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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131

[Docket No. AO–14–A74, et al.; DA–06–01]

Milk in the Northeast and Other Marketing Areas; Interim Order Amending the Orders

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A74.
1005	Appalachian	AO–388–A18.
1006	Florida	AO–356–A39.
1007	Southeast	AO–366–A47.
1030	Upper Midwest	AO–361–A40.
1032	Central	AO–313–A49.
1033	Mideast	AO–166–A73.
1124	Pacific Northwest	AO–368–A35.
1126	Southwest	AO–231–A68.
1131	Arizona	AO–271–A40.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends the manufacturing (make) allowances contained in the Class III and Class IV product price formulas applicable to all Federal milk marketing orders. Specifically, this decision adopts the following make allowances: cheese—$0.1682 per pound; butter—$0.1202 per pound; nonfat dry milk (NFDM)—$0.1570 per pound; and dry whey—$0.1956 per pound. More than the required number of producers have approved the issuance of the interim orders as amended.

DATES: *Effective Date:* February 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Ave., SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act), as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(a) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of January 2006, the month the initial public hearing was held, the milk of 52,570 dairy farmers was pooled on the Federal order system. Of the total, 49,153 dairy farmers, or 94 percent, were considered small businesses. During the same month, 536 plants were regulated by or reported their milk receipts to be pooled and priced on a Federal order. Of the total, 286 plants, or 53 percent, were considered small businesses.

This decision provides that all orders be amended by changing the make allowances contained in the formulas used to compute component prices and the minimum class prices in all Federal milk orders. Specifically, the make allowance for butter would increase from $0.1150 to $0.1202 per pound; the make allowance for cheese would increase from $0.1650 to $0.1682 per pound; the make allowance for NFDM would increase from $0.1400 to $0.1570 per pound; and the make allowance for dry whey would increase from $0.1590 to $0.1956 per pound.

The adoption of these new make allowances serves to approximate the average cost of producing cheese, butter, NFDM and dry whey for manufacturing plants located in Federal milk marketing areas.

The established criteria for the make allowance changes are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products. The Department's economic analysis [1] discusses impacts of the order amendments on order participants

[1] The Economic Analysis, Class III and Class IV Make Allowances, Tentative Final Decision is available on the Internet at *http://www.ams.usda.gov/dairy/proposals/classIII_IV_make_all.htm.*

including producers and manufacturers. Based on the economic analysis, we have concluded that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

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

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 30, 2005; published January 5, 2006 (71 FR 545).

Notice of Intent To Reconvene Hearing: Issued June 28, 2006; published June 23, 2006 (71 FR 36715).

Notice To Reconvene Hearing: Issued August 31, 2006; published September 6, 2006 (71 FR 52502).

Tentative Final Decision: Issued November 17, 2006; published November 22, 2006 (71 FR 67467).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other marketing orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Northeast and other aforesaid marketing orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the orders, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended on an interim basis, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held.

(b) *Additional Findings.* It is necessary and in the public interest to make these interim amendments to the Northeast and other marketing orders effective February 1, 2007. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The interim amendments to this order are known to handlers. The tentative partial decision containing the proposed amendments to the orders was issued on November 17, 2006.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on February 1, 2007.

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Northeast and other marketing orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of the interim order amending the Northeast and other marketing orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

Orders Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended on an interim basis, as follows:

■ 1. The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 is revised to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

■ 2. Section 1000.50 is amended by:
■ a. Revising paragraph (l);
■ b. Revising paragraph (m);
■ c. Revising paragraph (n)(2);
■ d. Revising paragraph (n)(3)(i);
■ e. Revising paragraph (o); and
■ f. Revising paragraph (q)(3).

The revisions read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month, less 12.02 cents, with the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, less 15.70 and multiplying the result by 0.99.

(n) * * *

(1) * * *

(2) Subtract 16.82 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) * * *

(i) Subtract 16.82 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and * * *

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 19.56 cents, with the result multiplied by 1.03. * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 12.02 cents from this average, and multiplying the result by 1.20.

Dated: December 26, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9943 Filed 12–27–06; 9:53 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 06–18]

RIN 1557–AD00

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1273]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AD11

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical correction.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the "agencies") are publishing this joint final rule to reinsert a provision that was inadvertently deleted when the agencies revised their Community Reinvestment Act (CRA) regulations in August 2005. This change is technical only and does not make any substantive revisions. The agencies are also amending their CRA regulations to increase the asset-size threshold to be used to define "small bank" and "intermediate small bank." The regulation is amended to state the increase in the threshold amount based on the annual percentage change in the Consumer Price Index.

DATES: Effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Karen Tucker, National Bank Examiner, Compliance Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785–6054; or Elizabeth A. Eurgubian, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Faye Murphy, Fair Lending Specialist, (202) 898–6613, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The agencies jointly are amending their regulations at 12 CFR parts 25, 228, and 345 implementing the CRA (12 U.S.C. 2901 *et seq.*) to make a technical correction related to regulatory changes that became effective on September 1, 2005 (70 FR 44256) and to publish an increase in the asset-size threshold for small and intermediate small banks as required by the regulations. The agencies will publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/.*

Description of the Joint Final Rule

The technical correction published today adds as paragraph (d) to §§ 25.26, 228.26, and 345.26 a provision stating, "The [agency] rates the performance of a bank evaluated under this section as provided in appendix A of this part." No change in the evaluation or rating of small banks will result from reinserting the provision as new paragraph (d). The agencies find it important to make this technical correction in order to provide clarification and consistency with other similar provisions in parts 25, 228, and 345.

The agencies' CRA regulations, as revised on September 1, 2005, provide that banks that, as of December 31 of either of the prior two calendar years, had assets of less than $1 billion are "small banks." Small banks with assets of at least $250 million as of December 31 of both of the prior two calendar years and less than $1 billion as of December 31 of either of the prior two calendar years are "intermediate small banks." 12 CFR 25.12(u)(1), 228.12(u)(1), and 345.12(u)(1). The regulations further provide that the agencies will publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 228.12(u)(2), and 345.12(u)(2).

During the period ending November 2006, the CPIW increased by 3.32 percent. As a result, the agencies are revising §§ 25.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2007, banks that, as of December 31 of either of the prior two calendar years, had assets of less than $1.033 billion are "small banks." Small banks with assets of at least $258 million as of December 31 of both of the prior two calendar years and less than $1.033 billion as of December 31 of either of the prior two calendar years are "intermediate small banks."

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

With regard to the revision adding back the paragraph referring to appendix A: Appendix A to the agencies' regulations describes the CRA ratings system for each performance test under the regulations and provides specific information on what institutions must demonstrate in order to achieve a particular rating. Prior to the regulatory changes adopted in 2005, each provision in the agencies' regulations describing a performance test included a paragraph stating that

the performance of a bank under that particular test is rated as provided in appendix A. In 2005, the agencies revised §§ 25.26, 228.26, and 345.26 and appendix A to include a new performance test for banks that meet the definition of "intermediate small bank." In adopting the revision, the paragraph in §§ 25.26, 228.26, and 345.26 referring to appendix A inadvertently was deleted. This revision adds that paragraph back into the regulations. For these reasons, the agencies, for good cause, find that the notice and comment procedures prescribed by the APA are unnecessary because the joint final rule is making a technical correction without substantive change to the provisions of parts 25, 228, and 345.

With regard to the adjusted asset-size thresholds: The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks are technical. Sections 25.12(u)(1), 228.12(u)(1), and 345.12(u)(1) are amended by adjusting the asset threshold as provided for in §§ 25.12(u)(2), 228.12(u)(2), and 345.12(u)(2). This amendment applies the formula established by the CRA regulations for determining adjustments to the small and intermediate small bank asset thresholds.

For these reasons, the agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. The agencies find that there is good cause for shortened notice because the revisions made by this joint final rule are minor, nonsubstantive, and technical. This joint final rule takes effect January 1, 2007.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

There are no collection of information requirements in this joint final rule.

Executive Order 12866

The OCC has determined that this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

Executive Order 13132

The OCC has determined that this joint final rule does not have any Federalism implications as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

■ For the reasons discussed in the joint preamble, 12 CFR part 25 is amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

■ 2. Revise § 25.12(u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.033 billion. Intermediate small bank means a small bank with assets of at least $258 million as of December 31 of both of the prior two calendar years and less than $1.033 billion as of December 31 of either of the prior two calendar years.

* * * * *

■ 3. Add § 25.26(d) to read as follows:

§ 25.26 Small bank performance standards.

* * * * *

(d) *Small bank performance rating.* The OCC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

Federal Reserve System

12 CFR Chapter II

■ For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 2. Revise § 228.12(u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.033 billion. Intermediate small bank means a small bank with assets of at least $258 million as of December 31 of both of the prior two calendar years and less than $1.033 billion as of December 31 of either of the prior two calendar years.

* * * * *

■ 3. Add § 228.26(d) to read as follows:

§ 228.26 Small bank performance standards.

* * * * *

(d) *Small bank performance rating.* The Board rates the performance of a bank evaluated under this section as provided in appendix A of this part.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 1. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

■ 2. Revise § 345.12(u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition.* Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.033 billion. Intermediate small bank means a small bank with assets of at least $258 million as of December 31 of both of the prior two calendar years and less than $1.033 billion as of December 31 of either of the prior two calendar years.

* * * * *

■ 3. Add § 345.26(d) to read as follows:

§ 345.26 Small bank performance standards.

* * * * *

(d) *Small bank performance rating.* The FDIC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

Dated: December 15, 2006.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, December 19, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 18th day of December, 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–9944 Filed 12–28–06; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AD14

Repeal of Reports and Public Disclosure of Indebtedness of Executive Officers and Principal Shareholders to a State Nonmember Bank and Its Correspondent Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is repealing its regulations governing reporting on lending by a State nonmember bank and its correspondent banks to executive officers and principal shareholders. The FDIC is taking this action in accordance with the Financial Services Regulatory Relief Act of 2006, section 601, which repealed the provision under which the FDIC promulgated these regulations.

DATES: This rule becomes effective on December 22, 2006.

FOR FURTHER INFORMATION CONTACT: Karen Jones Currie Examination Specialist, FDIC, 550 17th Street, NW., Washington, DC 20429; telephone: (202) 898–3981; or electronic mail: *kcurrie@fdic.gov;* or Michelle Borzillo, Counsel, FDIC, 550 17th Street, NW., Washington, DC 20230; telephone: (202) 898–7400; facsimile: (202) 898–8815; or electronic mail: *mborzillo@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 28, 1983, the FDIC issued a final rule entitled "Reports and Public Disclosure of Indebtedness of Executive Officers and Principal Shareholders to a State Nonmember Bank and Its Correspondent Banks." This rule implemented section 7(k) of the Federal Deposit Insurance Act ("FDI Act") and section 106(b)(2)(G) of the Bank Holding Company Act Amendments of 1970 ("BHCA Amendments") contained in sections 428 and 429 of the Garn-St. Germain Depository Institutions Act of 1982 ("Garn-St. Germain Act"). It restated the existing statutory requirement which required insiders to report to the board of directors of their bank any indebtedness to the correspondent banks of that bank. The statute also provided that the bank or the agency shall make the information available, upon request, to the public. The appropriate Federal banking agencies were authorized to issue rules and regulations to require the reporting and public disclosure of information concerning insider indebtedness.

II. Repeal of the Reports and Public Disclosure of Indebtedness of Executive Officers and Principal Shareholders

On October 13, 2006, the President signed into law Public Law No. 109–351, the Financial Services Regulatory Relief Act of 2006 (the Act). Section 601 of the Act struck the following statutory provisions:

- Requirement that a bank must include a separate report with its quarterly Reports of Condition and Income ("Call Report") on any extensions of credit the bank has made to its executive officers since its last Call Report (section 22(g)(9) of the Federal Reserve Act, codified at 12 U.S.C. 375a(9));
- Requirement that an executive officer of a bank file a report with the bank's board of directors whenever the executive officer obtains an extension of credit from another bank in an amount that exceeds the amount the executive officer could obtain from the bank (section 22(g)(6) of the Federal Reserve Act, codified at 12 U.S.C. 375a(6));
- Requirement that an executive officer or principal shareholder of a bank must file an annual report with the bank's board of directors during any year in which the officer or shareholder has an outstanding extension of credit from a correspondent bank of the bank (section 106(b)(2)(G)(i) of the BHCA, codified at 12 U.S.C. 1972(2)(G)(i)); and
- The authorization of the Federal banking agencies to issue regulations that require the reporting and public disclosure of information related to extensions of credit received by an executive officer or principal shareholder of a bank from a correspondent bank of the bank (section 106(b)(2)(G)(ii) of the BHCA, codified at 12 U.S.C. 1972(2)(G)(ii)).

Neither the repeal of Section 106 (b)(2)(G) of the BHCA Amendments nor part 349 changes the substantive restrictions on loans by depository institutions to their executive officers and principal shareholders or loans to executive officers and principal shareholders of depository institutions by their correspondent banks.

Because the new law strikes the specific requirement underpinning the rule on Reports and Public Disclosure of

Indebtedness of Executive Officers and Principal Shareholders to a State Nonmember Bank and Its Correspondent Banks, and because the FDIC does not believe that the reports at issue contribute significantly to the effective monitoring of insider lending or the prevention of insider abuse, the FDIC is repealing its regulations at part 349.

III. Exemption From Public Comment

The Act repeals the specific statutory requirements for these reports. However, the FDIC retains authority under other provisions of law to collect information regarding insider lending by depository institutions. The FDIC does not believe these reports contribute significantly to the effective monitoring of insider lending or the prevention of insider abuse. Under these circumstances, providing prior notice and an opportunity for public comment on whether to repeal these rules would serve no useful purpose. As a result, under authority at 5 U.S.C. 553(b)(B), FDIC finds good cause to waive such procedures. Moreover, no Federal agency's or private sector entity's interest will be adversely affected by their repeal. Further, and for the same reason, FDIC finds good cause pursuant to 553(d)(3) to waive the requirement of a 30-day delay in effect for this rule. Thus, this rule is effective immediately.

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required under 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act are inapplicable. Thus, no regulatory flexibility analysis is required and none has been prepared.

Paperwork Reduction Act

At the FDIC's request, the Office of Management and Budget (OMB) has deleted the collection of information associated with this rule (formerly approved by OMB under Control No. 3064–0023, "Reports of Indebtedness of Executive Officers and Principal Shareholders to Correspondent Banks and to Own Bank," collected using FFIEC form 004). The reduction in paperwork burden imposed on the public resulting from the elimination of this collection of information will be 47,998 hours a year. The Federal Financial Institutions Examination Council (FFIEC) is providing notice to all affected parties that they will no longer need to provide this information to the agencies.

Also, as discussed above, section 601 of the Act eliminated the requirement that a bank include a separate report with its Call Report each quarter on any extensions of credit the bank has made to its executive officers since the date of its last Call Report. Accordingly, as of December 31, 2006, the FDIC will no longer require banks to provide the "Special Report" on loans to executive officers, which had been included after the final page of the Call Report forms in previous quarters. At the FDIC's request, OMB has approved this change in the Call Report. The resulting reduction in paperwork burden imposed on the public will be 5,247 hours a year.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a federal agency issues a final rule. The FDIC will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the rule does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 349

Reports, Public disclosure, Indebtedness of principal shareholders, Indebtedness of executive officers, State nonmember banks, Correspondent banks.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends title 12, chapter III of the Code of Federal Regulations under the authority of 5 U.S.C. 553 by removing and reserving part 349.

PART 349—[REMOVED AND RESERVED]

Dated at Washington, DC, this 22nd day of December, 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–22260 Filed 12–28–06; 8:45 am]

BILLING CODE 6714–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228 and 229

[Release Nos. 33–8765; 34–55009; File No. S7–03–06]

RIN 3235–AI80

Executive Compensation Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rules with request for comments.

SUMMARY: The Securities and Exchange Commission is adopting, as interim final rules, amendments to the disclosure requirements for executive and director compensation. The amendments to Item 402 of Regulations S–K and S–B revise Summary Compensation Table and Director Compensation Table disclosure with respect to stock awards and option awards to provide disclosure of the compensation cost of awards over the requisite service period, as described in Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004) *Share-Based Payment* (FAS 123R). FAS 123R defines a requisite service period as the period or periods over which an employee is required to provide service in exchange for a share-based payment. The revised disclosure replaces disclosure in the Summary Compensation Table and Director Compensation Table of the aggregate grant date fair value of awards computed in accordance with FAS 123R. The amendments revise the Grants of Plan-Based Awards Table to add a column showing, on a grant-by-grant basis, the full grant date fair value of awards computed in accordance with FAS 123R. The amendments also revise the Grants of Plan-Based Awards Table to include information concerning repriced or materially modified options, stock appreciation rights and similar option-like instruments, disclosing the incremental fair value computed as of the repricing or modification date computed in accordance with FAS 123R. The amendments to the Director Compensation Table in Item 402 of Regulation S–K require footnote disclosure corresponding to the new Grants of Plan-Based Awards Table fair value disclosures. The amendments are intended to provide investors with more complete and useful disclosure about executive compensation. Disclosing the compensation cost of stock and option awards over the requisite service period will give investors a better idea of the compensation earned by an executive or

director during a particular reporting period, consistent with the principles underlying the financial statement disclosure; and retaining the requirement to disclose the grant date fair value will give investors useful information about the total impact of compensation decisions made by a company in a particular reporting period.

DATES: *Effective Date:* The amendments are effective December 29, 2006.

Comment Date: As discussed below, we are publishing interim final regulations. We will, however, consider any comments received on or before January 29, 2007 and will revise the interim final rule amendments to Item 402 of Regulations S–K and S–B if necessary.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–03–06 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–03–06. This file number should be included on the subject line if e-mail is used. To help us 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/proposed/shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: David Lynn or Anne Krauskopf, at (202) 551–3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Item 402 [1] of Regulations S–K [2] and S–B [3] as interim final rules.

I. Background

On July 26, 2006, we voted to adopt revisions to our rules governing disclosure of executive compensation.[4] We intended these revisions to provide investors with a clearer and more complete picture of compensation to principal executive officers, principal financial officers, the other highest paid executive officers and directors.[5]

Two significant features of the amended disclosure rules were revisions to the Summary Compensation Table [6] and adoption of a new Grants of Plan-Based Awards Table.[7] Among other things, we revised the Summary Compensation Table to include a new "Total" column [8] that aggregates the total dollar value of each form of compensation quantified in the other columns. We also adopted a Director Compensation Table,[9] modeled on the revised Summary Compensation Table.

Under these rules, in order to calculate a total dollar amount of compensation in the Summary Compensation Table for a particular fiscal year, a dollar value for all equity awards—rather than the number of securities underlying an equity award—must be disclosed. We required this valuation to be based on the grant date fair value of the awards determined pursuant to FAS 123R. In particular, for both the Stock Awards and Option Awards columns,[10] we amended the rules to require disclosure of the aggregate grant date fair value of the awards computed in accordance with FAS 123R.[11] This approach provided for Summary Compensation Table and Director Compensation Table disclosure of these awards, consistent with the timing of option and stock awards disclosure that had applied in the Summary Compensation Table since 1992.[12]

The comments we received regarding the dollar amount for Stock Awards and Option Awards in the Summary Compensation Table reflected differing views. Some commenters expressed support for requiring companies to report the full grant date fair value in the fiscal year of the award because it would provide a more complete representation of compensation and would be more consistent with the purpose of executive compensation disclosure.[13] Others stated that we should require Summary Compensation Table disclosure of the proportionate

[1] 17 CFR 229.402 and 17 CFR 228.402.

