Enforcement Administration presence, even after successfully concluding a lengthy process of negotiation with U.S. officials. Venezuela also has not signed a letter of agreement that would make nearly \$3 million from FY 2005 available for United States Government cooperative counternarcotics efforts.

Last year Venezuela was found to have "failed demonstrably" as a partner in the war on drugs, in part because it ended most air interdiction cooperation, refused to grant U.S. counternarcotics overflights of Venezuela, curtailed most military and law enforcement counternarcotics cooperation, replaced its most effective counternarcotics officials, and failed to effectively implement its own money laundering and organized crime legislation. All of these issues remain outstanding in 2006.

The United States is very concerned about the continued deterioration of democratic institutions in Venezuela as reflected in the increased executive control over the other branches of government, threats to judicial independence and human rights, and attacks on press freedoms and freedom of expression.

A vital national interests certification will allow the United States Government to provide funds that support programs to aid Venezuela's democratic institutions, establish selected community development projects, and strengthen Venezuela's political party system.

[FR Doc. 06-8302

Filed 8-28-06; 9:04 am]

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## Federal Register

Vol. 71, No. 189

Friday, September 29, 2006

### CUSTOMER SERVICE AND INFORMATION

<b>Federal Register/Code of Federal Regulations</b>	
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<b>Laws</b>	<b>741-6000</b>
<b>Presidential Documents</b>	
Executive orders and proclamations	<b>741-6000</b>
<b>The United States Government Manual</b>	<b>741-6000</b>
<b>Other Services</b>	
Electronic and on-line services (voice)	<b>741-6020</b>
Privacy Act Compilation	<b>741-6064</b>
Public Laws Update Service (numbers, dates, etc.)	<b>741-6043</b>
TTY for the deaf-and-hard-of-hearing	<b>741-6086</b>

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### FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51973-52284	1
52285-52402	5
52403-52732	6
52733-52980	7
52981-53298	8
53299-53542	11
53543-53960	12
53961-54194	13
54195-54398	14
54399-54564	15
54565-54754	18
54755-54888	19
54889-55086	20
55087-55280	21
55281-55726	22
55727-55990	25
55991-56334	26
56335-56852	27
56853-57382	28
57383-57870	29

### CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

#### 2 CFR

<b>Proposed Rules:</b>	
1326	55354

#### 3 CFR

<b>Proclamations:</b>	
7463 (See Notice of September 5, 2006)	52733
8044	52281
8045	52283
8046	53297
8047	53959
8048	53961
8049	54883
8050	54885
8051	54887
8052	54889
8053	54891
8054	55991
8055	55993
8056	56851

#### Executive Orders:

13224 (See Notice of September 21, 2006)	55725
13411	52729

#### Administrative Orders:

Notices:	
Notice of September 5, 2006	52733
Notice of September 21, 2006	55725

#### Presidential

<b>Determinations:</b>	
No. 2006-19 of August 17, 2006	51973
No. 2006-21 of August 21, 2006	51975
No. 2006-22 of August 28, 2006	53543
No. 2006-23 of September 13, 2006	54399
No. 2006-24 of September 15, 2006	57865

#### 4 CFR

<b>Proposed Rules:</b>	
81	54597

#### 5 CFR

334	54565
337	53545
630	54567
1653	54893

#### 6 CFR

29	52262
----	-------

<b>Proposed Rules:</b>	
5	53609

#### 7 CFR

6	51977
54	56335
205	53299
246	56708
301	52981, 52982, 53546, 53963, 56337
305	55089
319	55089, 57383
457	55995
700	54401
702	54401
711	54401
729	54401
752	54401
755	54401
800	52403
810	52403
916	51982, 55090
917	51982, 55090
923	55281
983	51985
985	52735
1219	52285
1290	53303
1413	54401
1437	52738
1446	54401
1470	54401
1479	54401
1480	54401
1481	54401
1482	54401
3411	54894

#### Proposed Rules:

51	55356, 55367
91	55369
92	55369
246	52209
457	52013, 56049
993	55380
1000	52502
1001	52502
1005	52502, 54118
1006	52502
1007	52502, 54118
1030	52502, 54136
1032	52502, 54152
1033	52502, 54172
1124	52502
1126	52502
1131	52502
1435	53051