[2] 17 CFR 229.10 *et seq.*

[3] 17 CFR 228.10 *et seq.*

[4] *Executive Compensation and Related Person Disclosure*, Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] (the "2006 Executive Compensation Release"). These revisions became effective on November 7, 2006.

[5] The discussion that follows focuses on amendments to Item 402 of Regulation S–K, with references to differences from Item 402 of Regulation S–B where appropriate.

[6] Item 402(c) of Regulation S–K, which presents information for each of the company's last three completed fiscal years, and Item 402(b) of Regulation S–B, which presents information for each of a small business issuer's last two completed fiscal years.

[7] Item 402(d) of Regulation S–K.

[8] Item 402(c)(2)(x) of Regulation S–K and Item 402(b)(2)(x) of Regulation S–B.

[9] Item 402(k) of Regulation S–K and Item 402(f) of Regulation S–B. Each of these tables presents information for the last completed fiscal year.

[10] Items 402(c)(2)(v) and (vi) of Regulation S–K and Items 402(b)(2)(v) and (vi) of Regulation S–B require these columns in the Summary Compensation Table. Items 402(k)(2)(iii) and (iv) of Regulation S–K and Items 402(f)(2)(iii) and (iv) of Regulation S–B require these columns in the Director Compensation Table.

[11] 2006 Executive Compensation Release at Section II.C.1.c.i.

[12] See *Executive Compensation Disclosure*, Release No. 33–6962 (Oct. 16, 1992) [57 FR 48126] (the "1992 Release"). Before the amendments adopted in the 2006 Executive Compensation Release, the Summary Compensation Table had required disclosure of the sum of the number of securities underlying stock options granted (including options that subsequently have been transferred), with or without tandem stock appreciation rights (SARs), and the number of free-standing SARs. The Summary Compensation Table also had required disclosure of the dollar value (net of any consideration paid by the named executive officer) of any award of restricted stock, calculated by multiplying the closing market price of the company's unrestricted stock on the date of grant by the number of shares awarded. Alternatively, restricted stock awards subject to performance-based vesting conditions could have been reported as long-term incentive plan (LTIP) awards in the separate Long-Term Incentive Plan Awards table, with vesting later reported in the Summary Compensation Table LTIP Payouts column.

[13] See, for example, letters from California Public Employees' Retirement System; CFA Centre for Financial Market Integrity, dated April 13, 2006; Connecticut Retirement Plans and Trust Funds, dated April 10, 2006; Leo J. Burns; Governance for Owners USA, Inc.; Laborers International Union of North America; Nancy Lucke Ludgus; jointly, California Public Employees' Retirement System, California State Teachers' Retirement System, Co-operative Insurance Society—UK, F&C Asset Management—UK, Illinois State Board of Investment, London Pensions Fund Authority—UK, New York State Common Retirement Fund, New York City Pension Funds, Ontario Teachers' Pension Plan, PGGM Investments—Netherlands, Public Sector and Commonwealth Super (PSS/CSS)—Australia, RAILPEN Investments—UK, State Board of Administration (SBA) of Florida, Stichting Pensioenfonds ABP—Netherlands, UniSuper Limited—Australia, and Universities Superannuation Scheme—UK; State Board of Administration (SBA) of Florida; Teamsters Local 671 Health Services and Insurance Plan; Southwestern Pennsylvania and Western Maryland Area Teamsters and Employers Pension Fund; United Church Foundation, Inc.; Washington State Investment Board; and Western PA Teamsters & Employers Welfare Fund.

amount of an award's total fair value that is recognized in the company's financial statements for the fiscal year.[14] Some of these commenters expressed concerns that disclosing the full grant date fair value would overstate compensation earned related to service rendered for the year, and might confuse the discussion and analysis of compensation policies and practices.[15] Others stated that requiring immediate reporting of the full grant date fair value would not necessarily reflect the cost to the company or the benefit to the named executive officer or director, and that the actual amounts earned later could be substantially different.[16] For example, a performance-based stock award might never be earned, yet the entire grant date fair value of the award is required to be reported in the Summary Compensation Table in the fiscal year of grant.[17] Some commenters expressed concern regarding inconsistency with the presentation of non-equity incentive plan compensation,[18] which is reported when earned.[19]

Commenters also suggested that providing compensation disclosure that is consistent with the company's financial statements would make it easier for analysts and investors to analyze compensation for top executives.[20] One commenter noted particularly that the Financial Accounting Standards Board engaged in a thorough and extensive process before concluding that financial statements should reflect the compensation cost of the award proportionately over the vesting period.[21] Another commenter stated that the accounting rules shape decision-making on executive compensation.[22] Regarding identification of the most highly compensated executive officers, one commenter noted that reporting full grant date fair value would cause wide year-to-year swings in reported compensation when in fact the executive is earning a consistent level of compensation, and cause inconsistencies in the identification of named executive officers from year-to-year.[23]

Our comprehensive revisions also adopted the Grants of Plan-Based Awards Table to supplement and complement Summary Compensation Table disclosure of stock and option awards by disclosing, among other things, the number of shares of stock or units comprising or underlying the award. This supplemental table shows the terms of grants, including estimated future payouts for both equity incentive plans and non-equity incentive plans,[24] with separate disclosure for each grant.

II. Discussion

Under FAS 123R, while the compensation cost is initially measured based on the grant date fair value of an award, it is generally recognized for financial reporting purposes over the period in which the employee is required to provide service in exchange for the award (generally the vesting period). When and where to disclose this compensation cost as executive compensation disclosure requires a careful balancing. In the 2006 Executive Compensation Release, we chose to require disclosure of the full grant date fair value as compensation when the grant is made. As we explained, on balance we chose that approach for the purpose of executive compensation disclosure for a variety of reasons, including that it informs investors of current actions regarding plan awards, and emphasizes the importance of the compensation committee's compensation decisions for the most recent fiscal year.

We recognize, however, that no one approach to disclosure of stock and option awards addresses all of the issues regarding disclosure of these forms of compensation. Upon further consideration, we have concluded that a combination of disclosure of the compensation cost associated with equity awards as that cost is recognized in the financial statements in the Summary Compensation Table, combined with disclosure of the grant date fair value of those awards on a grant-by-grant basis in the Grants of Plan-Based Awards Table, would provide a fuller and more useful picture of executive compensation than our recently adopted rules. Thus, we now adopt, as interim final rules, amendments that implement an approach to Summary Compensation Table disclosure of equity awards that provides disclosure of compensation cost of those awards over the requisite service period, as described in FAS 123R. Adopting the amendments as interim final rules—before issuers are required to comply with the recently adopted amendments—will avoid presentation of executive compensation disclosure in the first year that would be different in later years. Measuring compensation in this manner should provide investors with a clearer view of the annual compensation earned by executives and the annual compensation costs to a company, consistent with the timing of financial statement reporting. Measuring compensation in this manner also should eliminate the potential for distortion in identifying named executive officers based on a measure that reflects the full grant date fair value of awards, such as when a single large grant that will be earned by services to be performed over multiple years changes the composition of the named executive officers in the Summary Compensation Table.

In addition, we are revising the Grants of Plan-Based Awards Table to add a column showing the full grant date fair value of each award granted, computed in accordance with FAS 123R. This will provide investors a more complete perspective of the compensation decisions made with respect to the last completed fiscal year, and facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding compensation awarded to, earned by, or paid to the named executive officers.[25] As a result of the amendments, investors will have more disclosure and ultimately a more complete picture of a company's

[14] See, for example, letters from the SEC Regulations Committee of the American Institute of Certified Public Accountants ("AICPA"); Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.; Chamber of Commerce of the United States of America ("Chamber of Commerce"); Computer Sciences Corporation; Deloitte & Touche LLP ("Deloitte"); Ernst & Young LLP ("E&Y"); Fenwick & West LLP ("Fenwick"); Foley & Lardner LLP ("Foley"); HR Policy Association; American Bar Association, Joint Committee on Employee Benefits; and KPMG LLP ("KPMG").

[15] See letters from Chamber of Commerce and E&Y.

[16] See letters from Foley (noting that awards would be forfeited if the executive terminates employment before expiration of the vesting period) and WorldatWork.

[17] See letter from Compass Bancshares, Inc.

[18] See, for example, letters from The Corporate & Securities Law Committee and the Employment & Labor Law Committee of the Association of Corporate Counsel; Amalgamated Bank Long-View Funds; BDO Seidman, LLP ("BDO Seidman"); Council of Institutional Investors, dated March 29, 2006; IUE–CWA Pension Fund and 401(k) Plan; and Mercer Human Resources Consulting.

[19] Item 402(c)(2)(vii) of Regulation S–K and Item 402(b)(2)(vii) of Regulation S–B.

[20] See letters from AICPA; Chamber of Commerce; Deloitte; EY; and KPMG.

[21] See letter from Fenwick.

[22] See letter from Steven Hall & Partners. If this is the case, we would anticipate that this influence may be discussed in the Compensation Discussion and Analysis. See Item 402(b)(2)(xii) of Regulation S–K.

[23] See letter from Fenwick.

[24] Equity incentive plan and non-equity incentive plan are both defined in Item 402(a)(6)(iii) of Regulation S–K and Item 402(a)(5)(iii) of Regulation S–B.

[25] The Compensation Discussion and Analysis section is required by Item 402(b) of Regulation S–K. Instruction 2 to Item 402(b) provides, among other things, that the Compensation Discussion and Analysis should be of the information contained in the tables and otherwise disclosed pursuant to Item 402 of Regulation S–K.

compensation decisions. We believe that this approach will better fulfill the Commission's objective of informing investors of current actions regarding plan awards and compensation decisions, and that this disclosure ultimately will be easier for companies to prepare and investors to understand.

A. Summary Compensation Table

Under the amendments we adopt today as interim final rules, the dollar amount of compensation cost recognized over the requisite service period, as described in FAS 123R, will be the amount reported in the Stock Awards and Option Awards columns in the Summary Compensation Table.[26] Compensation cost will include both the amounts recorded as compensation expense in the income statement for the fiscal year as well as any amounts earned by an executive that have been capitalized on the balance sheet for the fiscal year. This amount will include compensation cost recognized in the financial statements with respect to awards granted in previous fiscal years and the subject fiscal year. The amendments revise the corresponding columns in the Director Compensation Table in the same way.[27]

We also amend the related instruction calling for a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the company's financial statements, footnotes to the financial statements, or discussion in Management's Discussion and Analysis,[28] and providing that the referenced sections are deemed part of the Item 402 disclosure, to also require footnote disclosure of awards that are forfeited.[29] Since the amendments correlate Summary Compensation Table disclosure of stock and option awards to the dollar amount recognized for financial statement purposes with respect to the fiscal year, the other related instruction, limiting the amount reported with respect to a repriced option or SAR to the FAS 123R incremental fair value,[30] is rescinded. As discussed below,[31] this information and the full grant date fair value disclosure formerly disclosed in the Summary Compensation Table is moved to the Grants of Plan-Based Awards Table, where it is required on a grant-by-grant basis.

We also revise the instruction to the Summary Compensation Table Salary and Bonus columns regarding salary or bonus forgone at the election of a named executive officer in favor of receiving a non-cash form of compensation.[32] Reporting such forgone amounts in the Stock Awards or Option Awards columns after salary or bonus is earned is inconsistent with the original terms of the award that would have compensated the named executive officer in cash. Accordingly, the revised instruction requires the forgone amount to be reported in the Salary or Bonus column, with footnote disclosure of the receipt of non-cash compensation that refers to the Grants of Plan-Based Awards Table where the stock, option or non-equity incentive plan award elected is reported.

Under FAS 123R, the classification of an award as an equity or liability award is an important aspect of the accounting because the classification will affect the measurement of compensation cost recognized in each financial statement reporting period. Awards with cash-based settlement, certain repurchase features, or other features that do not result in an employee bearing the risks and rewards normally associated with share ownership for a specified period of time are classified as liability awards under FAS 123R. For an award classified as an equity award under FAS 123R, the compensation cost recognized is fixed for a particular award and, absent modification of the award, is not revised with subsequent changes in market prices or other assumptions used for purposes of the valuation. In contrast, liability awards are initially measured at fair value on the grant date, but for purposes of recognition in the financial statements are then re-measured at each financial statement reporting date through the date the awards are settled under FAS 123R. Under the amendments to the Summary Compensation Table and Director Compensation Table, these re-measurements of liability awards will be reflected in executive compensation disclosure, providing a more comprehensive measure of liability awards over time.

FAS 123R requires a company to aggregate individuals receiving awards into relatively homogenous groups, for example, executives and non-executives, with respect to exercise and post-vesting employment termination behaviors for the purpose of determining expected term assumption used for computing the grant date fair value. The rules we adopt today as interim final rules, like the recently adopted amendments, are not intended to change the method used to value employee stock options for purposes of FAS 123R or to affect the judgments as to reasonable groupings for purposes of determining the expected term assumption required by FAS 123R. Where a company uses more than one group, the measurement of grant date fair value for purposes of Item 402 will be derived using the expected term assumption for the group that includes the named executive officers (or the group that includes directors for purposes of the Director Compensation Table).

In determining the amount recognized, FAS 123R requires a company to estimate at the grant date the number of awards that ultimately will be earned. Those estimates are revised each period as awards vest or are forfeited. The interim final rules that we adopt today are not intended to change the method a company uses to estimate forfeitures under FAS 123R. However, under the amendments, the compensation cost disclosed for Item 402 purposes will not include an estimate of forfeitures related to service-based vesting conditions. Compensation cost for awards containing service-based vesting conditions[33] will be disclosed assuming that a named executive officer will perform the requisite service to vest in the award. If the named executive officer fails to perform the requisite service and forfeits the award, the

[26] Items 402(c)(2)(v) and (vi) of Regulation S–K and Items 402(b)(2)(v) and (vi) of Regulation S–B.

[27] Items 402(k)(2)(iii) and (iv) of Regulation S–K and Items 402(f)(2)(iii) and (iv) of Regulation S–B.

[28] Item 303 of Regulation S–K [17 CFR 229.303].

[29] Former Instruction 1 to Item 402(c)(2)(v) and (vi) of Regulation S–K and former Instruction 1 to Item 402(b)(2)(v) and (vi) of Regulation S–B. Each of these instructions is redesignated as the Instruction to the respective Item.

[30] Former Instruction 2 to Item 402(c)(2)(v) and (vi) of Regulation S–K and former Instruction 2 to Item 402(b)(2)(v) and (vi) of Regulation S–B. With respect to the Director Compensation Table, we correspondingly amend the Instruction to Item 402(k) of Regulation S–K and the Instruction to Item 402(f) of Regulation S–B to reflect this rescission. We also make a technical correcting amendment to the Instruction to Item 402(k) of Regulation S–K so that it also applies Instructions 1 and 5 to Item 402(c)(2)(ix). These two instructions regarding the All Other Compensation column address the treatment of non-equity incentive plan awards and earnings and earnings on stock and options, and accrued amounts under termination or change in control plans or arrangements, respectively.

[31] See Section II.B.

[32] Instruction 2 to Item 402(c)(2)(iii) and (iv) of Regulation S–K and Instruction 2 to Item 402(b)(2)(iii) and (iv) of Regulation S–B. Compensation that is within the scope of FAS 123R, and hence reportable in the Stock Awards or Option Awards columns, is specified by Paragraph 4 of FAS 123R.

[33] As defined in Appendix E of FAS 123R, a service condition is "a condition affecting the vesting, exercisability, exercise price, or other pertinent factors used in determining the fair value of an award that depends solely on an employee rendering service to the employer for the requisite service period. A condition that results in the acceleration of vesting in the event of an employee's death, disability, or termination without cause is a service condition."

amount of compensation cost previously disclosed in the Summary Compensation Table will be deducted in the period during which the award is forfeited.[34]

Under the interim final rules, compensation cost for awards containing a performance-based vesting condition[35] will be disclosed in the Summary Compensation Table only if it is probable that the performance condition will be achieved. If the achievement of the performance condition is not probable at the grant date but becomes probable in a subsequent period, the proportionate amount of compensation cost based on service previously rendered will be disclosed in the Summary Compensation Table during the period in which achievement of the performance condition becomes probable. Likewise, if the achievement of a performance condition was previously considered probable but in a later period is no longer considered probable, the amount of compensation cost previously disclosed in the Summary Compensation Table will be reversed during the period in which it is determined that achievement of the performance condition is no longer probable.[36]

In summary, if an award with service or performance-based conditions ultimately vests, the amount cumulatively recognized in the Summary Compensation Table over a period of years should equal 100% of the grant date fair value of the equity award or the total fair value at the date of settlement for a liability award. The amount cumulatively reported in the Summary Compensation Table for awards with service or performance-based conditions that do not vest will be zero. On this basis, the amount cumulatively reported for equity awards with graded vesting will equal 100% of the grant date fair value of the portion of the award that vests. For example, if 20% of an award to the principal executive officer vests in each of the five years following the grant and the principal executive officer leaves the company after the fourth year of service, 80% of the award's grant date fair value will be reported cumulatively in the Summary Compensation Table over those four years of service.[37]

In some cases, correlating disclosure in the Stock Awards and Option Awards columns to the financial statement recognition timing could result in a negative number. For example, a negative number would result if the value of awards forfeited in a fiscal year by a named executive officer exceeds the value of other awards recognized in the Summary Compensation Table for that same named executive officer. Such a negative number will be disclosed in the relevant column and affect the calculation of "total" for purposes of determining who is a named executive officer. In addition, there could be instances when compensation cost is recognized in the financial statements under FAS 123R in the year before the award is granted. This occurs when an employee is rendering services in exchange for an award, but a grant has not occurred because the terms of the award have not yet been finalized. There also could be instances where a grant has been made, but compensation cost is not recognized in the financial statements. This occurs when an award has a performance condition that is not considered at the date of grant to be probable to vest.[38]

Under FAS 123R, an award granted to a retirement eligible employee who is entitled to retain the award at retirement generally is not considered to have a substantive service requirement. This is because the employee can keep the benefit of the award without performing services, regardless of the stated vesting terms. In this circumstance, the full grant date fair value of the award is recognized in the company's financial statements in the year of grant. Thus, the interim final rules do not effect significant change from the former requirements for computing Stock Awards and Option Awards disclosure for retirement eligible executives.

The amendments do not revise the instruction regarding the determination of the most highly compensated executive officers for purposes of identifying named executive officers other than the principal executive officer and principal financial officer.[39] This determination will continue to be based on total compensation, reduced by the sum of the increase in pension values and nonqualified deferred compensation above-market or preferential earnings reported in column (h) of the Summary Compensation Table, subject to a $100,000 threshold. However, the amendments to the Stock Awards and Option Awards disclosure may reduce potential fluctuations in total compensation resulting from year-to-year differences in equity awards, as a commenter suggested.[40] Consequently, a company's identification of named executive officers may be more consistent from year-to-year, facilitating investors' ability to track year-to-year changes in compensation for the same persons.

B. Grant of Plan-Based Awards Table

Under the interim final rules, the grant date fair value information with respect to equity awards to named executive officers is moved to the Grants of Plan-Based Awards Table and expanded to include grant-by-grant information. As described above, this should provide investors a more complete perspective of the compensation decisions made with respect to the last completed fiscal year and facilitate Compensation Discussion and Analysis disclosure of the

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[34] This approach to forfeitures was suggested in the letter from BDO Seidman.

[35] As defined in Appendix E of FAS 123R, a performance condition is "a condition affecting the vesting, exercisability, exercise price or other pertinent factors used in determining the fair value of an award that relates to both (a) an employee's rendering service for a specified (either explicitly or implicitly) period of time and (b) achieving a specified performance target that is defined solely by reference to the employer's own operations (or activities). Attaining a specified growth rate in return on assets, obtaining regulatory approval to market a specified product, selling shares in an initial public offering or other financing event, and a change in control are examples of performance conditions for purposes of this Statement. A performance target also may be defined by reference to the same performance measure of another entity or group of entities. For example, attaining a growth rate in earnings per share that exceeds the average growth rate in earnings per share of other entities in the same industry is a performance condition for purposes of this Statement. A performance target might pertain either to the performance of the enterprise as a whole or to some part of the enterprise, such as a division or an individual employee."

[36] Disclosing stock and option awards as they are recognized for financial statement reporting purposes may not mirror the timing of disclosure of non-equity incentive plan compensation. Because there is not one clearly required or accepted standard for measuring the value at grant date of non-equity incentive plan awards that reflects the applicable performance contingencies, as there is for equity-based awards under FAS 123R, we have not included such a value in the Summary Compensation Table disclosure. Instead, non-equity incentive plan compensation is disclosed in the Summary Compensation Table in the year when the relevant specified performance criteria are satisfied and the compensation earned, whether or not payment is actually made to the named executive officer in that year. See Item 402(c)(2)(vii) of Regulation S–K, Item 402(b)(2)(vii) of Regulation S–B and 2006 Executive Compensation Release at Section II.C.1.c.ii.

[37] This example of graded vesting assumes an award with service-based vesting conditions only, where the company has elected the straight-line attribution method pursuant to paragraph 42 of FAS 123R.

[38] Footnote 25 of FAS 123R provides that whether vesting is probable for this purpose is determined based on the standard set forth in Financial Accounting Standards Board Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* (FAS 5), at paragraph 3, which defines probable as "the future event or events are likely to occur."

[39] Instruction 1 to Item 402(a)(3) of Regulation S–K and Instruction 1 to Item 402(a)(2) of Regulation S–B.

[40] See letter from Fenwick.

company's policies and decisions regarding named executive officers' compensation.[41]

The amendments revise the Grants of Plan-Based Awards Table to add column (*l*), showing the full grant date fair value of each equity award, computed in accordance with FAS 123R.[42] Presenting this information on a grant-by-grant basis is consistent with the presentation of other information in the Grants of Plan-Based Awards Table. This presentation should continue to provide investors a clear picture of the value of options when granted, including in-the-money awards.[43] The table will continue to disclose the number of shares underlying an award and other details regarding the award.[44] To conform the presentation for directors, we amend the Director Compensation Table in Item 402 of Regulation S–K to require footnote disclosure of the grant date fair value of each equity award computed in accordance with FAS 123R.[45] Under the amendments, grant date fair value information is not required regarding equity awards to named executive officers or directors of companies covered by Item 402 of Regulation S–B, which does not include a Grants of Plan-Based Awards Table.[46] This differential treatment of small business issuers is consistent with other aspects of Item 402 of Regulation S–B, which in general recognizes that the executive compensation arrangements of small business issuers typically are less complex than those of other public companies and that satisfying disclosure requirements applicable to other public companies may impose unwarranted burdens on small business issuers.[47]

The interim final rules further amend the Grants of Plan-Based Awards Table to include information concerning repriced or materially modified options, stock appreciation rights and similar option-like instruments, disclosing the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R.[48] Consistent with the presentation of other information in the Grants of Plan-Based Awards Table, this disclosure will be made on a grant-by-grant basis. The Director Compensation Table in Item 402 of Regulation S–K also is amended to require footnote disclosure of the same information.[49] Consistent with FAS 123R, this disclosure does not apply to any modification that equalizes the fair value of an award before and after the modification, such as a modification made pursuant to an antidilution provision that requires adjustment in the event of a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs. Similarly, this disclosure does not apply to a repricing that occurs through a pre-existing formula or mechanism in the terms of the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, as the adjustment feature would have been reflected in the grant date fair value of the award.[50] As described in the 2006 Executive Compensation Release, disclosure also will be provided in the Compensation Discussion and Analysis and the narrative disclosures for the Summary Compensation Table and Grants of Plan-Based Awards Table,[51] as appropriate, regarding awards granted in connection with repricing transactions.[52]

III. Administrative Law Matters and Request for Comments

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[53] This requirement does not apply, however, if the agency "for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest."[54]

The Commission, for good cause, finds that notice and solicitation of comment regarding the amendments to Item 402 of Regulations S–K and S–B is impracticable, unnecessary and contrary to the public interest. First, the subject matter of the amendments already was subject to extensive public comment in connection with the 2006 Executive Compensation Release, and the Commission has considered those comments thoroughly in adopting these interim final rules.

Second, compliance with the Item 402 amendments adopted in the 2006 Executive Compensation Release is required for proxy and information statements filed on or after December 15, 2006 that are required to include Item 402 disclosure for fiscal years ending on or after December 15, 2006, and for Forms 10–K and 10–KSB for fiscal years ending on or after December 15, 2006.[55] This compliance schedule affects all public companies with a calendar year fiscal year that are required to file proxy or information statements, which we estimate to number approximately 12,190, excluding investment companies. Submitting the amendments to notice and further opportunity for public comment would generate considerable

[41] See general discussion in Section II above.

[42] Item 402(d)(2)(viii) of Regulation S–K. Disclosing the value of the equity award in this table resembles the approach taken in the Option/SAR Grants Table previously required by Item 402(c) of Regulation S–K as adopted in the 1992 Release. That table required disclosure of either (a) the present value of the grant at grant date under any option-pricing model, or (b) the potential realizable value of each option or freestanding SAR grant assuming annualized appreciation rates of 5% and 10%, and 0% for awards where the exercise or base price was below the market price of the underlying security at the date of grant. In their comment letters, AICPA, E&Y and KPMG recommended presenting full grant date fair value in a supplemental table. In light of our previous decision to report the full grant date fair value in the Summary Compensation Table, we did not follow this recommendation in the 2006 Executive Compensation Release.

[43] As noted in the 2006 Executive Compensation Release at Section II.C.1.c.i, disclosing grant date fair value will give investors a clearer picture of the value of any in-the-money awards.

[44] Item 402(c)(2)(ix)(G) of Regulation S–K and Item 402(b)(2)(ix)(G) of Regulation S–B require disclosure in the Summary Compensation Table, All Other Compensation column of the dollar value of any dividends or other earnings paid on stock or option awards when those amounts were not factored in the grant date fair value for the stock or option award. Item 402(k)(2)(vii)(I) of Regulation S–K and Item 402(f)(2)(vii)(I) of Regulation S–B require corresponding disclosure in the Director Compensation Table. These Items are amended to reflect that the grant date fair value no longer is required to be reported in the Stock Awards or Option Awards columns, and in the case of Regulation S–K, must be reported in the Grants of Plan-Based Awards Table with respect to named executive officers.

[45] Instruction to Item 402(k)(2)(iii) and (iv).

[46] Instead, Item 402(c) of Regulation S–B requires narrative disclosure to the Summary Compensation Table. Item 402(c)(4) includes among the examples of material factors necessary to an understanding of the Summary Compensation Table for which narrative disclosure should be provided the material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered.

[47] See 2006 Executive Compensation Release at Section II.D.1.

[48] Instruction 7 to Item 402(d) of Regulation S–K. Disclosure of repriced awards was proposed for the Grants of All Other Equity Awards Table, on which the Grants of Plan-Based Awards Table is based in part. *Executive Compensation and Related Party Disclosure*, Release No. 33–8655 (Jan. 27, 2006) [71 FR 6542] at Section II.B.2.b. In light of previously adopting Summary Compensation Table disclosure of the FAS 123R incremental fair value of these awards, we did not adopt disclosure of these awards in the Grants of Plan-Based Awards Table in the 2006 Executive Compensation Release. See the 2006 Executive Compensation Release at Section II.C.2.

[49] Instruction to Item 402(k)(2)(iii) and (iv).

[50] Instruction 7 to Item 402(d) and Instruction to Item 402(k)(2)(iii) and (iv), which conform to Instruction 1 to Item 402(e)(1).

[51] Item 402(e)(1)(ii) of Regulation S–K and Item 402(c)(2) of Regulation S–B.

[52] 2006 Executive Compensation Release at Section II.C.3.a.

[53] See 5 U.S.C. 553(b).

[54] *Id.*

[55] 2006 Executive Compensation Release at Section VII.

uncertainty regarding the executive compensation disclosure standards to apply as these companies prepare their proxy statements. Given that the amendments affect not only the calculation of total compensation for each named executive officer, but also the identification of the named executive officers (other than the principal executive officer and principal financial officer) based on highest total compensation, such uncertainty could impose extensive burdens and costs. In effect, submitting the amendments to notice and further opportunity for public comment could compel calendar year-end companies to prepare two different sets of executive compensation disclosures because they would not know which version of Item 402 ultimately would apply on the date the proxy or information statement must be filed.

Adopting the amendments as interim final rules also will substantially benefit investors by minimizing any inconsistency between the measure used for disclosure in the Summary Compensation Table of Stock Awards and Option Awards in the first year of compliance and the measure used in later years. Avoiding such potential inconsistency will facilitate year-to-year comparability of the compensation disclosed for individual named executive officers and directors.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[56] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[57] For the same reasons as it is waiving notice and comment, the Commission finds good cause to make the amendments effective as interim final rules upon publication of this release in the **Federal Register**.[58] The compliance dates for the interim final rules will be the same as the compliance dates for the amendments to Item 402 of Regulations S–K and S–B that were adopted in the 2006 Executive Compensation Release.[59]

Although the Commission is dispensing with prior notice of proposed rulemaking, the Commission is interested in receiving written comments on the interim final rules within 30 days after publication of this release in the **Federal Register**. The Commission will consider those comments and make changes to the amendments if necessary.

- Do the amendments result in disclosure that is easier or more difficult for investors to understand? Do the amendments facilitate or complicate company compliance? For example, does presenting the compensation costs of stock and option awards over the requisite service period, as described in FAS 123R, for each individual named executive officer increase compliance costs?
- Does correlating the Summary Compensation Table and Director Compensation Table disclosure to the recognition of the compensation cost of stock and option awards over the requisite service period, as described in FAS 123R, with full grant date fair value disclosure for named executive officers and directors of non-small business issuers only, provide investors with a clearer and more useful presentation of compensation for the subject fiscal year than disclosure of aggregate grant date fair value in the Summary and Director Compensation Tables? Are there other approaches that would provide a better presentation of compensation?
- Should footnote or narrative disclosure be required to identify the remeasurement of liability awards? If so, what level of detail should we require?
- Under the interim final rules, the compensation cost disclosed for Summary Compensation Table and Director Compensation Table purposes does not include an estimate of forfeitures related to service-based vesting conditions. Is this deviation from FAS 123R needed to present meaningful executive compensation disclosure? If not, why not? Does this deviation make it easier or harder for companies to prepare the disclosure and for investors to understand it?
- Correlating disclosure in the Stock Awards and Option Awards columns to an approach that provides disclosure of compensation cost of those awards over the requisite service period could result in a negative number. In this circumstance, the negative number will be disclosed and will affect the calculation of "total" for purposes of determining who is a named executive officer. Instead, should the same approach be followed as for disclosure of the aggregate change in actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial plans, where a negative number is disclosed in a footnote but not reflected in the applicable column and not subtracted for purposes of computing the total?[60]
- Does applying a recognition-based measure for Summary Compensation Table disclosure of equity awards result in any circumstances where, in disclosing a named executive officer's potential payments upon termination or change-in-control,[61] there would be a disclosure gap regarding the remaining value of outstanding awards (as adjusted for any acceleration of vesting) that has not yet been recognized?
- Does spreading out disclosure of equity award compensation over the period that the cost is recognized for financial reporting purposes result in less variability in the amount of total compensation reported from year-to-year?
- If the amendments result in fewer year-to-year fluctuations in the list of named executive officers, will such increased consistency result in more meaningful disclosure to investors?
- The interim final rules revise Summary Compensation Table disclosure of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation have instead been received by the named executive officer to require this compensation to be disclosed in the salary or bonus column, as applicable. Should this compensation be disclosed this way? Are there any other items of disclosure that should be revised in light of adopting a recognition-based approach to Summary Compensation Table and Director Compensation Table disclosure of equity-based compensation?
- Will Grants of Plan-Based Awards Table disclosure of the grant date fair value on a grant-by-grant basis improve investors' understanding of the value of awards, including in-the-money grants?
- For companies subject to Item 402 of Regulation S–K, is footnote disclosure in the Director Compensation Table of the grant date fair value of each equity award necessary to investors' understanding of director compensation?
- Under the interim final rules, disclosure of the full grant date fair value of equity awards and disclosure of the incremental fair value for repriced or materially modified awards no longer will be required for named executive officers and directors of small business

[56] See 5 U.S.C. 553(d).

[57] *Id.*

[58] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become immediately effective notwithstanding the requirements of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are "impractical, unnecessary, or contrary to the public interest," a rule "shall take effect at such time as the Federal agency promulgating the rule determines.")

[59] See 2006 Executive Compensation Release at Section VII.

[60] Instruction 3 to Item 402(c)(2)(viii) of Regulation S–K.

[61] This disclosure is required by Item 402(j) of Regulation S–K and Item 402(e) of Regulation S–B.

issuers. Are these results appropriate? Should this disclosure also be required, on either an aggregate or grant-by-grant basis by Regulation S–B companies, either as a footnote or in the narrative disclosure to the Summary Compensation Table?[62] As a footnote or in narrative disclosure to the Director Compensation Table?[63]

• In circumstances where compensation cost with respect to an award is first recognized in the financial statements in the year before the award is granted, should disclosure in the Grants of Plan-Based Awards Table also be required in the year before the award is granted to eliminate potential inconsistency between these tables? What modifications would be required to reflect that the terms of the award have not yet been finalized?

• Should footnote or narrative disclosure be required to identify in the Grants of Plan-Based Awards Table and the Regulation S–B narrative disclosure to the Summary Compensation Table equity awards with performance conditions that are not considered probable of achievement and therefore are not reflected in the Summary Compensation Table disclosure? If so, what level of detail should we require?

IV. Transition Guidance

Because FAS 123R became effective for companies in 2006, it did not apply to stock and option awards that were granted in earlier years. Consequently, we are providing transition guidance for application of the Summary Compensation Table and Director Compensation Table amendments to disclosure of awards that were granted before 2006, including both equity awards that are not yet vested and liability awards that are not yet settled.[64] In this regard, we are requiring companies to utilize the FAS 123R modified prospective transition method[65] for Item 402 disclosure purposes, without regard to whether they have adopted that method for financial statement reporting purposes.[66] Under the modified prospective transition method, a proportionate share of the grant date fair value determined under Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, of equity awards that are outstanding at the date FAS 123R was adopted will be recognized in the financial statements over those awards' remaining vesting periods, if any. Liability awards that are outstanding at the date FAS 123R was adopted will be recognized in the financial statements until those awards are settled, based on the fair values of those awards at each financial statement reporting period under FAS 123R as well as the portion of the awards that have vested. The same approach will apply for presentation of the corresponding information in the Summary Compensation Table and Director Compensation Table for fiscal 2006 and later fiscal years.

V. Paperwork Reduction Act

A. Background

The interim final rules contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[67] We are submitting these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.[68] The titles for the collection of information are:[69]

(1) "Regulation S–B" (OMB Control No. 3235–0417);

(2) "Regulation S–K" (OMB Control No. 3235–0071);

(3) "Form SB–2"[70] (OMB Control No. 3235–0418);

(4) "Form S–1"[71] (OMB Control No. 3235–0065);

(5) "Form S–4"[72] (OMB Control Number 3235–0324);

(6) "Form S–11"[73] (OMB Control Number 3235–0067);

(7) "Regulation 14A[74] and Schedule 14A"[75] (OMB Control Number 3235–0059);

(8) "Regulation 14C[76] and Schedule 14C"[77] (OMB Control Number 3235–0057);

(9) "Form 10"[78] (OMB Control No. 3235–0064);

(10) "Form 10–SB"[79] (OMB Control No. 3235–0419)

(11) "Form 10–K"[80] (OMB Control No. 3235–0063);

(12) "Form 10–KSB"[81] (OMB Control No. 3235–0420); and

(13) "Form N–2"[82] (OMB Control No. 3235–0026).

We adopted all of the existing regulations and forms pursuant to the Securities Act of 1933 ("Securities Act")[83] and the Securities Exchange Act of 1934 ("Exchange Act"),[84] except for Form N–2, which we adopted pursuant to the Securities Act and the Investment Company Act of 1940 ("Investment Company Act").[85] These regulations and forms set forth the disclosure requirements for annual[86] and current reports, registration statements, proxy statements and information statements that are prepared by issuers to provide investors with the information they need to make informed investment decisions in registered offerings and in secondary market transactions, as well as informed voting decisions in the case of proxy statements.

The amendments adopted as interim final rules are intended to provide investors a fuller and more useful picture of executive compensation. In particular, they are intended to provide a more complete perspective of the compensation decisions made with respect to the last completed fiscal year, facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation, and provide investors with a clearer view of the annual compensation earned by executives and directors and the annual compensation costs to a company consistent with the timing of financial statement reporting.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a

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[62] Item 402(c) of Regulation S–B.

[63] Item 402(f)(3) of Regulation S–B.

[64] Under the amendments, the adjustments to update the cumulative compensation costs recognized for certain awards that a company might have in the year that FAS 123R initially is adopted will not be included in the Summary Compensation Table disclosure for that year.

[65] Under the modified prospective transition method in FAS 123R, the accounting for new awards and awards that are modified, repurchased or cancelled after the standard's effective date must apply the provisions of FAS 123R.

[66] Consequently, for companies that have not adopted the modified prospective transition method for financial statement reporting, the tabular compensation disclosure may not match financial statement disclosure during the transition period.

[67] 44 U.S.C. 3501 *et seq.*

[68] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[69] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in those Regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by Regulation S–K to be a total of one hour.

[70] 17 CFR 239.10.

[71] 17 CFR 239.11.

[72] 17 CFR 239.25.

[73] 17 CFR 239.18.

[74] 17 CFR 240.14a–1 *et seq.*

[75] 17 CFR 240.14a–101.

[76] 17 CFR 240.14c–1 *et seq.*

[77] 17 CFR 240.14c–101.

[78] 17 CFR 249.210.

[79] 17 CFR 249.210b.

[80] 17 CFR 249.310.

[81] 17 CFR 249.310b.

[82] 17 CFR 239.14 and 274.11a–1.

[83] 15 U.S.C. 77a *et seq.*

[84] 15 U.S.C. 78a *et seq.*

[85] 15 U.S.C. 80a–1 *et seq.*

[86] The pertinent annual reports are those filed on Form 10–K and Form 10–KSB.

person is not required to respond to, a collection of information unless it displays a currently valid control number.

The information collection requirements related to annual and current reports, registration statements, proxy statements and information statements are mandatory. However, the information collection requirements relating exclusively to proxy and information statements will apply only to issuers subject to the proxy rules. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the EDGAR filing system.