#### 9 CFR

53	56302
55	52983
56	56302
78	54402
81	52983
93	54552, 56338
145	56302
146	56302

147.....	56302	54443, 54446, 54939, 54941,	<b>21 CFR</b>	9.....	53612
205.....	56338	56054, 56056, 56058, 56062,	1.....	56006	
<b>Proposed Rules:</b>		56064, 56070, 56414, 56416,	11.....	56006	<b>28 CFR</b>
3.....	54438	56900, 56903, 57449	73.....	54411	0.....
<b>10 CFR</b>		61.....	520.....	51995, 56346, 56866	45.....
9.....	54570	71.....	522.....	51995, 57416	94.....
70.....	56344	91.....	524.....	56867	<b>Proposed Rules:</b>
709.....	57386	121.....	556.....	53005	20.....
710.....	57386	125.....	558.....	51995, 52429, 53005,	
<b>Proposed Rules:</b>		135.....		53006, 53966, 56007	<b>29 CFR</b>
19.....	55382	399.....	807.....	55729	403.....
20.....	55382	<b>15 CFR</b>	868.....	55729	2201.....
50.....	55382	700.....	870.....	55729	2400.....
70.....	56413	736.....	872.....	55729	2700.....
490.....	54771	740.....	874.....	55729	2704.....
<b>11 CFR</b>		743.....	876.....	55729	2705.....
102.....	54899	772.....	878.....	55729	4022.....
<b>Proposed Rules:</b>		774.....	880.....	53569, 55729	4044.....
100.....	52295	902.....	882.....	55729	<b>Proposed Rules:</b>
<b>12 CFR</b>		<b>Proposed Rules:</b>	884.....	55729	1910.....
3.....	55830, 55958	14.....	886.....	55729	1915.....
208.....	55830, 55958	26.....	892.....	55729	1917.....
225.....	55830, 55958	801.....	1271.....	54198	1918.....
325.....	55830, 55958	922.....	1300.....	56008	1926.....
330.....	53547	<b>16 CFR</b>	1308.....	51996	2509.....
566.....	55830, 55958	<b>Proposed Rules:</b>	1309.....	56008	2550.....
603.....	54899	1307.....	1310.....	56008	2550.....
605.....	54899	1410.....	1314.....	56008	<b>30 CFR</b>
608.....	54899	1500.....	<b>Proposed Rules:</b>		906.....
611.....	54899	1515.....	807.....	55748	917.....
745.....	56001	<b>17 CFR</b>	868.....	55748	938.....
<b>13 CFR</b>		211.....	870.....	55748	<b>Proposed Rules:</b>
Ch. III.....	56658	228.....	872.....	55748	100.....
120.....	57397	229.....	874.....	55748	938.....
<b>Proposed Rules:</b>		229.....	876.....	55748	948.....
115.....	56049	232.....	878.....	55748	<b>31 CFR</b>
120.....	52296	239.....	880.....	55748	560.....
<b>14 CFR</b>		240.....	882.....	55748	<b>32 CFR</b>
13.....	52406	245.....	884.....	55748	281.....
21.....	52250, 56005	249.....	886.....	55748	283.....
23.....	52407	274.....	892.....	55748	706.....
25.....	53309, 53310, 53313,	400.....	1306.....	52724	2002.....
	53315, 53316, 54572, 54576,	401.....	<b>22 CFR</b>		
	57398	402.....	181.....	53007	<b>33 CFR</b>
39.....	51988, 51990, 52410,	403.....	<b>Proposed Rules:</b>		100.....
	52413, 52415, 52416, 52418,	404.....	99.....	54001	117.....
	52421, 52423, 52983, 52988,	405.....	<b>24 CFR</b>		148.....
	52990, 52992, 52994, 52998,	<b>Proposed Rules:</b>	<b>Proposed Rules:</b>		149.....
	52999, 53319, 53550, 53553,	1.....	203.....	54451	150.....
	53556, 53559, 53562, 54195,	4.....	291.....	54451	165.....
	54755, 54757, 54759, 54762,	229.....	<b>25 CFR</b>		<b>Proposed Rules:</b>
	54901, 55727, 56853, 56854,	232.....	<b>Proposed Rules:</b>		117.....
	56856, 56859, 56861, 56864,	239.....	502.....	57455	165.....
	57403, 57405, 57407	240.....	546.....	57455	55755, 56420
71.....	51993, 52426, 52740,	249.....	547.....	57455	<b>34 CFR</b>
	52741, 57412, 57413, 57414	249b.....	<b>26 CFR</b>		200.....
91.....	52250, 52287, 56005	269.....	1.....	52430, 53009, 53967,	<b>36 CFR</b>
97.....	53321, 53566, 54404,	274.....		55108, 56868	7.....
	54578	<b>18 CFR</b>	54.....	53966	242.....
121.....	52287, 53954	35.....	301.....	52444, 56225	1253.....
125.....	52287	<b>19 CFR</b>	602.....	52430, 53009, 56868	1280.....
135.....	52287	101.....	<b>Proposed Rules:</b>		<b>Proposed Rules:</b>
193.....	54405	103.....	1.....	52876, 53052, 54005,	242.....
413.....	56005	<b>20 CFR</b>		54452, 54598, 56072	1193.....
417.....	56005	260.....	300.....	54005, 54006	1194.....
1214.....	56006	320.....	<b>27 CFR</b>		1195.....
<b>Proposed Rules:</b>		341.....	<b>Proposed Rules:</b>		1280.....
25.....	52755	404.....	4.....	54943	<b>37 CFR</b>
39.....	52300, 53341, 53345,	603.....	5.....	54943	Ch. III.....
	53347, 53610, 54438, 54446,	<b>Proposed Rules:</b>	7.....	54943	53325
		401.....			