B. Summary of Information Collections

The amendments will affect existing disclosure burdens for affected filings as follows:

- The dollar value reported in the Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table is revised to disclose the compensation cost of those awards over the requisite service period, as described in FAS 123R, but will not reflect the estimate for forfeitures related to service-based vesting used for financial statement reporting purposes;
- The Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table are revised to require footnote disclosure of forfeitures during the last completed fiscal year;
- The Grants of Plan-Based Awards Table is revised to require disclosure of the grant date fair value of each individual equity award, computed in accordance with FAS 123R, and the Item 402 of Regulation S–K Director Compensation Table is revised to require footnote disclosure of the same information; and
- The Grants of Plan-Based Awards Table is revised to require disclosure of any option or SAR that was repriced or otherwise materially modified during the last completed fiscal year, including the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, and the Item 402 of Regulation S–K Director Compensation Table is revised to require footnote disclosure of the same incremental fair value information.

C. Paperwork Reduction Act Burden Estimates

For purposes of the Paperwork Reduction Act, we estimate no annual incremental increase in the paperwork burden for companies to comply with our amended collection of information requirements. We base this estimate on the fact that the revised approach is substantially the same as the approach companies already apply when complying with financial reporting requirements, most of the information that will be required to be disclosed will be collected to comply with financial reporting requirements, and any necessary modifications will not impose additional burdens compared to the burdens associated with applying the currently required disclosure. We also base this estimate on the likelihood that the revised approach will make companies' identification of named executive officers more consistent from year-to-year, thereby possibly reducing the burden of tracking the compensation of all executive officers in order to determine which executive officers are the most highly compensated.

D. Request for Comment

We invite comment on this estimate and its assumptions. We request comment in order to: (a) Evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the collections of information; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[87]

VI. Cost-Benefit Analysis

A. Background

We are adopting, as interim final rules, amendments to our rules governing disclosure of executive compensation. The amendments adopted as interim final rules are intended to provide investors a fuller and more useful picture of executive compensation. In particular, they are intended to provide a more complete perspective of the compensation decisions made with respect to the last completed fiscal year, facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation, and provide investors with a clearer view of the annual compensation earned by executives and directors and the annual compensation costs to a company consistent with the timing of financial statement reporting.

B. Summary of Amendments

Under the amendments adopted as interim final rules, a measure based on the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R will become the measure for reporting in the Stock Awards and Option Awards columns in the Summary Compensation Table and the Director Compensation Table. However, this measure does not include an estimate of forfeitures related to service-based vesting conditions, and the amendments require footnote disclosure of awards forfeited during the last completed fiscal year. The new measure, which is included in total compensation disclosed in the Summary Compensation Table, could affect the determination of most highly compensated executive officers for purposes of identifying named executive officers other than the principal executive officer and principal financial officer.

Under the interim final rules, the Grants of Plan-Based Awards Table is amended to add a column showing the grant date fair value of each equity award computed in accordance with FAS 123R, and information for repriced options, stock appreciation rights and similar option-like instruments, including the incremental fair value computed as of the repricing or modification date in accordance with FAS 123R. The interim final rules also amend the Director Compensation Table in Item 402 of Regulation S–K to provide footnote disclosure of the same grant date fair value and incremental fair value information.

C. Benefits

Basing Stock and Options Award disclosure in the Summary Compensation Table and Director Compensation Table on the amount recognized for financial statement purposes, as required by the interim final rules, will provide investors with a fuller and more useful picture of executive compensation. Measuring compensation in a manner more consistent with FAS 123R recognition will provide investors with a clearer view of the annual compensation costs to a company. The amended presentation in some circumstances will reduce the possibility of overstating compensation related to service rendered for the year that could result from disclosing the full grant date fair value, particularly with respect to liability awards, which are subject to

[87] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

remeasurement, and will better reflect the possibility that some awards may be forfeited. Potentially reducing the variability in the identity of named executive officers from year-to-year may result in compensation disclosure that is more meaningful to investors due to the ability to track year-to-year changes in the same executive's compensation.

For companies subject to Item 402 of Regulation S–K, grant date fair value information is moved to the Grants of Plan-Based Awards Table, where it is presented on a more comprehensible grant-by-grant basis. This should provide investors a more complete perspective of the compensation decisions made with respect to the last completed fiscal year and facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation. Amending the Director Compensation Table in Item 402 of Regulation S–K to provide footnote disclosure of the same grant date fair value and incremental fair value information also will present this information on a more comprehensible grant-by-grant basis. Conforming Summary Compensation Table disclosure of equity-based awards to the timing mandated for the company's financial statements, together with the fair value disclosure in the Grants of Plan-Based Awards Table, will provide more disclosure, potentially making it easier for investors and analysts to analyze compensation for top executives.

Although difficult to quantify, disclosure under the amendments will benefit investors in terms of the transparency, completeness and accessibility of executive compensation disclosure. Making Summary Compensation Table and Director Compensation Table disclosure of stock and option awards more comparable to the approach used for financial accounting recognition purposes will make executive compensation disclosure more transparent by providing investors a clearer picture of annual compensation costs. Moving grant date fair value information to the Grants of Plan-Based Awards Table, where it is presented on a more comprehensive grant-by-grant basis, and requiring the same disclosure in a footnote to the Director Compensation Table, makes this disclosure more complete and accessible for investors in companies that report under Item 402 of Regulation S–K. To the extent that the amendments facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation, investors will obtain a more complete perspective of the compensation decisions made with respect to the last completed fiscal year.

D. Costs

In our view, the amendments to the executive compensation disclosure rules adopted as interim final rules do not significantly increase the costs of complying with the Commission's rules. In order to implement the amendments, companies will need to incur costs to revise their disclosure controls. However, we believe that these costs will be incurred principally on a transitional basis as companies and their advisors determine how best to compile and report information in response to the amended disclosure requirements. We base this view on the fact that the amended approach for Summary Compensation Table and Director Compensation Table disclosure is substantially the same as the approach companies already apply when complying with financial reporting requirements, most of the information that will be required to be disclosed will have been collected to comply with financial reporting requirements, and any necessary modifications will impose minimal additional costs compared to the costs associated with applying the formerly required disclosure. We also base this view on the likelihood that the amended approach will make companies' identification of named executive officers more consistent from year-to-year, thereby possibly reducing the costs of tracking the compensation of all executive officers in order to determine which executive officers are the most highly compensated.

The amendments also may generate costs if they affect the compensation practices of companies or executives' preferences with respect to executive compensation. Under the amendments, the Item 402 of Regulation S–B Summary Compensation Table and Director Compensation Table no longer will provide the full grant date fair value of equity awards to named executive officers. Similarly, neither of these tables will provide disclosure of the incremental fair value of awards that are repriced or materially modified. To the extent that the loss of this information will reduce the value of executive compensation disclosure to investors, the amendments could impose costs on investors.

E. Request for Comment

- We solicit quantitative data to assist our assessment of the benefits and costs of the revised disclosure requirements.
- What, if any, additional work and costs are involved in collecting the information necessary to comply with the amendments? What are the types of costs, and in what amounts? In what way can the amendments be modified to mitigate the costs?
- Does identification of named executive officers based on the portion of equity compensation earned during the fiscal year result in more meaningful identification of named executive officers than under the former method based on the aggregate grant date fair value of awards?
- Will the interim final rules have an effect on companies' choice of compensation packages, or executives' preferences with respect to equity awards?
- Assuming the interim final rules are retained, what are the costs in the first year of compliance versus subsequent years?
- We solicit comments on the degree to which companies already collect the information that the amendments will require to be disclosed.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Exchange Act Section 23(a)(2)[88] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Securities Act Section 2(b),[89] Exchange Act Section 3(f)[90] and Investment Company Act Section 2(c)[91] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We have also discussed other impacts of the amendments adopted as interim final rules in our Cost-Benefit, Paperwork Reduction Act and Final Regulatory Flexibility Act Analyses. The amendments to Regulations S–K and S–B are intended to make executive compensation disclosure more consistent with financial statement disclosure, which should promote

[88] 15 U.S.C. 78w(a)(2).
[89] 15 U.S.C. 77b(b).
[90] 15 U.S.C. 78c(f).
[91] 15 U.S.C. 80a–2(c).

efficiency. The amendments should enhance investors' understanding of how corporate resources are used, and enable shareholders to better evaluate the actions of the board of directors and executive officers in fulfilling their responsibilities. In particular, measuring executive and director compensation in a manner more consistent with financial accounting recognition, along with disclosure of the grant date fair value of equity awards on a grant-by-grant basis, should provide investors with a fuller and more useful picture of executive compensation. This would include a clearer view of a company's compensation decisions and the annual compensation costs to a company.

The amendments may have the effect of reducing the likelihood of inconsistencies in the identity of named executive officers from year-to-year. To this extent, the number of executives for whom competitors could potentially gain insights with respect to a company's executive compensation practices through the required disclosure over a period of years may be reduced. However, we do not expect the incremental effect of the amendments overall to affect competition materially.

In adopting the amendments, we have considered their effect on capital formation and believe that the amendments will have little effect on capital formation.

We request comment on whether the amendments will promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

VIII. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to the rules and forms under the Securities Act and Exchange Act, adopted as interim final rules, that will provide investors with a presentation of compensation for the fiscal year that is more comparable to the approach used for financial accounting purposes.

A. Need for the Amendments

Since the enactment of the Securities Act and the Exchange Act, the Commission has on a number of occasions explored the best methods for communicating clear, concise and meaningful material information about executive and director compensation. Recently, the Commission adopted comprehensive amendments to improve the clarity and completeness of executive compensation disclosure.[92] The interim final rules principally modify two aspects of those comprehensive amendments: modifying the timing of reporting option and stock awards in the Summary Compensation Table and Director Compensation Table so that it is more comparable to financial accounting recognition; and, in Item 402 of Regulation S–K, requiring Grants of Plan-Based Awards Table reporting of the full grant date fair value of equity awards and information regarding option, SAR and similar option-like awards that are repriced or materially modified during the fiscal year, and Director Compensation Table footnote disclosure of the same information. The overall goal of the amendments is to increase the transparency and completeness of executive compensation disclosure by providing investors a fuller and more useful picture of executive compensation. In particular, they are intended to provide a more complete perspective of the compensation decisions made with respect to the last completed fiscal year, facilitate Compensation Discussion and Analysis disclosure of the company's policies and decisions regarding named executive officers' compensation, and provide investors with a clearer view of the annual compensation earned by executives and directors and the annual compensation costs to a company consistent with the timing of financial statement reporting.

B. Significant Issues Raised by Public Comment

As summarized in Section I above, several commenters expressed the view that Summary Compensation Table disclosure of equity awards should be presented on a basis that is generally consistent with financial statement reporting. We have taken these comments into account in adopting the amendments that would apply to small entities.

C. Small Entities Subject to the Amendments

For purposes of the Regulatory Flexibility Act, Securities Act Rule 157[93] and Exchange Act Rule 0–10(a)[94] define an issuer to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year. These are the types of entities that we refer to as small entities in this section.

We believe that the amendments will affect small entities that are operating companies. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. Under Rule 0–10 under the Investment Company Act,[95] an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. We believe that the amendments will affect small entities that are investment companies. Specifically, we believe that the amendments will affect small entities that are business development companies.[96] We estimate that there are 53 business development companies that qualify as small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

We note that small business issuers,[97] which is a broader category of issuers than small entities, in certain circumstances may provide the executive compensation disclosure specified in Item 402 of Regulation S–B, rather than the corresponding disclosure specified in Item 402 of Regulation S–K.

The amendments adopted as interim final rules will affect small business issuers as follows:

- The dollar value reported in the Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table is revised to disclose the compensation cost of those awards over the requisite service period, as described in FAS 123R, but will not reflect the estimate for forfeitures related to service-based vesting used for financial statement reporting purposes; and
- The Stock Awards and Option Awards columns of the Summary Compensation Table and Director Compensation Table are revised to require footnote disclosure of forfeitures during the last completed fiscal year.

Because Item 402 of Regulation S–B does not include the Grants of Plan-Based Awards Table, the amendments to Item 402 of Regulation S–B do not include the following disclosures that

[92] See the 2006 Executive Compensation Release.

[93] 17 CFR 230.157.

[94] 17 CFR 240.0–10(a).

[95] 17 CFR 270.0–10.

[96] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. 15 U.S.C. 80a–2(a)(48).

[97] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a registrant that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer.

are required for named executive officers and directors by the amendments to Item 402 of Regulation S–K:

- Disclosure of the grant date fair value of each individual equity award, computed in accordance with FAS 123R; and
- Disclosure of the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, of any option or SAR that was repriced or otherwise materially modified during the last completed fiscal year.

As a result, the amendments to Item 402 of Regulation S–B do not result in the same level of incremental increase in costs or burdens to small businesses as do the amendments to Item 402 of Regulation S–K.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

1. Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;

2. The clarification, consolidation or simplification of disclosure for small entities;

3. Use of performance standards rather than design standards; and

4. Exempting smaller entities from coverage of the disclosure requirements, or any part thereof.

We have considered different changes to our rules and forms to achieve our regulatory objectives, and where possible, have taken steps to minimize the effect of the rules on smaller entities. The amendments are unlikely to have a significant impact on smaller entities because their principal effect is to make Summary Compensation Table and Director Compensation Table disclosure of stock and option awards more comparable to the financial statement presentation of those compensation items. The amendments do not affect the abbreviated format of the Regulation S–B Summary Compensation Table, which requires disclosure with respect to the principal executive officer and two most highly compensated executive officers for the small business issuer's last two completed fiscal years. Because Item 402 of Regulation S–B does not include a Grants of Plan-Based Awards Table, the amendments to that table do not apply.

F. General Request for Comments

We solicit written comments regarding this analysis. We request comment on whether the amendments adopted as interim final rules could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

IX. Statutory Authority and Text of the Amendments

We are adopting rule amendments pursuant to Sections 3(b), 6, 7, 10, and 19(a) of the Securities Act, as amended, Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act, as amended, Section 38 of the Investment Company Act, and Section 3(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The authority citation for part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Section 228.402 is amended by revising Instruction 2 to Item 402(b)(2)(iii) and (iv), paragraphs (b)(2)(v), (b)(2)(vi) and the Instructions to Item 402(b)(2)(v) and (b)(2)(vi), paragraph (b)(2)(ix)(G), paragraphs (f)(2)(iii), (f)(2)(iv) and (f)(2)(vii)(I), and Instruction to Item 402(f) to read as follows:

§ 228.402 (Item 402) Executive compensation.

* * * * *

(b) * * *

(2) * * *

Instructions to Item 402(b)(2)(iii) and (iv).

* * * * *

2. Small business issuers shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (c) of this Item) where the material terms of the stock, option or non-equity incentive plan award elected by the named executive officer are reported.

(v) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (f));

Instruction to Item 402(b)(2)(v) and (vi). For awards reported in columns (e) and (f), disregard the estimate of forfeitures related to service-based vesting conditions. Include a footnote describing all forfeitures during the year, and disclosing all assumptions made in the valuation. Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

* * * * *

(ix) * * *

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

* * * * *

(f) * * *

(2) * * *

(iii) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (d));

* * * * *

(vii) * * *

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts

were not factored into the grant date fair value for the stock or option award; and

* * * * *

Instruction to Item 402(f).

In addition to the Instruction to paragraph (f)(2)(vii) of this Item, the following apply equally to paragraph (f) of this Item: Instructions 2 and 4 to paragraph (b) of this Item; the Instructions to paragraphs (b)(2)(iii) and (iv) of this Item; the Instruction to paragraphs (b)(2)(v) and (vi) of this Item; the Instructions to paragraph (b)(2)(vii) of this Item; the Instruction to paragraph (b)(2)(viii) of this Item; the Instructions to paragraph (b)(2)(ix) of this Item; and paragraph (c)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (f) of this Item that correspond to analogous disclosures provided for in paragraph (b) of this Item to which they refer.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The general authority citation for part 229 is revised to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38, 80av39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 229.402 is amended by revising Instruction 2 to Item 402(c)(2)(iii) and (iv), paragraphs (c)(2)(v) and (c)(2)(vi), the Instructions to Item 402(c)(2)(v) and (c)(2)(vi), and paragraph (c)(2)(ix)(G), revising the Grants of Plan-Based Awards Table in paragraph (d)(1), removing "and" at the end of paragraph (d)(2)(vi), removing the period at the end of paragraph (d)(2)(vii) and adding "and" in its place, adding paragraph (d)(2)(viii) and Instruction 7 to Item 402(d), revising paragraphs (k)(2)(iii), (k)(2)(iv), the Instruction to Item 402(k)(2)(iii) and (iv), and revising paragraph (k)(2)(vii)(I) and Instruction to Item 402(k), to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(c) * * *

(2) * * *

Instructions to Item 402(c)(2)(iii) and (iv).

* * * * *

2. Registrants shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the Grants of Plan-Based Awards Table (required by paragraph (d) of this Item) where the stock, option or non-equity incentive plan award elected by the named executive officer is reported.

(v) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (f));

Instruction to Item 402(c)(2)(v) and (vi). For awards reported in columns (e) and (f), disregard the estimate of forfeitures related to service-based vesting conditions. Include a footnote describing all forfeitures during the year, and disclosing all assumptions made in the valuation. Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

* * * * *

(ix) * * *

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (*l*) of the Grants of Plan-Based Awards Table required by paragraph (d)(2)(viii) of this Item; and

* * * * *

(d) * * *

GRANTS OF PLAN-BASED AWARDS

Name	Grant date	Estimated future payouts under non-equity incentive plan awards			Estimated future payouts under equity incentive plan awards			All other stock awards: Number of shares of stock or units (#)	All other option awards: Number of securities underlying options (#)	Exercise or base price of option awards ($/Sh)	Grant date fair value of stock and option awards
		Threshold ($)	Target ($)	Maximum ($)	Threshold (#)	Target (#)	Maximum (#)				
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
PEO											
PFO											
A											
B											
C											

(2) * * *

(viii) The grant date fair value of each equity award computed in accordance with FAS 123R (column (*l*)). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise or base price of options, SARs or similar option-like instruments previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R, with respect to that repriced or modified award, shall be reported.

Instructions to Item 402(d).

* * * * *

7. Options, SARs and similar option-like instruments granted in connection with a repricing transaction or other material modification shall be reported in this Table. However, the disclosure required by this Table does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

* * * * *

(k) * * *

(2) * * *

(iii) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (d));

Instruction to Item 402(k)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column: the grant date fair value of each equity award computed in accordance with FAS 123R; for each option, SAR or similar option like instrument for which the registrant has adjusted or amended the exercise or base price during the last completed fiscal year, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FAS 123R; and the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end. However, the disclosure required by this Instruction does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

* * * * *

(vii) * * *

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award; and

* * * * *

Instruction to Item 402(k). In addition to the Instruction to paragraphs 402(k)(2)(iii) and (iv) and the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; the Instruction to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; Instructions to paragraph (c)(2)(viii) of this Item; and Instructions 1 and 5 to paragraph (c)(2)(ix) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

Dated: December 22, 2006.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–9932 Filed 12–26–06; 2:29 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9308]

RIN 1545–BF75

Reporting Rules for Widely Held Fixed Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of the temporary regulations.

SUMMARY: This document contains final regulations amending § 1.671–5 which provides reporting rules for widely held fixed investment trusts (WHFITs). These final regulations clarify and simplify reporting for trustees and middlemen of non-mortgage widely held fixed investment trusts (NMWHFITs). These final regulations also provide temporary safe harbor reporting rules for widely held mortgage trusts (WHMTs) that are outside the WHMT safe harbor. The preamble to these regulations also provides that trustees of WHFITs are to indicate on the Form 1041, "U.S. Income Tax Return for Estates and Trusts," filed for a WHFIT's 2006 calendar year that the return is a final return.

DATES: *Effective Date:* These regulations are effective December 29, 2006.

Applicability Date: For date of applicability see § 1.671–5(n).

FOR FURTHER INFORMATION CONTACT: Faith Colson, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1540. The collection of information in these final regulations is in § 1.671–5. This information is required to be reported to beneficial owners of trust interests to enable them to correctly report their share of the items of income, deduction, and credit of the WHFIT in which they have invested. This information is also required to be reported to the IRS to enable the IRS to verify that trustees and middlemen are accurately reporting information to beneficial owners of trust interests and that beneficial owners are properly reporting their ownership of a trust interest.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The estimated annual burden per recordkeeper varies from 1 to 4 hours, depending on individual circumstances, with an estimated average of 2 hours. Comments concerning the accuracy of this burden estimate should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1. On January 24, 2006, the Internal Revenue Service (IRS) and the Treasury Department published the WHFIT reporting rules in the **Federal Register** (TD 9241) (71 FR 4002) under § 1.671–5 (WHFIT reporting rules). On August 3, 2006, in response to comments received subsequent to the publication of the WHFIT reporting rules, the IRS and the Treasury Department published final and temporary regulations (TD 9279) (71 FR 43968) (temporary regulations) as well as proposed regulations that, in part, cross-referenced the temporary regulations (71 FR 43998) (proposed regulations) (REG–125071–06) in the **Federal Register**. No public hearing was requested or held with respect to the temporary or proposed regulations.

Written comments responding to those regulations were received. After consideration of the comments, the proposed regulations, with certain revisions, are adopted as final regulations by this Treasury decision, and the corresponding temporary regulations are removed. The comments and the revisions are discussed in this preamble.

Summary of Comments and Explanation of Revisions

I. Application of the WHFIT Reporting Rules to NMWHFITs

A. The Qualified NMWHFIT Exception

Trustees and middlemen of NMWHFITs that satisfy the qualified NMWHFIT exception in § 1.671–5(c)(2)(iv)(E) are excepted from reporting information regarding market discount and bond premium, and are permitted to use the simplified reporting for sales and dispositions of trust assets in § 1.671–5(c)(2)(iv)(B) and the simplified reporting rules for sales or redemptions of trust interests in § 1.671–5(c)(2)(v)(C). The temporary regulations provide that the qualified NMWHFIT exception is satisfied if the calendar year for which the trustee is reporting begins before January 1, 2011, and the NMWHFIT meets any of the following requirements: (1) the NMWHFIT has a start-up date as defined in § 1.671–5(b)(19) before February 23, 2006; (2) the registration statement for the NMWHFIT becomes effective under the Securities Act of 1933, as amended (15 U.S.C. 77a, *et. seq.*) (Securities Act of 1933) and trust interests are offered for sale to the public before February 23, 2006; or (3) the registration statement of the NMWHFIT becomes effective under the Securities Act of 1933 and trust interests are offered for sale to the public on or after February 23, 2006 and before July 31, 2006, and the NMWHFIT is fully funded before October 1, 2006. These final regulations retain this amendment to the WHFIT reporting rules. Additionally, commentators on the temporary regulations expressed concern that certain trusts that otherwise satisfy the eligibility requirements for the qualified NMWHFIT exception would be disqualified because additional assets are deposited into the trust pursuant to a distribution reinvestment program. These final regulations clarify that for the purpose of determining whether a NMWHFIT is fully funded before October 1, 2006, deposits to the NMWHFIT pursuant to a distribution reinvestment program that is consistent with the requirements of § 301.7701–4(c) will be disregarded.

Commentators have also expressed concern regarding NMWHFITs that hold debt instruments (fixed income trusts) that were originated before the WHFIT reporting rules were published in the **Federal Register**. Commentators are concerned because the simplified reporting permitted under the exception terminates after December 31, 2010, and many fixed income trusts will be unable to comply with the WHFIT reporting rules once the simplified reporting permitted under the qualified NMWHFIT exception terminates because these NMWHFITs generally are not able to engage in pro-rata sales of trust assets to effect redemptions. Commentators have requested that these NMWHFITs be permanently permitted to report consistent with the qualified NMWHFIT exception. In response, these regulations amend § 1.671–5(c)(2)(iv)(E) to eliminate the requirement that the trustee must be reporting for a year that begins before January 1, 2011 for the NMWHFIT to be eligible for the simplified reporting. Accordingly, NMWHFITs that satisfy the qualified NMWHFIT exception and continue in existence after December 31, 2010 may report under the simplified reporting permitted under the exception until those NMWHFITs terminate.

B. Simplified Reporting of Sales and Redemptions of Trust Interests

With respect to the sale or redemption of a trust interest, section 1.671–5(c)(2)(v) of the WHFIT reporting rules requires trustees and middlemen to provide information regarding the sales assets proceeds (as defined in § 1.671–5(b)(17)) or the redemption assets proceeds (as defined in § 1.671–5(b)(14)) as well as the income that is attributable to a redeeming, selling or purchasing beneficial owner up to the date of the sale or redemption of a trust interest. Section 1.671–5(c)(2)(v)(C) excepts a NMWHFIT from the requirement to provide information to enable requesting persons to differentiate between income and proceeds if substantially all the NMWHFIT's income is comprised of dividends (equity trusts) and the NMWHFIT is required by its governing document to distribute the cash held for distribution by the NMWHFIT at least monthly. The temporary regulations, and these final regulations revise § 1.671–5(c)(2)(v)(C) to provide that a NMWHFIT will be considered to have satisfied the requirement that it distribute the cash held for distribution monthly notwithstanding the fact that, although the governing document requires monthly distributions, the governing document of the NMWHFIT also permits the trustee to forego making its normally required monthly distribution if the cash held for distribution is less than 0.1 percent of the net asset value of the trust (aggregate fair market value of the trust's assets less the trust's liabilities) as of the date that the amount of the monthly distribution is required to be determined.

Commentators have indicated that it will be extremely difficult for a certain class of NMWHFITs that are not equity trusts to comply with § 1.671–5(c)(2)(v). These NMWHFITs hold assets that produce income that is treated as interest income, not dividend income, for Federal income tax purposes. The assets of these NMWHFITs, however, are similar to assets that produce dividend income in that the assets are traded on a recognized exchange or securities market in such a way that the price of the assets is determined without a component attributable to accrued interest. As with NMWHFITs that hold assets that produce dividend income, it is difficult for the trustees and middlemen of these NMWHFITs to determine the income attributable to a redeeming, selling, or purchasing beneficial owner between trust distribution dates. For these reasons, the final regulations provide that NMWHFITs that hold assets that produce income that is treated as interest income for Federal income tax purposes will also qualify for the simplified reporting under § 1.671–5(c)(2)(v)(C) but only if the assets are traded on a recognized exchange or securities market in such a way that the price of the assets is determined without a component attributable to accrued interest.

C. Simplified Reporting for Sales and Dispositions by Certain NMWHFITs

In addition to the qualified NMWHFIT exception, the WHFIT reporting rules provide that the trustees of NMWHFITs that meet the general *de minimis* test in § 1.671–5(c)(2)(iv)(D)(*1*) are only required, under § 1.671–5(c)(2)(iv)(B), to provide information regarding the amount of trust sales proceeds distributed to a beneficial owner. A NMWHFIT meets the general *de minimis* test if trust sales proceeds (as defined in § 1.671–5(b)(21)) for the calendar year are not more than five percent of the net asset value of the trust as of the later of January 1 of the year for which the trustee is reporting or the start-up date. The reason for the *de minimis* exception, as stated in the preamble to the WHFIT reporting rules, is that the IRS and the Treasury

Department believe that if a NMWHFIT only sells or disposes of assets infrequently, although there may be some deferral of gains and losses if sales and dispositions are not fully reported, the deferral is acceptable, in light of the burden of fully, accurately reporting the sales and dispositions.

Commentators on the WHFIT reporting rules reported that trustees of NMWHFITs frequently have to sell trust assets to obtain cash to effect redemptions and that, because of those sales, many NMWHFITs will not be able to meet the general *de minimis* test in § 1.671–5(c)(2)(iv)(D)(*1*). Commentators on the WHFIT reporting rules requested that those regulations be amended to provide for reduced reporting where this will have little or no compliance impact. In response to those comments, the temporary regulations provide a number of modifications to the NMWHFIT reporting rules as applied to certain sales and dispositions of trust assets by NMWHFITs. Those modifications, as well as additional modification made by these final regulations, include:

1. NMWHFIT Final Calendar Year Exception

Section 1.671–5T(c)(2)(iv)(F) of the temporary regulations provides that all NMWHFITs qualify for the simplified reporting in § 1.671–5T(c)(2)(iv)(B) in the final calendar year of the NMWHFIT, regardless of whether the NMWHFIT has otherwise satisfied the general *de minimis* test, provided that a beneficial owner cannot roll over its investment in the NMWHFIT to another WHFIT. Commentators on the temporary regulations requested that the IRS and Treasury Department clarify that a taxable roll-over would not preclude a trustee from reporting under the final year exception. Accordingly, these regulations remove the reference to a roll-over and instead require that, to be eligible for the final year exception, beneficial owners of trust interests must exchange their trust interests for cash or be treated as having exchanged their trust interests for cash for Federal income tax purposes upon the termination of the trust.

2. Pro-rata Sales to Effect Redemptions Exception

Section 1.671–5T(c)(2)(iv)(G) of the temporary regulations provides that a pro-rata sale of a trust asset to effect a redemption is not required to be reported under § 1.671–5. The temporary regulations describe a pro-rata sale of a trust asset as occurring when (1) a trust interest holder tenders one or more trust interests for redemption; (2) the trustee sells the pro-rata share of a trust asset that is deemed to be owned by the trust interest holder as a result of the trust interest holder's ownership of the trust interest or interests tendered for redemption; (3) the trustee engages in the sale solely to obtain cash that is immediately distributed to the redeeming trust interest holder as a result of the redemption; and (4) the redemption is reported as required under § 1.671–5(c)(2)(v).

Commentators on the temporary regulations have requested that the pro-rata sales to effect a redemption exception in the temporary regulations be adjusted to accommodate economic and practical issues that trustees confront in executing sales of trust assets to effect redemptions. These commentators requested that the pro-rata sales to effect a redemption exception be revised to provide the trustee with some flexibility regarding the time period in which the trustee has to execute sales following the tender of trust interests for redemptions and to permit trustees to aggregate sales of assets from several redemptions for the purpose of testing whether the asset sales have been pro-rata. In response, the final regulations provide that pro-rata sales to effect redemptions occur when (i) one or more trust interests are tendered for redemption; (ii) the trustee identifies the pro-rata share of the trust assets deemed to be owned by the trust interest or interests tendered for redemption, and sells those assets as soon as practicable; (iii) proceeds from the sale of the identified assets are used solely to effect redemptions; and (iv) the redemptions are reported as required under § 1.671–5(c)(2)(v) by the trustee.

Additionally, the final regulations provide that the trustee may compare the aggregate of the pro-rata share of the trust assets deemed to be owned by the trust interests tendered for redemption and the sales of assets sold to effect redemptions determine the pro-rata sales of assets to effect redemptions for a calendar month. Further, if the aggregate pro-rata share of the assets deemed to be owned by the redeemed trust interests for the month equals a fractional share, the trustee may round that amount to the next whole share for the purpose of determining the pro-rata sales to effect a redemption for the calendar month.

3. De minimis Test Modifications

Section 1.671–5T(b)(21) of the temporary regulations provides an amended definition of trust sales proceeds that excludes the gross proceeds paid to a NMWHFIT for a pro-rata sale of a trust asset to effect a redemption. The effect of this change in the definition of trust sales proceeds is to exclude the proceeds from pro-rata sales of trust assets to effect redemptions when determining whether a trust has met the general *de minimis* test. Since only the proceeds from non pro-rata sales of trust assets are considered for purposes of determining whether a NMWHFIT meets the general *de minimis* test, more trusts will meet the general *de minimis* test and qualify for the reduced reporting in § 1.671–5(c)(2)(iv)(B). This amended definition is adopted by these final regulations.

Commentators on the temporary regulations requested that the final regulations also except certain other trust sales proceeds for the purpose of determining whether a NMWHFIT has met the general *de minimis* test if these sales are fully reported under § 1.671–5(c)(2)(iv)(A) (the general reporting rules for sales and dispositions). These sales and dispositions include corporate reorganizations and restructurings for which the trust receives cash, the sale of securities received by the trust in corporate reorganizations and restructurings (including conversions of closed-end investment companies to open-end investment companies), principal prepayments, bond calls, bond maturities, and the sale of securities by the trustee as required by the governing document or applicable law governing fiduciaries in order to maintain the sound investment character of the trust, and any other nonvolitional dispositions.

The IRS and the Treasury Department agree that this exclusion may be appropriate but are concerned that there may be some potential for abuse if trustees can choose to fully report some of these sales and not fully report other sales. Accordingly, the final regulations provide that the trust sales proceeds from these sales and dispositions may be excluded when determining whether the general *de minimis* test has been met, provided that the trustee consistently reports all such sales or dispositions, other than certain small excepted sales or dispositions (described in § 1.671–5(c)(2)(iv)(D)(*4*)(*iii*)), under § 1.671–5(c)(2)(iv)(A) during the life of the WHFIT.

The regulations currently provide that a WHFIT meets the general *de minimis* test in § 1.671–5(c)(2)(iv)(D)(*1*) for its initial year if trust sales proceeds equal five percent or less of the net fair market value of the trust assets as of the start-up date. The start-up date is defined as the date when substantially all of the assets have been deposited with the

trustee. Commentators suggested that the regulations provide trustees with an alternative date for measuring whether the *de minimis* test has been met for the initial trust year. They suggested that trustees be permitted to measure whether the *de minimis* test has been met by using the net fair market value of the trust's assets as of the date of the last deposit of trust assets into the NMWHFIT (not including any deposit of assets into the NMWHFIT pursuant to a distribution reinvestment program), not to exceed 90 days after the date the registration statement of the WHFIT becomes effective under the Securities Act of 1933. The final regulations adopt this suggestion.

The special WHMT *de minimis* test in § 1.671–5(c)(2)(iv)(D)(*2*) of the WHFIT reporting rules was added to the WHFIT reporting rules in response to comments from the WHMT industry indicating that WHMT trustees would have difficulty applying the general *de minimis* test because it would be extremely difficult for the trustee to determine the fair market value of the mortgages held by the WHMT on an annual basis, as required under the general *de minimis* test. Under the special WHMT *de minimis* test, trustees of certain WHMTs are permitted to determine whether the *de minimis* test has been met using the outstanding principal balance of the mortgages of the trust as of January 1 rather than the net fair market value of the trust's assets. A commentator suggested that this *de minimis* test be expanded so that all WHFITs with hard to value debt instruments be permitted to use this *de minimis* test. In response, the IRS and Treasury Department request that trustees of WHFITs that hold hard to value debt instruments and that believe the application of the WHMT *de minimis* test to the instruments held by the WHFIT for which the trustees act would be useful, submit additional comments on this issue. The final regulations amend § 1.671–5(c)(2)(iv)(D)(*2*) to provide that the application of the special *de minimis* test may be expanded by revenue ruling or other published guidance.

4. Non Taxable Exchanges of Assets

Commentators suggested that the final regulations provide an exception to the reporting rules for sales and dispositions of trust assets for exchanges of trust assets that result from nontaxable corporate reorganizations. The final regulations adopt this suggestion.

D. Market Discount

Commentators requested amendments to the information required to be reported under the NMWHFIT safe harbor with respect to market discount. If a NMWHFIT is required to provide information regarding market discount under the general rules in § 1.671–5(c)(2)(vii), the NMWHFIT safe harbor provides that a trustee's requirement to provide information regarding market discount is satisfied by providing information regarding the portion of the trust that the assets sold represented. Assuming that a trust interest holder purchased its interest at a discount, it was contemplated that the trust interest holder would allocate the same portion of its discount to the sale as the assets represented to the NMWHFIT.

This information was incomplete, however, with respect to a NMWHFIT holding debt instruments with original issue discount (OID). Under both the general provisions (§ 1.671–5(c)(2)(ii)(A) and (vii)) and the safe harbor (§ 1.671–5(f)(1)(vii) and (viii)), OID information and market discount information are required to be calculated and provided separately. Accordingly, for beneficial owners to determine the amount of market discount an owner must allocate to a particular sale or disposition of a debt instrument by the NMWHFIT, § 1.671–5(f)(1)(viii)(A) is amended with respect to NMWHFITs that hold debt instruments with OID, to include a requirement that trustees provide a list of the aggregate adjusted issue prices of the debt instruments held by the NMWHFIT per trust interest as of the start-up date or the measuring date (as defined in § 1.671–5(c)(2)(iv)(D)(*1*)) whichever will provide the more accurate information, as well as of January 1 of each subsequent year of the NMWHFIT. The IRS and the Treasury Department expect that beneficial owners of trust interests will use the adjusted issue price for the trust's debt instruments per trust interest for the year in which the beneficial owner purchased its interest to determine whether a trust interest has market discount.

II. Applicability of the WHFIT Reporting Rules to WHMTs

A. Temporary WHMT Safe Harbor for WHMTs That Hold Interests in a REMIC, Hold Interests in Another WHFIT, or Hold or Issue Stripped Interests

The WHFIT reporting rules include a safe harbor for WHMTs that directly hold mortgages (as defined in § 1.671–5(b)(11)) and issue trust interests that represent an equal pro-rata right to payments of interest and principal on the underlying mortgages. WHMTs that hold or issue stripped interests, hold interests in another WHFIT, or hold interests in a REMIC, are not eligible to report under the WHMT safe harbor. The IRS and the Treasury Department received comments expressing concern about the application of the WHFIT reporting rules to WHMTs that are outside the WHMT safe harbor because trustees and middlemen of these WHMTs are required to comply with the general WHFIT reporting rules in § 1.671–5(c). The commentators contended that some of the information required to be reported under the general information rules would be burdensome to obtain and moreover, is not required by beneficial owners to accurately report the tax consequences of owning a trust interest. In response to these concerns, pending the issuance of additional WHMT safe harbors, these final regulations provide a temporary safe harbor for all WHMTs that are outside the WHMT safe harbor in § 1.671–5(g) of the WHFIT reporting rules because they hold or issue stripped interests, hold interests in a REMIC or hold an interest in another WHMT. Under the safe harbor, a trustee will be deemed to satisfy the requirements of § 1.671–5(c)(1) if the trustee calculates and provides trust information in a manner that enables a requesting person to provide trust information to a beneficial owner of a trust interest that enables the owner to reasonably accurately report the tax consequences of its ownership of a trust interest on the Federal income tax return of the beneficial owner.