<b>Proposed Rules:</b>	<b>42 CFR</b>	73.....54934, 54935, 54936,	225.....53045
201.....54948	121.....54198	54937, 56407	236.....53044
<b>38 CFR</b>	403.....55326	90.....52747, 52750	237.....53047
3.....52290, 52455, 52744	405.....55341	95.....52747	252.....53044, 53045, 53047
4.....52457	412.....57447	<b>Proposed Rules:</b>	<b>Proposed Rules:</b>
19.....56868	414.....57447	Ch. I.....54008	3.....54255
<b>Proposed Rules:</b>	416.....55326	1.....55149, 57455	12.....54255
5.....55052	418.....55326	2.....57455	52.....54255
<b>39 CFR</b>	424.....57447	6.....57455	
111.....54198	460.....55326	7.....57455	<b>49 CFR</b>
952.....53971	482.....55326	9.....57455	1.....52751
953.....53971	483.....55326	13.....57455	40.....55347
958.....54198	485.....55326	20.....57455	107.....54388, 54937
964.....53971	491.....55341	22.....57455	171.....54388, 54937
<b>Proposed Rules:</b>	<b>Proposed Rules:</b>	24.....57455	172.....54388, 54937, 56894
111.....54006, 56588	405.....55404	25.....56923	173.....54388, 54937
3001.....55136	422.....52014	27.....55149, 57455	175.....54388, 54937
<b>40 CFR</b>	<b>43 CFR</b>	64.....54009, 56442	177.....54388, 54937
51.....55119	2560.....54199, 56225	68.....57455	178.....54388, 54937
52.....52460, 52464, 52467,	4100.....52012	73.....54253, 54974, 56931,	180.....54388, 54937
52656, 52659, 52664, 52670,	<b>Proposed Rules:</b>	57455	450.....55743
52698, 52703, 54421, 55284,	421.....56921	74.....57455	544.....52291
55287, 56872, 56881, 57428	423.....56921	78.....57455	575.....53572
60.....55119	3900.....56085	80.....57455	593.....56027
62.....53972	<b>44 CFR</b>	87.....57455	<b>Proposed Rules:</b>
63.....55280	64.....54202, 55128	90.....55149, 57455	171.....52017, 55757
80.....54908	67.....54933	95.....57455	172.....52017, 55156, 55757
81.....54421	<b>45 CFR</b>	97.....57455	173.....52017, 55757
82.....56359, 56884	<b>Proposed Rules:</b>	101.....57455	174.....52017
180.....51998, 52003, 52483,	263.....56440	<b>48 CFR</b>	175.....55757
52487, 53974, 53979, 53984,	302.....54965	Ch. 1.....57356, 57380	177.....55757
54423, 54912, 54917, 54922,	303.....54965	1.....57360, 57363, 57380	178.....52017, 55757
54928, 55290, 55293, 55300,	304.....54965	2.....57360, 57363, 57380	180.....55757
55307, 55313, 56369, 56374,	305.....54965	3.....57380	192.....57457
56378, 56383, 56388, 56392,	308.....54965	4.....57362, 57363, 57380	195.....52504
57431, 57436	<b>46 CFR</b>	5.....57357, 57363, 57380	571.....54712
271.....53989	1.....54768	6.....57357, 57363	579.....52040
300.....54763, 54767, 55319,	4.....55743	7.....57360, 57363, 57380	585.....54712
55742, 56399	5.....54768	8.....57357, 57363	
355.....53331	10.....54768	9.....57363	<b>50 CFR</b>
710.....52494, 53335	12.....54768	11.....57357, 57360	17.....53589, 54344
712.....54434, 57439	13.....54768	12.....57362, 57363	20.....55076, 55654, 55676
716.....54434, 57439	14.....57362	13.....57357, 57363, 57380	100.....56356
<b>Proposed Rules:</b>	15.....57362, 57363	14.....57362	404.....52874
52.....55402, 55403, 56920,	16.....57363	15.....57362, 57363	600.....57696
56921	17.....57363	16.....57363	622.....55096, 56039
80.....55552	19.....57363	17.....57363	648.....52499, 53049, 56047,
82.....55140, 56422	22.....57363, 57375	19.....57363	56895
49.....53631, 53639	25.....57363, 57375, 57378	22.....57363, 57375	660.....56408, 56409, 56411,
51.....54235	26.....57380	25.....57363, 57375, 57378	56896, 56897
52.....52504, 54235	28.....57363	26.....57380	56896, 56897
60.....53272	31.....57360	28.....57363	665.....53605, 54769
62.....53272, 54007	32.....57363	31.....57360	679.....52500, 52501, 52754,
63.....52624, 53272	33.....57380	32.....57363	53337, 53338, 53339, 55134,
180.....54953, 56425	36.....57363	33.....57380	55347, 56412, 56898
264.....52624	39.....57360	36.....57363	<b>Proposed Rules:</b>
266.....52624	42.....57363	39.....57360	16.....52305
271.....54007	48.....57363	42.....57363	17.....53355, 53756, 53838,
300.....54793, 55403, 56433	49.....57363, 57380	48.....57363	56085, 56094, 56228, 56932,
355.....53354	50.....57363, 57380	49.....57363, 57380	56937, 56938
<b>41 CFR</b>	52.....57363, 57375, 57380	50.....57363, 57380	21.....54794
60-2.....53032	53.....57363, 57380	52.....57363, 57380	22.....54794
102-36.....53571	202.....53042	53.....57363, 57380	91.....56443
102-76.....52498	204.....53044	202.....53042	100.....46421
<b>Proposed Rules:</b>	207.....53044	204.....53044	648.....52519, 52521, 56098,
102-35.....53646	210.....53042	207.....53044	56446
	213.....53042	210.....53042	660.....52051, 57764
	215.....53042	213.....53042	697.....54261
	219.....53042	215.....53042	
		219.....53042	