Additionally, in order to be deemed to have satisfied the requirements of § 1.671–5(c)(1), the trustee must provide information regarding market discount and original issue discount (OID) that is calculated in any reasonable manner consistent with section 1272(a)(6). Pending the issuance of additional guidance, it is intended that this safe harbor except trustees from any penalties that may apply for not fully complying with paragraph (c) of the WHFIT reporting rules where it can be shown that full compliance with paragraph (c) is unnecessary in order to provide trust interest holders with appropriate information. A trustee or middleman required to provide information to the IRS under § 1.671–5(d) and to beneficial owners under paragraph § 1.671–5(e) may satisfy those obligations by calculating and providing trust information consistent with the information provided by the trustee under this safe harbor.

B. Application of the Requirement To Provide Market Discount and OID Information for Existing WHMTs

Section 1.671–5(c)(2)(ii)(A) requires a trustee of a WHFIT to provide information regarding OID. Commentators have expressed concern regarding the application of this requirement to existing WHMTs because the historical information that would enable the trustee to provide OID information has never been provided or maintained by the trustee or the persons responsible for information reporting. Commentators contend that it is unlikely that these trustees will be able to comply with this requirement for existing WHMTs. The IRS and the Treasury Department recognize that, in some cases, the information necessary for a WHMT to comply with this provision may not be available. If it can be demonstrated that a trustee of a WHMT with a start-up date on or after August 13, 1998 and on or before January 24, 2006, has attempted in good faith, but without success, to obtain the historical information required to provide OID information, the IRS will not impose any penalties that would apply under § 1.671–5(l) of the WHFIT reporting rules (redesignated § 1.671–5(m) by these final regulations) as a result of a trustee's failure to comply with the requirement to provide OID information. Further, § 1.671–5(c)(2)(ii)(A) of these final regulations excepts a trustee of a WHMT with a start-up date prior to August 13, 1998 from the requirement to provide OID information. For purposes of calculating the market discount fraction under the WHMT safe harbor in § 1.671–5(g)(1)(v), these trustees may assume that the WHMT is holding mortgages that were issued without OID.

The WHMT safe harbor provisions for calculating OID information in § 1.671–5(g)(i)(iv) and market discount information in § 1.671–5(g)(1)(v) require trustees to use the prepayment assumption used in pricing the original issue of trust interests. Commentators have indicated that trustees of existing WHMTs may not know the prepayment assumption used in pricing the original issue of trust interests. In response, the safe harbor is amended to provide that if the trustee does not know the prepayment assumption used in pricing the original issue of trust interests for a WHMT with a start-up date prior to January 24, 2006, and the trustee makes a good faith effort without success to obtain the prepayment assumption, the trustee may use any reasonable prepayment assumption when calculating OID and market discount information for that WHMT.

III. Requirement to Register and Continued Consideration of a WHFIT Directory

Prior to the publication of the WHFIT reporting rules, commentators expressed concern that middlemen would not be able to identify a client's investment as an investment in a WHFIT and suggested that the IRS publish a directory or list of WHFITs that would include the name and CUSIP number of each WHFIT, along with the name, address and telephone number of the WHFIT's representative. Commentators noted that a publicly available directory or list would assist middlemen and brokers in identifying a client's investment as an investment in a WHFIT and in locating the WHFIT's representative. The WHFIT reporting rules did not provide for a directory and instead, required the trustee to identify a representative of the trust to provide trust information in a publication generally read by and available to requesting persons, in the trust's prospectus, or on the trustee's Internet Web site.

Following the publication of the WHFIT reporting rules, additional comments were received regarding the need for a directory of WHFITs. In response to those comments, the proposed regulations indicated that the IRS and Treasury Department considered expanding Publication 938, "Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (and other Collateralized Debt Obligations (CDOs))," or creating a separate publication to list WHMT trustees and NMWHFITs. The IRS and Treasury Department continue to consider how a directory of WHFITs could be implemented. Pending the publication of such a directory, trustees must provide information regarding a trust representative in the manner provided in the WHFIT reporting rules.

IV. Form 1041 Reporting

A trustee of a WHFIT must indicate on the Form 1041 filed for the 2006 calendar year that the return is a final return.

Effective Date

These final amendments are effective December 29, 2006. In general, these final regulations are applicable to the reporting required under § 1.671–5 as of January 1, 2007 (see § 1.671–5(m) (redesignated § 1.671–5(n) by these final regulations)) and will be applied as though these amendments were included in the WHFIT reporting rules. The IRS and the Treasury Department are aware that some trustees and middlemen were unable to complete updates to their computer and information reporting systems to comply with the WHFIT reporting rules until the amendments to the WHFIT reporting rules included in these regulations are finalized. Accordingly, the IRS will not impose any penalties that would apply under § 1.671–5(l) (redesignated § 1.671–5(m) by these final regulations) of the WHFIT reporting rules as a result of the failure to comply with the WHFIT reporting rules as amended by these final regulations with respect to the 2007 calendar year in cases where a trustee or middleman was unable to change its information reporting systems to comply with the WHFIT reporting rules because of uncertainty regarding the application of certain provisions of those rules pending the publication of these final regulations. For example, penalties will not be imposed on a trustee of a NMWHFIT that reports the amount of trust sales proceeds distributed to trust interest holders for the 2007 calendar year under § 1.671–5(c)(2)(iv)(B) even though the trustee is unable to determine whether the NMWHFIT has met the *de minimis* test for the 2007 calendar year, provided that the trustee's failure to determine whether a NMWHFIT has met the *dc minimis* test results from the trustee's inability to alter its existing information reporting systems by January 1, 2007, to capture the necessary information. As an additional example, penalties will not be imposed on the trustees or the middlemen of WHMTs that are unable to comply with certain provisions of the WHFIT reporting rules with respect to the 2007 calendar year because those trustees and middlemen were not able to change their existing reporting systems to comply with the WHFIT reporting rules pending the publication of these final regulations.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations will not have a significant economic impact on small entities because the reporting burdens in these regulations will fall primarily on large brokerage firms, large banks, and other large entities acting as trustees or middlemen, most of which

are not small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Thus, a substantial number of small entities are not expected to be affected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Faith Colson, Office of Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.671–5 is amended by:

■ 1. Revising paragraph (a) by redesignating entries for paragraphs (h), (j), (k), (l), and (m) as entries for paragraphs (j), (k), (l), (m) and (n) and adding a new entry for paragraph (h).

■ 2. Revising paragraphs (b)(5), (b)(8), (b)(21), (c)(2)(ii)(A), (c)(2)(iv), (c)(2)(v), (c)(2)(vi), (c)(2)(vii), (d)(2)(ii)(C), (d)(2)(ii)(F), (d)(2)(ii)(G), (f)(1), (f)(1)(i)(A), (f)(1)(viii)(A), (f)(2)(viii)(A), (f)(3)(i)(A)(*1*), (f)(3)(i)(B)(*5*), (f)(3)(i)(B)(*9*), (f)(3)(ii)(B)(*4*)(*i*), (f)(3)(ii)(B)(*5*), (f)(3)(ii)(B)(*6*), (g)(1)(iv)(A)(*2*), and (g)(1)(v)(A).

■ 3. Redesignating paragraphs (h), (j), (k), (l) and (m) as (j), (k), (l), (m) and (n) respectively.

■ 4. Adding new paragraph (h).

Revising newly designated paragraph (m).

The additions and revisions read as follows:

§ 1.671–5 Reporting for widely held fixed investment trusts.

(a) * * *

(h) Additional safe harbors.

(1) Temporary safe harbors.

(2) Additional safe harbors provided by other published guidance.

* * * * *

(b) * * *

(5) The *cash held for distribution* is the amount of cash held by the WHFIT (other than trust sales proceeds and proceeds from sales described in paragraphs (c)(2)(iv)(D)(*4*), (G), and (H) of this section) less reasonably required reserve funds as of the date that the amount of a distribution is required to be determined under the WHFIT's governing document.

* * * * *

(8) An *in-kind redemption* is a redemption in which a beneficial owner receives a pro-rata share of each of the assets of the WHFIT that the beneficial owner is deemed to own under section 671. For example, for purposes of this paragraph (b)(8), if beneficial owner A owns a one percent interest in a WHFIT that holds 100 shares of X corporation stock, so that A is considered to own a one percent interest in each of the 100 shares, A's pro-rata share of the X corporation stock for this purpose is one share of X corporation stock.

* * * * *

(21) *Trust sales proceeds* equal the amount paid to a WHFIT for the sale or disposition of an asset held by the WHFIT, including principal payments received by the WHFIT that completely retire a debt instrument (other than a final scheduled principal payment) and pro-rata partial principal prepayments described under § 1.1275–2(f)(2). Trust sales proceeds do not include amounts paid for any interest income that would be required to be reported under § 1.6045–1(d)(3). Trust sales proceeds also do not include amounts paid to a NMWHFIT as the result of pro-rata sales of trust assets to effect a redemption described in paragraph (c)(2)(iv)(G) of this section or the value of assets received as a result of a tax-free corporate reorganization as described in paragraph (c)(2)(iv)(H) of this section.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) All items of gross income (including OID, except that OID is not required to be included for a WHMT that has a start-up date (as defined in paragraph (b)(19) of this section) prior to August 13, 1998).

* * * * *

(iv) *Asset sales and dispositions.* The trustee must report information regarding sales and dispositions of WHFIT assets as required in this paragraph (c)(2)(iv). For purposes of this paragraph (c)(2)(iv), a payment (other than a final scheduled payment) that completely retires a debt instrument (including a mortgage held by a WHMT) or a pro-rata prepayment on a debt instrument (see § 1.1275–2(f)(2)) held by a WHFIT must be reported as a full or partial sale or disposition of the debt instrument. Pro-rata sales of trust assets to effect redemptions, as defined in paragraph (c)(2)(iv)(G) of this section, or exchanges of trust assets as the result of a corporate reorganization under paragraph (c)(2)(iv)(H) of this section, are not reported as sales or dispositions under this paragraph (c)(2)(iv).

(A) *General rule.* Except as provided in paragraph (c)(2)(iv)(B) (regarding the exception for certain NMWHFITs) or paragraph (c)(2)(iv)(C) (regarding the exception for certain WHMTs) of this section, the trustee must report with respect to each sale or disposition of a WHFIT asset—

(*1*) The date of each sale or disposition;

(*2*) Information that enables a requesting person to determine the amount of trust sales proceeds (as defined in paragraph (b)(21) of this section) attributable to a beneficial owner as a result of each sale or disposition; and

(*3*) Information that enables a beneficial owner to allocate, with reasonable accuracy, a portion of the owner's basis in its trust interest to each sale or disposition.

(B) *Exception for certain NMWHFITs.* If a NMWHFIT meets paragraph (c)(2)(iv)(D)(*1*)(regarding the general de minimis test), paragraph (c)(2)(iv)(E) (regarding the qualified NMWHFIT exception), or paragraph (c)(2)(iv)(F) (regarding the NMWHFIT final calendar year exception) of this section, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report sufficient information to enable a requesting person to determine the amount of trust sales proceeds distributed to a beneficial owner during the calendar year with respect to each sale or disposition of a trust asset. The trustee also must provide requesting persons with a statement that the NMWHFIT is permitted to report under this paragraph (c)(2)(iv)(B).

(C) *Exception for certain WHMTs.* If a WHMT meets either the general or the special de minimis test of paragraph (c)(2)(iv)(D) of this section for the calendar year, the trustee is not required to report under paragraph (c)(2)(iv)(A) of this section. Instead, the trustee must report information to enable a requesting person to determine the

amount of trust sales proceeds attributable to a beneficial owner as a result of the sale or disposition. The trustee also must provide requesting persons with a statement that the WHMT is permitted to report under this paragraph (c)(2)(iv)(C).

(D) *De minimis tests*—(*1*) *General WHFIT de minimis test.* The general WHFIT de minimis test is satisfied if trust sales proceeds for the calendar year are not more than five percent of the net asset value of the trust (aggregate fair market value of the trust's assets less the trust's liabilities) as of the later of January 1 and the start-up date (as defined paragraph (b)(19) of this section); or, if the trustee chooses, the later of January 1 and the measuring date. The measuring date is the date of the last deposit of assets into the WHFIT (not including any deposit of assets into the WHFIT pursuant to a distribution reinvestment program), not to exceed 90 days after the date the registration statement of the WHFIT becomes effective under the Securities Act of 1933.

(*2*) *Special WHMT de minimis test.* A WHMT that meets the asset requirement of paragraph (g)(1)(ii)(E) of this section satisfies the special WHMT de minimis test in this paragraph (c)(2)(iv)(D)(*2*) if trust sales proceeds for the calendar year are not more than five percent of the aggregate outstanding principal balance of the WHMT (as defined in paragraph (g)(1)(iii)(D) of this section) as of the later of January 1 of that year or the trust's start-up date. For purposes of applying the special WHMT de minimis test in this paragraph (c)(2)(iv)(D)(*2*), amounts that result from the complete or partial payment of the outstanding principal balance of the mortgages held by the trust are not included in the amount of trust sales proceeds. The IRS and the Treasury Department may provide by revenue ruling, or by other published guidance, that the special de minimis test of this paragraph (c)(2)(iv)(D)(*2*) may be applied to WHFITs holding debt instruments other than those described in paragraph (g)(1)(ii)(E) of this section.

(*3*) *Effect of clean-up call.* If a WHFIT fails to meet either de minimis test described in this paragraph (c)(2)(iv)(D) solely as the result of a clean-up call, as defined in paragraph (b)(6) of this section, the WHFIT will be treated as having met the de minimis test.

(*4*) *Exception for certain fully reported sales*—(*i*) *Rule.* If a trustee of a NMWHFIT reports the sales described in paragraph (c)(2)(iv)(D)(*4*)(*ii*) of this section as provided under paragraph (c)(2)(iv)(A) of this section (regardless of whether the general minimis test in paragraph (c)(2)(iv)(D)(*1*) of this section is satisfied for a particular calendar year) consistently throughout the life of the WHFIT, a trustee may exclude the trust sales proceeds received by the WHFIT as a result of those sales from the trust sales proceeds used to determine whether a WHFIT has satisfied the general de minimis test in paragraph (c)(2)(iv)(D)(*1*) of this section.

(*ii*) *Applicable sales and dispositions.* This paragraph (c)(2)(iv)(D)(*4*) applies to sales and dispositions resulting from corporate reorganizations and restructurings for which the trust receives cash, the sale of assets received by the trust in corporate reorganizations and restructurings (including conversions of closed-end investment companies to open-end investment companies), principal prepayments, bond calls, bond maturities, and the sale of securities by the trustee as required by the governing document or applicable law governing fiduciaries in order to maintain the sound investment character of the trust, and any other nonvolitional dispositions of trust assets.

(*iii*) *Certain small sales and dispositions.* If the amount of trust sales proceeds from a sale or disposition described in paragraph (c)(2)(iv)(D)(*4*)(*ii*) of this section is less than .01 percent of the net fair market value of the WHFIT as determined for applying the de minimis test for the calendar year, the trustee is not required to report the sale or disposition under paragraph (c)(2)(iv)(A) of this section provided the trustee includes the trust sales proceeds, received for purposes of determining whether the trust has met the general de minimis test of paragraph (c)(2)(iv)(D)(*1*) of this section.

(E) *Qualified NMWHFIT exception.* The qualified NMWHFIT exception is satisfied if—

(*1*) The NMWHFIT has a start-up date (as defined in paragraph (b)(19) of this section) before February 23, 2006;

(*2*) The registration statement of the NMWHFIT becomes effective under the Securities Act of 1933, as amended (15 U.S.C. 77a, *et seq.*) and trust interests are offered for sale to the public before February 23, 2006; or

(*3*) The registration statement of the NMWHFIT becomes effective under the Securities Act of 1933 and trust interests are offered for sale to the public on or after February 23, 2006, and before July 31, 2006, and the NMWHFIT is fully funded before October 1, 2006. For purposes of determining whether a NMWHFIT is fully funded under this paragraph (c)(2)(iv)(E), deposits to the NMWHFIT after October 1, 2006, that are made pursuant to a distribution reinvestment program that is consistent with the requirements of § 301.7701–4(c) of this chapter are disregarded.

(F) *NMWHFIT final calendar year exception.* The NMWHFIT final calendar year exception is satisfied if—

(*1*) The NMWHFIT terminates on or before December 31 of the year for which the trustee is reporting;

(*2*) Beneficial owners exchange their interests for cash or are treated as having exchanged their interests for cash upon termination of the trust; and

(*3*) The trustee makes reasonable efforts to engage in pro-rata sales of trust assets to effect redemptions.

(G) *Pro-rata sales of trust assets to effect a redemption*—(1) *Rule.* Pro-rata sales of trust assets to effect redemptions are not required to be reported under this paragraph (c)(2)(iv).

(2) *Definition.* Pro-rata sales of trust assets to effect redemptions occur when—

(*i*) One or more trust interests are tendered for redemption;

(*ii*) The trustee identifies the pro-rata shares of the trust assets that are deemed to be owned by the trust interest or interests tendered for redemption (See paragraph (b)(8) of this section for a description of how pro-rata is to be applied for purposes of this paragraph (c)(2)(iv)(G)) and sells those assets as soon as practicable;

(*iii*) Proceeds from the sales of the assets identified in paragraph (c)(2)(iv)(G)(*2*)(*ii*) of this section are used solely to effect redemptions; and

(*iv*) The redemptions are reported as required under paragraph (c)(2)(v) of this section by the trustee.

(*3*) *Additional rules*—(*i*) *Calendar month aggregation.* The trustee may compare the aggregate pro-rata share of the assets deemed to be owned by the trust interests tendered for redemption during the calendar month with the aggregate sales of assets to effect redemptions for the calendar month to determine the pro-rata sales of trust assets to effect redemptions for the calendar month. If the aggregate pro-rata share of an asset deemed to be owned by the trust interests tendered for redemption for the month is a fractional amount, the trustee may round that number up to the next whole number for the purpose of determining the pro-rata sales to effect redemptions for the calendar month;

(*ii*) *Sales of assets to effect redemptions may be combined with sales of assets for other purposes.* Sales of assets to effect redemptions may be combined with the sales of assets to obtain cash for other purposes but the proceeds from the sales of assets to effect redemptions must be used solely

to provide cash for redemptions and the sales of assets to obtain cash for other purposes must be reported as otherwise provided in this paragraph (c)(2)(iv). For example, if a trustee sells assets and the proceeds are used by the trustee to pay trust expenses, these amounts are to be included in the amounts reported under paragraph (c)(2)(iv)(A) or (B), as appropriate.

(*4*) *Example—*(*i*) *January 1, 2008.* Trust has one million trust interests and all interests have equal value and equal rights. The number of shares of stock in corporations A through J and the pro-rata share of each stock that a trust interest is deemed to own as of January 1, 2008, is as follows:

Stock	Total shares	Per trust interest
A	24,845	.024845
B	28,273	.028273
C	35,575	.035575
D	13,866	.013866
E	25,082	.025082
F	39,154	.039154
G	16,137	.016137
H	14,704	.014704
I	17,436	.017436
J	31,133	.031133

(*ii*) *Transactions of January 2, 2008.* On January 2, 2008, 50,000 trust interests are tendered for redemption. The deemed pro-rata ownership of stocks A through J represented by the 50,000 redeemed trust interests and the stocks sold to provide cash for the redemptions are set out in the following table:

Stock	Deemed pro-rata ownership	Shares sold
A	1,242.25	1,242
B	1,413.65	1,413
C	1,778.75	1,779
D	693.30	694
E	1,254.10	1,254
F	1,957.70	1,957
G	806.85	807
H	735.20	735
I	871.80	872
J	1,556.65	1,557

(*iii*) *Transactions on January 15 through 17, 2008.* On January 15, 2008, 10,000 trust interests are tendered for redemption. Trustee lends money to Trust for redemptions. On January 16, B merges into C at a rate of .55 per share. On January 17, Trustee sells stock to obtain cash to be reimbursed the cash loaned to Trust to effect the redemptions. The pro-rata share of the stock deemed to be owned by the 10,000 redeemed trust interests and the stock sold by the trustee to effect the redemptions are set out in the following table:

Stock	Deemed pro-rata ownership	Shares sold
A	248.45	249
B	00	00
C	511.25	512
D	138.66	138
E	250.82	251
F	391.54	392
G	161.37	162
H	147.04	148
I	174.36	174
J	311.33	311

(*iv*) *Transactions on January 28 and 29, 2008.* On January 28, 2008, the value of the H stock is $30.00 per share and Trustee, pursuant to Trust's governing document, sells the H stock to preserve the financial integrity of Trust and receives $414,630. Trustee intends to report this sale under paragraph (c)(2)(iv)(A) of this section and to distribute the proceeds of the sale pro-rata to trust interest holders on Trust's next scheduled distribution date. On January 29, 2008, while trustee still holds the proceeds from the January 28 sale, 10,000 trust interests are tendered for redemption. The pro-rata share of the stock deemed to be owned by the 10,000 redeemed trust interests and the stock sold by the trustee to effect the redemptions are set out in the following table:

Stock	Deemed pro-rata ownership	Shares sold
A	248.45	248
B	0	0
C	511.25	511
D	138.66	139
E	250.82	251
F	391.54	391
G	161.37	161
H	[1]0	0
I	174.36	175
J	311.33	312

[1]Share of cash proceeds: $4,458.39.

(*v*) *Monthly amounts.* To determine the pro-rata sales to effect redemptions for January, trustee compares the aggregate pro-rata share of stocks A through J (rounded to the next whole number) deemed to be owned by the trust interests tendered for redemption during the month of January with the sales of stocks A through J to effect redemptions:

Stock	Deemed pro-rata ownership	Shares sold
A	1740	1739
B	0	0
C	3579	3579
D	971	971
E	1756	1756
F	2741	2741
G	1130	1130
H	883	883
I	1221	1221
J	2180	2180

(*vi*) *Pro-rata sales to effect redemptions for the month of January.* For the month of January, the deemed pro-rata ownership of shares of stocks A through J equal or exceed the sales of stock to effect redemptions for the month. Accordingly, all of the sales to effect redemptions during the month of January are considered to be pro-rata and are not required to be reported under this paragraph (c)(2)(iv).

(H) *Corporate Reorganizations.* The exchange of trust assets for other assets of equivalent value pursuant to a tax free corporate reorganization is not required to be reported as a sale or disposition under this paragraph (c)(2)(iv).

(v) *Redemptions and sales of WHFIT interests—*(A) *Redemptions—*(*1*) *In general.* Unless paragraph (c)(2)(v)(C) of this section applies, for each date on which the amount of a redemption proceeds for the redemption of a trust interest is determined, the trustee must provide information to enable a requesting person to determine—

(*i*) The redemption proceeds (as defined in paragraph (b)(15) of this section) per trust interest on that date;

(*ii*) The redemption asset proceeds (as defined in paragraph (b)(14) of this section) per trust interest on that date; and

(*iii*) The gross income that is attributable to the redeeming beneficial owner for the portion of the calendar year that the redeeming beneficial owner held its interest (including income earned by the WHFIT after the date of the last income distribution.

(*2*) *In kind redemptions.* The value of the assets received with respect to an in-kind redemption (as defined in paragraph (b)(8) of this section) is not required to be reported under this paragraph (c)(2)(v)(A). Information regarding the income attributable to a redeeming beneficial owner must, however, be reported under paragraph (c)(2)(v)(A)(*1*)(*iii*) of this section.

(B) *Sale of a trust interest.* Under paragraph (c)(2)(v)(C) of this section applies, if a secondary market for interests in the WHFIT is established, the trustee must provide, for each day of the calendar year, information to enable requesting persons to determine—

(*1*) The sale assets proceeds (as defined in paragraph (b)(17) of this section) per trust interest on that date; and

(*2*) The gross income that is attributable to a selling beneficial owner and to a purchasing beneficial owner for the portion of the calendar year that each held the trust interest.

(C) *Simplified Reporting for Certain NMWHFITs—*(*1*) *In general.* The trustee of an NMWHFIT described in paragraph (c)(2)(v)(C)(*2*) of this section is not

required to report the information described in paragraph (c)(2)(v)(A) of this section (regarding redemptions) or (c)(2)(v)(B) of this section (regarding sales). However, the trustee must report to requesting persons, for each date on which the amount of redemption proceeds to be paid for the redemption of a trust interest is determined, information that will enable requesting persons to determine the redemption proceeds per trust interest on that date. The trustee also must provide requesting persons with a statement that this paragraph applies to the NMWHFIT.

(*2*) *NMWHFITs that qualify for the exception.* This paragraph (c)(2)(v)(C) applies to a NMWHFIT if—

(*i*) Substantially all the assets of the NMWHFIT produce income that is treated as interest income (but only if these assets trade on a recognized exchange or securities market without a price component attributable to accrued interest) or produce dividend income (as defined in section 6042(b) and the regulations under that section). (Trust sales proceeds and gross proceeds from sales described in paragraphs (c)(2)(iv)(G) and (H) of this section are ignored for the purpose of determining if substantially all of a NMWHFIT's assets produce dividend or the interest income described in this paragraph); and

(*ii*) The qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section is satisfied, or the trustee is required by the governing document of the NMWHFIT to determine and distribute all cash held for distribution (as defined in paragraph (b)(5) of this section) no less frequently than monthly. A NMWHFIT will be considered to have satisfied this paragraph (c)(2)(v)(C)(*2*)(*i*) notwithstanding that the governing document of the NMWHFIT permits the trustee to forego making a required monthly or more frequent distribution, if the cash held for distribution is less than 0.1 percent of the aggregate net asset value of the trust as of the date specified in the governing document for calculating the amount of the monthly distribution.

(vi) *Information regarding bond premium.* The trustee generally must report information that enables a beneficial owner to determine, in any manner that is reasonably consistent with section 171, the amount of the beneficial owner's amortizable bond premium, if any, for each calendar year. However, if a NMWHFIT meets the general *de minimis* test in paragraph (c)(2)(iv)(D)(*1*) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee of the NMWHFIT is not required to report information regarding bond premium.

(vii) *Information regarding market discount.* The trustee generally must report information that enables a beneficial owner to determine, in any manner reasonably consistent with section 1276 (including section 1276(a)(3)), the amount of market discount that has accrued during the calendar year. However, if a NMWHFIT meets the general *de minimis* test in paragraph (c)(2)(iv)(D) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final calendar year exception of paragraph (c)(2)(iv)(F) of this section, the trustee of such NMWHFIT is not required to provide information regarding market discount.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(C) *Gross income.* All items of gross income of the WHFIT attributable to the TIH for the calendar year (including OID (unless the exception for certain WHMTs applies (see paragraph (c)(2)(ii)(A) of this section)) and all amounts of income attributable to a selling, purchasing, or redeeming TIH for the portion of the calendar year that the TIH held its interest (unless paragraph (c)(2)(v)(C) of this section (regarding an exception for certain NMWHFITs) applies));

* * * * *

(F) *Reporting Redemptions.* All redemption asset proceeds (as defined in paragraph (b)(14) of this section) paid to the TIH for the calendar year, if any, or, if paragraph (c)(2)(v)(C) of this section (regarding an exception for certain NMWHFITs) applies, all redemption proceeds (as defined in paragraph (b)(15) of this section) paid to the TIH for the calendar year;

(G) *Reporting sales of a trust interest on a secondary market.* All sales asset proceeds (as defined in paragraph (b)(17) of this section) paid to the TIH for the sale of a trust interest or interests on a secondary market established for the NMWHFIT for the calendar year, if any, or, if paragraph (c)(2)(v)(C) of this section (regarding an exception for certain NMWHFITs) applies, all sales proceeds (as defined in paragraph (b)(18) of this section) paid to the TIH for the calendar year; and

* * * * *

(f) *Safe harbor for providing information for certain NMWHFITs*—(1) *Safe harbor for trustee reporting of NMWHFIT information.* The trustee of a NMWHFIT that meets the requirements of paragraph (f)(1)(i) of this section is deemed to satisfy paragraph (c)(1)(i) of this section, if the trustee calculates and provides WHFIT information in the manner described in this paragraph (f) and provides a statement to a requesting person giving notice that information has been calculated in accordance with this paragraph (f)(1).

(i) *In general*—(A) *Eligibility to report under this safe harbor.* Only NMWHFITs that meet the requirements set forth in paragraphs (f)(1)(i)(A)(*1*) and (*2*) of this section may report under this safe harbor. For purposes of determining whether the requirements of paragraph (f)(1)(i)(A)(*1*) of this section are met, trust sales proceeds and gross proceeds from sales described in paragraphs (c)(2)(iv)(G) and (H) of this section are ignored.

(*1*) Substantially all of the NMWHFIT's income is from dividends or interest; and

(*2*) All trust interests have identical value and rights.

* * * * *

(viii) *Reporting market discount information under the safe harbor*—(A) *In general*—(*1*) *Trustee required to provide market discount information.* If the trustee is required to provide information regarding market discount under paragraph (c)(2)(vii) of this section, the trustee must provide—

(*i*) The information required to be provided under paragraph (f)(1)(iv)(A)(*1*)(*iii*) of this section; and

(*ii*) If the NMWHFIT holds debt instruments with OID, a list of the aggregate adjusted issue prices of the debt instruments per trust interest calculated as of the start-up date or measuring date (see paragraph (c)(2)(iv)(D)(*4*) of this section) (whichever provides more accurate information) and as of January 1 for each subsequent year of the NMWHFIT.

(*2*) *Trustee not required to provide market discount information.* If the trustee is not required to provide market discount information under paragraph (c)(2)(vii) of this section (because the NMWHFIT meets the general de minimis test of paragraph (c)(2)(iv)(D)(*1*) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final year exception of paragraph (c)(2)(iv)(F) of this section), the trustee is not required under this paragraph (f) to provide any information regarding market discount.

* * * * *

(2) * * *

(viii) * * *

(A) Except as provided in paragraph (f)(2)(viii)(B) of this section, the trustee or middleman must provide the TIH with the information provided under paragraph (f)(1)(viii) of this section.

(3) * * *

(i) * * *

(A) * * *

(*1*) Trust is a NMWHFIT that holds common stock in ten different corporations and has 100 trust interests outstanding. The start-up date for Trust is December 15, 2006, and Trust's registration statement under the Securities Act of 1933 became effective after July 31, 2006. Trust terminates on March 15, 2008. The agreement governing Trust requires Trust to distribute cash held by Trust reduced by accrued but unpaid expenses on April 15, July 15, and October 15 of the 2007 calendar year. The agreement also provides that the trust interests will be redeemed by the Trust for an amount equal to the value of the trust interest, as of the close of business, on the day the trust interest is tendered for redemption. There is no reinvestment plan. A secondary market for interests in Trust will be created by Trust's sponsor and Trust's sponsor will provide Trustee with a list of dates on which sales occurred on this secondary market.

(B) * * *

(*5*) On June 1, 2007, Trustee sells shares of stock for $1000x to preserve the soundness of the trust. The stock sold on June 1, 2007, equaled 20% of the aggregate fair market value of the assets held by Trust on the start-up date of Trust. Trustee has chosen not to report sales described in paragraph (c)(2)(iv)(*4*)(*ii*) of Trust's assets under paragraph (c)(2)(iv)(D)(*4*) of this section.

* * * * *

(*9*) On December 10, 2007, *J* tenders a trust interest to Trustee for redemption through Broker1. Trustee determines that the amount of the redemption proceeds to be paid for a trust interest that is tendered for redemption on December 10, 2007 is $116x, of which $115x represents the redemption asset proceeds. Trustee pays this amount to Broker1 on *J*'s behalf. On December 12, 2007, trustee engages in a non pro-rata sale of shares of common stock for $115x to effect *J*'s redemption of a trust interest. The stock sold on December 12, 2007, equals 2% of the aggregate fair market value of all the assets of Trust as of the start-up date.

* * * * *

(ii) * * *

(B) * * *

(*4*) * * * (*i*) *Application of the de minimis test.* The aggregate fair market value of the assets of Trust as of January 1, 2007, was $10,000x. During the 2007 calendar year, Trust received trust sales proceeds of $1115x. The trust sales proceeds received by Trust for the 2007 calendar year equal 11.15% of Trust's fair market value as of January 1, 2007. Accordingly, the *de minimis* test is not satisfied for the 2007 calendar year. The qualified NMWHFIT exception in paragraph (c)(2)(iv)(E) of this section and the NMWHFIT final calendar year exception in (c)(2)(iv)(F) of this section also do not apply to Trust for the 2007 calendar year.

* * * * *

(*5*) *Reporting redemptions.* Because Trust is not required to make distributions at least as frequently as monthly, and Trust does not satisfy the qualified NMWHFIT exception in paragraph (c)(2)(iv)(E) of this section, the exception in paragraph (c)(2)(v)(C) does not apply to Trust. To satisfy the requirements of paragraph (f)(1) of this section, Trustee provides a list of dates for which the redemption proceeds to be paid for the redemption of a trust interest was determined for the 2007 calendar year and the redemptions asset proceeds paid for each date. During 2007, Trustee only determined the amount of redemption proceeds paid for the redemption of a trust interest once, for December 10, 2007 and the redemption asset proceeds determined for that date was $115x.

(*6*) *Reporting sales of trust interests.* Because trust is not required to make distributions at least as frequently as monthly, and Trust does not satisfy the qualified NMWHFIT exception in paragraph (c)(2)(iv)(E) of this section, the exception in paragraph (c)(2)(v)(C) of this section does not apply to Trust. Sponsor, in accordance with the trust agreement, provides Trustee with a list of dates on which sales on the secondary market occurred. To satisfy the requirements of paragraph (f)(1) of this section, Trustee provides requesting persons with a list of dates on which sales on the secondary market occurred and the amount of cash held for distribution, per trust interest, on each date. The first sale during the 2007 calendar year occurred on September 30, 2007, and the amount of cash held for distribution, per trust interest, on that date is $1.35x. The second sale occurred on December 10, 2007, and the amount of cash held for distribution, per trust interest, on that date is $1.00x.

(g) * * *

(1) * * *

(iv) * * * (A) * * *

(*2*) In calculating the daily portion of OID, the trustee must use the prepayment assumption used in pricing the original issue of trust interests. If the WHMT has a start-up date prior to January 24, 2006, and the trustee, after a good faith effort to ascertain that information, does not know the prepayment assumption used in pricing the original issue of trust interests, the trustee may use any reasonable prepayment assumption to calculate OID provided it continues to use the same prepayment assumption consistently thereafter.

* * * * *

(v) * * * (A) * * *

(*3*) *Computing the total amount of stated interest remaining to be paid and the total remaining OID at the beginning of the month.* To compute the total amount of stated interest remaining to be paid to the WHMT as of the beginning of the month and the total remaining OID as of the beginning of the month, the trustee must use the prepayment assumption used in pricing the original issue of trust interests. If the WHMT has a start-up date prior to January 24, 2006, and the trustee, after a good faith effort to ascertain that information, does not know the prepayment assumption used in pricing the original issue of trust interests, the trustee may use any reasonable prepayment assumption to calculate these amounts provided it continues to use the same prepayment assumption consistently thereafter.

* * * * *

(h) *Additional safe harbors*—(1) *Temporary safe harbor for WHMTs*—(i) *Application.* Pending the issuance of additional guidance, the safe harbor in this paragraph applies to trustees and middlemen of WHMTs that are not eligible to report under the WHMT safe harbor in paragraph (g) of this section because they hold interests in another WHFIT, in a REMIC, or hold or issue stripped interests.

(ii) *Safe harbor.* A trustee is deemed to satisfy the requirements of paragraph (c) of this section, if the trustee calculates and provides trust information in a manner that enables a requesting person to provide trust information to a beneficial owner of a trust interest that enables the owner to reasonably accurately report the tax consequences of its ownership of a trust interest on its federal income tax return. Additionally, to be deemed to satisfy the requirements of paragraph (c) of this section, the trustee must calculate and provide trust information regarding market discount and OID by any reasonable manner consistent with section 1272(a)(6). A middleman or a trustee may satisfy its obligation to furnish information to the IRS under paragraph (d) of this section and to the trust interest holder under paragraph (e) of this section by providing information consistent with the information provided under this paragraph by the trustee.

(2) *Additional safe harbors provided by other published guidance.* The IRS and the Treasury Department may provide additional safe harbor reporting procedures for complying with this section or a specific paragraph of this section by other published guidance (see § 601.601(d)(2) of this chapter).

* * * * *

(m) *Penalties for failure to comply*—(1) *In general.* Every trustee or middleman who fails to comply with the reporting obligations imposed by this section is subject to penalties under sections 6721, 6722, and any other applicable penalty provisions.

(2) *Penalties not imposed on trustees and middlemen of certain WHMTs for failure to report OID.* Penalties will not be imposed as a result of a failure to provide OID information for a WHMT that has a start-up date on or after August 13, 1998 and on or before January 24, 2006, if the trustee of the WHMT does not have the historic information necessary to provide this information and the trustee demonstrates that it has attempted in good faith, but without success, to obtain this information. For purposes of calculating a market discount fraction under paragraph (g)(1)(v) of this section, for a WHMT described in this paragraph, it may be assumed that the WHMT is holding mortgages that were issued without OID. A trustee availing itself of this paragraph must include a statement to that effect when providing information to requesting persons under paragraph (c) of these regulations.

* * * * *

§ 1.671–5T [Removed]

■ **Par. 3.** Section 1.671–5T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary (Tax Policy).

[FR Doc. 06–9924 Filed 12–26–06; 10:22 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–07–123]

RIN 1625–AA00

Safety Zone: Transit of Industrial Cranes, Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone from the mouth of the Cape Fear River to the Cape Fear Memorial Bridge to provide for the safety of the public during the transit and mooring of a vessel carrying four (4) large industrial cranes. The cranes are of such size and dimension that they will create a significant obstruction to safe navigation for other vessels operating in the vicinity. Restricting vessel traffic is necessary to ensure the safety of the public. Vessel traffic will only be restricted during the transit of the vessel.

DATES: This rule is effective from 1 a.m. on February 1, 2007 until 11 p.m. on February 15, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–123 and are available for inspection or copying at the Coast Guard Marine Safety Unit Wilmington, North Carolina between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LT Tim Grant, Chief of Response, Coast Guard Marine Safety Unit Wilmington, North Carolina at (910) 772–2191.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553(b)(B), a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM. Any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to prevent traffic from transiting the waters of the Cape Fear River. A safety zone is needed in order to provide for the safety of life and property on navigable waters of the Cape Fear River. The regulated area will consist of the complete closure of the Cape Fear River to vessel traffic movement beginning at the International Regulations for Prevention of Collisions at Sea, 1972 (COLREGS, 72) Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River bank to bank to the Cape Fear Memorial Bridge. The safety zone will be enforced until the vessel transporting the cranes has been safely moored at North Carolina State Port Authority berth #8.