**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT SEPTEMBER 29, 2006****AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Spring viremia of carp; import restrictions on certain live fish, fertilized eggs, and gametes; published 8-30-06

Plant-related quarantine, foreign:

Pine shoot beetle host material from Canada; published 9-29-06

**AGRICULTURE DEPARTMENT****Forest Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Kenai Peninsula subsistence resource region; published 8-14-06

**DEFENSE DEPARTMENT**

Debts resulting from erroneous payments of pay and allowances; waiver; published 9-29-06

Personnel and general claims settlement and advance decision requests; settling and processing; published 9-29-06

**ENERGY DEPARTMENT****Federal Energy Regulatory Commission**

Electric utilities (Federal Power Act):

Pricing reform; transmission investment promotion; published 7-31-06

**ENVIRONMENTAL PROTECTION AGENCY**

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities: Flufenoxuron; published 9-29-06

Solid wastes:

Hazardous waste; identification and listing—Exclusions; published 7-31-06

Toxic substances:

Preliminary assessment information reporting and health safety data reporting—Chemical substances withdrawn; published 9-29-06

**HEALTH AND HUMAN SERVICES DEPARTMENT****Food and Drug Administration**

Animal drugs, feeds, and related products:

Tulathromycin; published 9-29-06

**HOMELAND SECURITY DEPARTMENT****Coast Guard**

Deepwater ports:

Regulations; revision; published 9-29-06

Regattas and marine parades:

Chesapeake Ultra Triathlon; published 8-31-06

Strait Thunder Hydroplane Races; published 9-27-06

**INTERIOR DEPARTMENT****Fish and Wildlife Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Kenai Peninsula subsistence resource region; published 8-14-06

**INTERIOR DEPARTMENT****Surface Mining Reclamation and Enforcement Office**

Permanent program

performance standards: Topsoil replacement and revegetation success standards; published 8-30-06

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

Privacy Act; implementation; published 9-29-06

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

Bombardier; published 8-25-06

Fokker; published 8-25-06

McDonnell Douglas; published 8-25-06

Pratt & Whitney Canada; published 9-14-06

**RULES GOING INTO EFFECT SEPTEMBER 30, 2006****HOMELAND SECURITY DEPARTMENT****Coast Guard**

Ports and waterways safety; regulated navigation areas,

safety zones, security zones, etc.:

Susquehanna River, Havre de Grace, MD; published 9-15-06

Regattas and marine parades:

Wilmington YMCA Triathlon; published 8-1-06

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Apricots grown in Washington; comments due by 10-2-06; published 8-2-06 [FR E6-12410]

**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Swine and ruminant hides, skins and bird trophies from Africa; comments due by 10-3-06; published 8-4-06 [FR E6-12639]

Plant-related quarantine, domestic:

Citrus canker; comments due by 10-2-06; published 8-1-06 [FR E6-12314]

**AGRICULTURE DEPARTMENT****Commodity Credit Corporation**

Loan and purchase program:

Quality Samples Program; comments due by 10-2-06; published 8-3-06 [FR 06-06652]

**AGRICULTURE DEPARTMENT****Food and Nutrition Service**

Child nutrition programs:

Women, infants, and children; special supplemental nutrition program; discretionary WIC vendor provisions; comments due by 10-2-06; published 8-1-06 [FR 06-06596]

**COMMERCE DEPARTMENT****Foreign-Trade Zones Board**

Applications, hearings, determinations, etc.:

Georgia Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging;

Open for comments until further notice; published 7-25-06 [FR E6-11873]

**COMMERCE DEPARTMENT****Industry and Security Bureau**

Export administration

regulations:

Commerce Control List—Libya and Iraq; designations as state sponsors of terror; revisions; comments due by 10-2-06; published 8-31-06 [FR 06-07255]

**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Fishery and conservation

management:

Caribbean, Gulf, and South Atlantic fisheries—Amendment 26; reef fish resources of the Gulf of Mexico; comments due by 10-2-06; published 8-2-06 [FR 06-06645]

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific cod; comments due by 10-4-06; published 9-22-06 [FR 06-08074]

Shallow-water species; inseason adjustment; opening to vessels using trawl gear in Gulf of Alaska; comments due by 10-3-06; published 9-21-06 [FR 06-07939]

Marine mammals:

North Atlantic right whales; ship collisions reduction; speed restrictions implementation; comments due by 10-5-06; published 6-26-06 [FR 06-05669]

**DEFENSE DEPARTMENT**

Privacy Act; implementation; comments due by 10-6-06; published 8-7-06 [FR 06-06719]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:

Halogenated solvent cleaning; comments due by 10-2-06; published 8-17-06 [FR 06-06927]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

New Jersey; comments due by 10-2-06; published 8-31-06 [FR 06-07317]

Air quality implementation plans; approval and promulgation; various States:

Connecticut; comments due by 10-2-06; published 8-31-06 [FR 06-07311]

Illinois; comments due by 10-6-06; published 9-6-06 [FR E6-14543]

Nevada; comments due by 10-2-06; published 8-31-06 [FR 06-07320]

Texas; comments due by 10-6-06; published 9-6-06 [FR 06-07410]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Alachlor, etc.; comments due by 10-2-06; published 8-2-06 [FR 06-06605]

Ethylene glycol monomethyl ether and methylene blue; comments due by 10-2-06; published 8-2-06 [FR E6-12344]

Fenhexamid; comments due by 10-2-06; published 8-2-06 [FR E6-12348]

Wheat bran; comments due by 10-2-06; published 8-2-06 [FR E6-12345]

Toxic substances:

Chemical inventory update reporting; electronic reporting; comments due by 10-6-06; published 9-6-06 [FR E6-14716]

#### FEDERAL RESERVE SYSTEM

Equal opportunity rules:

Non-citizen employees; sensitive information access requirements; comments due by 10-6-06; published 8-7-06 [FR E6-12732]

#### HEALTH AND HUMAN SERVICES DEPARTMENT Centers for Medicare & Medicaid Services

Medicare:

Hospital inpatient prospective payment systems; 2007 FY occupational mix adjustment to wage index; implementation; comments due by 10-2-06; published 8-18-06 [FR 06-06692]

#### HEALTH AND HUMAN SERVICES DEPARTMENT

##### Food and Drug Administration

Human drugs:

Patent extension; regulatory review period determinations—

EMEND; comments due by 10-2-06; published 8-3-06 [FR E6-12573]

#### HOMELAND SECURITY DEPARTMENT

##### Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Colorado River, Parker, AZ; comments due by 10-2-06; published 8-31-06 [FR E6-14498]

Great Lakes; OH, MI, and MN; public meetings; comments due by 10-6-06; published 9-19-06 [FR 06-07783]

#### HOMELAND SECURITY DEPARTMENT

##### Transportation Security Administration

Maritime and land

transportation security:  
Drivers licensed by Canada or Mexico transporting hazardous materials to and within U.S.; comments due by 10-6-06; published 8-7-06 [FR 06-06754]

#### HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community development block grants:

Insular Areas Program; timeliness expenditure standards; comments due by 10-6-06; published 8-7-06 [FR 06-06702]

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Unclassified information technology resources; security requirements; comments due by 10-2-06; published 8-1-06 [FR E6-12351]

#### PERSONNEL MANAGEMENT OFFICE

Health benefits, Federal employees:

Continued coverage during retirement; requirements waiver; comments due by 10-6-06; published 8-7-06 [FR E6-12782]

#### SMALL BUSINESS ADMINISTRATION

Business loans:

Lender examination and review fees; comments due by 10-5-06; published 9-5-06 [FR 06-07399]

#### SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old age, survivors, and disability insurance—Immune system disorders evaluation; revised medical criteria; comments due by 10-3-06; published 8-4-06 [FR 06-06655]

#### TRANSPORTATION DEPARTMENT

##### Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 10-6-06; published 9-11-06 [FR E6-14945]

Boeing; comments due by 10-2-06; published 8-18-06 [FR E6-13649]

Learjet; comments due by 10-2-06; published 8-16-06 [FR E6-13453]

Pratt & Whitney; comments due by 10-2-06; published 8-3-06 [FR E6-12539]

Sikorsky; comments due by 10-2-06; published 8-1-06 [FR E6-12305]

Airworthiness standards:

Special conditions—  
AmSafe, Inc. inflatable safety belt; comments due by 10-6-06; published 9-6-06 [FR E6-14750]

Class E airspace; comments due by 10-5-06; published 8-21-06 [FR 06-07063]

#### TREASURY DEPARTMENT Internal Revenue Service

Income taxes, etc.:

Section 482; treatment of controlled services transactions and allocation of income and deductions from intangibles  
Public hearing; comments due by 10-6-06; published 8-17-06 [FR E6-13530]

Income taxes:

Section 901 and related matters; taxpayer definition; comments due by 10-3-06; published 8-4-06 [FR E6-12358]

Widely held fixed investment trusts; reporting requirements; cross-reference; comments due by 10-2-06; published 8-3-06 [FR 06-06650]

Procedure and administration:

Economic Analysis Bureau; return information disclosure; comments due by 10-4-06; published 7-6-06 [FR E6-09555]

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#### LIST OF PUBLIC LAWS

---

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#### H.R. 866/P.L. 109-284

To make technical corrections to the United States Code. (Sept. 27, 2006; 120 Stat. 1211)

#### H.R. 2808/P.L. 109-285

Abraham Lincoln Commemorative Coin Act (Sept. 27, 2006; 120 Stat. 1215)

#### S. 1773/P.L. 109-286

Pueblo de San Ildefonso Claims Settlement Act of 2005 (Sept. 27, 2006; 120 Stat. 1218)

#### S. 2784/P.L. 109-287

Fourteenth Dalai Lama Congressional Gold Medal Act (Sept. 27, 2006; 120 Stat. 1231)

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#### Last List September 28, 2006

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