Background and Purpose

Sometime between February 1, 2007 and February 15, 2007, The North Carolina State Port Authority (NCSPA) intends to bring in four (4) new cranes to enhance container operations at the NCSPA's facility located on the Cape Fear River, Wilmington, North Carolina. The combination of the size of the cranes and the restricted maneuverability in the Cape Fear River necessitates the temporary restriction of all commercial vessel movement in the Cape Fear River to protect mariners from the hazards associated with this event. This temporary safety zone will be enforced for approximately five (5) to seven (7) hours on a day between February 1 and February 15 when the transit of the vessel carrying four large industrial cranes occurs. The zone will only be enforced on the day during the transit. The zone will not be enforced on subsequent days during the duration of the effective period. The zone will have minimal impact on vessel transits because the waterway will only be closed for five to seven hours.

Discussion of Rule

The Coast Guard is establishing a safety zone on the specified waters of the Cape Fear River. The regulated area will consist of the complete closure of the Cape Fear River to vessel traffic movement beginning at the International Regulations for Prevention of Collisions at Sea, 1972 (COLREGS, 72) Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River bank to bank to the Cape Fear Memorial Bridge. The safety zone will be in effect from 1 a.m. on February 1, 2007 to 11 p.m. on February 15, 2007. The zone will be enforced for approximately five (5) to seven (7) hours on a day between February 1 and February 15 when the transit of the vessel carrying four large industrial cranes occurs. After February 15, 2007 the zone will no longer be in effect. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Cape Fear River between the dates of February 1, 2007 and February 15, 2007. The safety zone will not have a significant impact on a substantial number of small entities, because the zone will only be in place for approximately five (5) to seven (7) hours and maritime advisories will be issued, so the mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Tim Grant, Chief of Response, Coast Guard Marine Safety Unit Wilmington, North Carolina at (910) 772–2191. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the U.S. Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.; Department of Homeland Security Delegation No. 0170; 46 U.S.C. Chapter 701; Pub. L. 107–295, 116 Stat. 2064.

■ 2. Add Temporary § 165.T05–123, to read as follows:

§ 165.T05–123 Safety Zone: Cape Fear River, Wilmington, North Carolina.

(a) *Location:* The following area is a safety zone: All waters of the Cape Fear River from COLREGS Demarcation Line drawn from Oak Island Light House to Bald Head Island Abandon Light House noted on NOAA chart 11537 and proceeding north up the Cape Fear River bank to bank to the Cape Fear Memorial Bridge, in the Captain of the Port Cape Fear River, Wilmington North Carolina zone as defined in 33 CFR § 3.25–20.

(b) *Definition:* As used in this section; Captain of the Port: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Cape Fear River, Wilmington, North Carolina to act on his behalf.

(c) *Regulation:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Cape Fear River, Wilmington, North Carolina, or designated representative.

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

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

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

(3) The Captain of the Port, Cape Fear River Wilmington, North Carolina can be contacted at telephone number (910) 772–2191/94 or (910) 512–5830/31.

(4) Coast Guard vessels enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 MHz) and channel 16 (156.8 MHz).

(d) *Enforcement period:* The zone will be enforced for approximately five (5) to seven (7) hours on a day between February 1 and February 15 when the transit of the vessel carrying four large industrial cranes occurs. If the transit occurs as planned on a day during this period, then the zone will not be enforced on subsequent days during the duration of the effective period.

(e) *Effective Date:* This regulation is effective from 1 a.m. on February 1, 2007 until 11 p.m. on February 15, 2007.

Dated: December 18, 2006.

Byron L. Black,

Commander, U.S. Coast Guard, Captain of the Port, Cape Fear River, Wilmington, North Carolina.

[FR Doc. E6–22440 Filed 12–28–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–121]

RIN 1625–AA00

Security Zone; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Choptank River. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents during the U.S. House Republican Issues Conference, being held during January 24–26, 2007. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 7 a.m. on January 24, 2007, through 7 a.m. on January 27, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–06–121 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, Waterways Management Division, at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard is establishing this security zone to support the United States Capitol Police Dignitary Protection Division, the lead federal agency coordinating security for the U.S. House Republican Issues Conference, in their efforts to coordinate security operations and establish a secure environment for this highly visible and publicized event. This temporary security zone of short duration is necessary to provide for the security of a large gathering of high-ranking United States officials, their families and staff. Additionally, the publication of an NPRM is contrary to the public interest as our Nation continues its heightened security posture. Therefore, immediate action is required to address the ongoing threat to U.S. national interests.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to protect the public by preventing waterborne acts of terrorism, which terrorists have demonstrated a capability to carry out. Immediate action is needed to defend against and deter these terrorist acts. Any delay in the effective date of this rule is contrary to public and national interests.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Coast Guard Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and

waterfront facilities against sabotage or terrorist attacks.

The Captain of the Port Baltimore is establishing a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against a large gathering of high-ranking United States officials, their families, and staff at or near the Hyatt Regency Chesapeake Bay Golf Resort, Spa and Marina, in Cambridge, Maryland, would have. This temporary security zone applies to all waters of the Choptank River, within 500 yards of the resort's River Marsh Marina Breakwater Pavilion, in approximate position latitude 38°33.76′ N longitude 076°02.75′ W (North American Datum of 1983). Vessels underway at the time this security zone is implemented will immediately proceed out of the zone. We will issue written and broadcast Notices to Mariners to further publicize the security zone and any revisions to the zone.

Except for Public vessels and vessels at berth, mooring or at anchor, this rule temporarily requires all vessels in the designated security zone as defined by this rule to depart the security zone.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate, transit or anchor on the Choptank River, within 500 yards of the Hyatt Regency Chesapeake Bay Golf Resort, Spa and Marina's Breakwater Pavilion, in approximate position latitude 38°33.76′ N longitude 076°02.75′ W (North American Datum of 1983) from 7 a.m. on January 24, 2007 through 7 a.m. on January 27, 2007. This security zone will not have a significant economic impact on a substantial number of small entities due to its limited size, vessels requiring to transit the federal navigation channel will be able to do so, and a lack of seasonal vessel traffic associated with recreational boating and commercial fishing during the effective period. Further, vessels with compelling interests that outweigh the port's security needs may be granted waivers from the requirements of the security zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT.**

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD 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)(g), of the Instruction, from further environmental documentation. This rule establishes a security zone.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are available in the docket.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–121 to read as follows:

§ 165.T05–121 Security Zone; Choptank River, Cambridge, MD.

(a) *Definitions.* For the purposes of this section, *Captain of the Port Baltimore* means the Commander, U.S. Coast Guard sector Baltimore, Maryland and any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, U.S. Coast Guard Sector Baltimore, Maryland to act as a designated representative on his behalf.

(b) *Location.* The following area is a security zone: All waters of the Choptank River, within 500 yards of the Hyatt Regency Chesapeake Bay Golf Resort, Spa and Marina's Breakwater Pavilion, in approximate position latitude 38° 33.76′ N longitude 076° 02.75′ W (North American Datum of 1983).

(c) *Regulations.* (1) The general regulations governing security zones found in § 165.33 of this part apply to the security zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore or his designated representative. Except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone are to depart the security zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore and proceed at the minimum speed necessary to maintain a safe course while within the zone.

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

(e) *Enforcement period.* This section will be enforced from 7 a.m. on January 24, 2007, through 7 a.m. on January 27, 2007.

Dated: December 18, 2006.

Brian D. Kelley,

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

[FR Doc. E6–22441 Filed 12–28–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP JACKSONVILLE 06–276]

RIN 1625–AA87

Security Zones; Escorted Vessels in the Captain of the Port Jacksonville Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily establishing security zones around any vessel escorted by one or more Coast Guard, State, or local law enforcement assets within the Captain of the Port Zone Jacksonville, FL. No vessel or person is allowed within 100 yards of an escorted vessel, while within the navigable waters of the Captain of the Port Zone, Jacksonville, FL, unless authorized by the Captain of the Port Jacksonville, FL or designated representative. Additionally, all vessels within 500 yards of an escorted vessel in the Captain of the Port Zone Jacksonville, FL will be required to operate at a minimum speed necessary to maintain a safe course. This action is necessary to protect personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature while we undertake a separate, notice-and-comment rulemaking to establish a permanent security zone for escorted vessels in the COTP Jacksonville Zone.

DATES: This rule is effective from December 7, 2006, through April 1, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (COTP Jacksonville 06–276) and are available for inspection or copying at Coast Guard Sector Jacksonville Prevention Department, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Kira Peterson at Coast Guard Sector Jacksonville Prevention

Department, Florida tel: (904) 232–2640, ext. 108.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Security zones around escorted vessels are necessary to ensure the safe transit of the escorted vessels as well as the public. Certain vessel movements are more vulnerable to terrorist acts and it would be contrary to the public interest to publish an NPRM which would incorporate a notice and comment period that would delay the effective date of this regulation.

For the same reasons and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The terrorist attacks of September 2001 heightened the need for development of various security measures throughout the seaports of the United States, particularly around vessels and facilities whose presence or movement creates a heightened vulnerability to terrorist acts; or those for which the consequences of terrorist acts represent a threat to national security. Following the attacks of September 11, 2001, the President of the United States found the security of the United States to be endangered (E.O. 13224, 66 FR 49079, September 25, 2001) and the President has continued the national emergencies he declared in 2001 (71 FR 52733, September 7, 2006, continuing the emergency declared with respect to terrorist attacks; and 71 FR 55725, September 22, 2006, continuing the emergency with respect to persons who commit, threaten to commit or support terrorism). Additionally, national security and intelligence officials continue to warn that future terrorist attacks are likely.

King's Bay, GA, and the Ports of Jacksonville, FL, and Canaveral, FL, receive vessels that carry sensitive Department of Defense cargoes as well as foreign naval vessels that require additional safeguards. The Captain of the Port (COTP) Jacksonville has determined that these vessels have a significant vulnerability to subversive activity by vessels or persons within the Jacksonville Captain of the Port Zone, as described in 33 CFR 3.35–20. This rule enables the COTP Jacksonville to provide effective port security, while minimizing the public's confusion and ease the administrative burden of implementing separate temporary security zones for each escorted vessel. In the near future, the Captain of the Port Jacksoniville will publish a notice of proposed rulemaking (NPRM) in the **Federal Register** and seek comments on a proposal to establish a permanent security zone for escorted vessels in the COTP Jacksonville Zone. While that rulemaking is underway, this temporary rule is necessary to continue to ensure security for the Port.

Discussion of Rule

This rule prohibits persons and vessels from coming within 100 yards of all escorted vessels within the navigable waters of the Captain of the Port Zone Jacksonville, FL, as described in 33 CFR 3.35–20. No vessel or person may enter within a 100 yard radius of an escorted vessel unless authorized by the Coast Guard Captain of the Port Jacksonville, FL or his designated representative. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed and must comply with all orders issued by the COTP or his designated representative. Additionally, a vessel operating within 500 yards of an escorted vessel must proceed at a minimum speed necessary to maintain a safe course, unless otherwise required to maintain speed by the navigation rules, and must comply with the orders of the COTP Jacksonville or his designated representative.

Regulatory Evaluation

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

While recognizing the potential impacts to the public, the Coast Guard believes the security zones are necessary for the reasons described above. However, we expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. There is generally enough room for vessels to navigate around these security zones. Where such room is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels as needed.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit King's Bay and the Ports of Jacksonville and Canaveral in the vicinity of escorted vessels. This rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, leaving in most cases ample space for vessels to navigate around them. The zones will not significantly impact commercial and passenger vessel traffic patterns, and mariners will be notified of the zones via Local Notice to Mariners and marine broadcasts. Where such room is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels to transit through the zones as needed.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would affect it economically.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T07–276 to read as follows:

§ 165.T07–276 Security Zones; Escorted Vessels in the Captain of the Port Jacksonville Zone.

(a) *Definitions.* The following definitions apply to this section:

Designated representatives means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP), Jacksonville, Florida, in the enforcement of the regulated navigation areas and security zones.

Escorted vessel means a vessel, other than a U.S. naval vessel as defined in § 165.2015 that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) Coast Guard Auxiliary surface asset displaying the Coast Guard Auxiliary insignia.

(3) State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.

Minimum Safe Speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a

particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

State and/or local law enforcement officer means any State or local government law enforcement officer who has authority to enforce State or local laws.

(b) *Regulated area.* All navigable waters within the Captain of the Port Zone Jacksonville, FL, as described in 33 CFR 3.35–20.

(c) *Regulations.* (1) A 100 yard Security Zone is established around, and centered on each Escorted vessel within the Regulated Area. This is a moving security zone when the Escorted vessel is in transit and becomes a fixed zone when the Escorted vessel is anchored or moored. The general regulations for Security Zones contained in § 165.33 of this part applies to this section.

(2) A vessel in the Regulated Area operating between 100 yards and 500 yards of an Escorted vessel must proceed at the minimum safe speed, unless otherwise required to maintain speed by the navigation rules, and must comply with the orders of the COTP Jacksonville or his designated representative.

(3) Persons or vessels shall contact the COTP Jacksonville to request permission to deviate from these regulations. The COTP Jacksonville may be contacted at (904) 247–7318 or on VHF channel 16.

(4) The COTP will inform the public of the existence or status of Escorted vessels in the Regulated Area by Broadcast Notice to Mariners.

(d) *Effective period.* This section is effective from December 7, 2006, through April 1, 2007.

Dated: December 8, 2006.

Paul F. Thomas,

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

[FR Doc. E6–22439 Filed 12–28–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM28

Accrued Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulation regarding accrued benefits. The amendments are the result of changes in statute and are intended to clarify existing regulatory provisions. This document adopts as final rule, without change, the proposed rule published in the **Federal Register** on June 29, 2006.

DATES: *Effective Date:* January 29, 2007.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Policy and Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 29, 2006, (71 FR 37027), VA proposed to amend its regulations regarding accrued benefits to clarify existing regulatory provisions and to ensure consistency with section 104 of the Veterans Benefits Act of 2003, Public Law 108–183, which amended 38 U.S.C. 5121, with respect to payment of certain accrued benefits upon the death of a beneficiary.

The public comment period ended on August 28, 2006, and VA received no comments. Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

Executive Order 12866

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

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents, 64.104, Pension for Non-Service-Connected Disability for Veterans, 64.105, Pension to Veterans Surviving Spouses, and Children, 64.109, Veterans Compensation for Service-Connected Disability, and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits,

Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: December 7, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 3 (subpart A) as follows:

PART 3—ADJUDICATION

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

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

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

■ 2. Amend § 3.1000 as follows:
■ a. In paragraph (a) introductory text, remove "at his death" and add, in its place, "at his or her death"; remove "decisions, or" and add, in its place, "decisions or"; and remove "for a period not to exceed 2 years prior to the last date of entitlement as provided in § 3.500(g)".
■ b. Redesignate paragraph (a)(4) as paragraph (a)(5).
■ c. Add a new paragraph (a)(4).
■ d. In paragraph (d)(4), add ", in support of a claim for VA benefits pending on the date of death" immediately following "before the date of death".
■ e. Add paragraph (d)(5).
■ f. Add paragraph (i).

The additions read as follows:

§ 3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary.

(a) * * *

(4) Upon the death of a child claiming benefits under chapter 18 of this title, to the surviving parents.

* * * * *

(d) * * *

(5) *Claim for VA benefits pending on the date of death* means a claim filed with VA that had not been finally adjudicated by VA on or before the date of death. Such a claim includes a deceased beneficiary's claim to reopen a finally disallowed claim based upon new and material evidence or a deceased beneficiary's claim of clear and unmistakable error in a prior rating or decision. Any new and material evidence must have been in VA's possession on or before the date of the beneficiary's death.

* * * * *

(i) *Active service pay.* Benefits awarded under this section do not include compensation or pension benefits for any period for which the veteran received active service pay.

(Authority: 38 U.S.C. 5304(c).)

[FR Doc. E6–22339 Filed 12–28–06; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0357; FRL–8264–2]

RIN 2060–AO03

National Emission Standards for Hazardous Air Pollutants: Shipbuilding and Ship Repair (Surface Coating) Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amendments to the national emission standards for hazardous air pollutants (NESHAP) for shipbuilding and ship repair (surface coating) operations (subpart II) promulgated on December 15, 1995 (60 FR 64330), under the authority of section 112(d) of the Clean Air Act (CAA). These direct final rule amendments close an unintended gap in the scope of activities subject to the NESHAP by amending the definition of "ship" to include all marine or fresh-water vessels that are either (1) 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or (2) less than 20 meters in length and designed and built specifically for military or commercial purposes. All shipbuilding and ship repair coating operations performed on "ships," as so defined, are subject to Subpart II if they take place at an "affected source," as defined in 40 CFR 63.782. The only exception is that this NESHAP shall not be construed to apply to coating activities that are subject to emission limitations or work practices under the NESHAP for the boat manufacturing at 40 CFR part 63 subpart VVVV. We have also added a definition of "commercial" to further clarify the types of nonmilitary vessels less than 20 meters that we consider to be ships. The amended definition of "ship" renders the term "pleasure craft" unnecessary and the amendments, therefore, eliminate the use of that term in subpart II.

DATES: The direct final rule is effective on February 27, 2007 without further notice, unless EPA receives adverse comment by January 29, 2007 or if a public hearing is requested by January 8, 2007. If adverse comments are received or a public hearing is requested, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0357 (Legacy No. A–92–11), by one of the following methods:

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

2. *E-mail: serageldin.mohamed@epa.gov.*

3. Fax: (202) 566–1741 and (919) 541–3470.

4. Mail: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a duplicate copy, if possible.

5. Hand Delivery: Air and Radiation Docket, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

We request that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions. Direct your comments to Docket ID No. OAR–2004–0357. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* 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 EDOCKET, www.regulations.gov, or e-mail. The EPA EDOCKET and the Federal Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical

difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006), or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to www.regulations.gov are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Dr. Mohamed Serageldin, Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (E143–03), Research Triangle Park, NC 27711, telephone number (919) 541–2379, electronic mail address *serageldin.mohamed@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Facilities that are engaged in shipbuilding and ship repair operations. The term ship means all marine or fresh-water vessels that are either (1) 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or (2) that are less than 20 meters in length and are designed and built specifically for military or commercial purposes. This includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, tankers, container ships, patrol and pilot boats, yachts, and dredges.
	Note: An offshore oil and gas drilling platform is not considered a ship for purposes of this regulation.
Federal Govt	Federal Agencies which undertake shipbuilding or repair operations (see above) such as the Navy and Coast Guard.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this rule.

To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.781 of the rule, as well as in this direct final rule. If you have any questions regarding the applicability of this rule to a particular activity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the direct final rule will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Comments. We are publishing the direct final rule without prior proposal because we do not believe that the changes are controversial. As explained below, the changes are being made to fill a gap in coverage which was inadvertently created in an effort to address an issue raised by commenters in response to the proposed rule (59 FR 62681, December 6, 1994). These amendments are wholly consistent with the intent of the 1995 rule. Moreover, we are issuing these amendments as a direct final rule to ensure that the activities made subject to subpart II by the amended definition of "ship" are covered under subpart II, as opposed to the Miscellaneous Metal Parts and Products (Surface Coating) NESHAP (subpart MMMM). Subpart MMMM is a catch-all category intended to cover all metal surface coating activities not specifically covered by another NESHAP. In the absence of these direct final rule amendments, any shipbuilding and ship repair operations performed on vessels that do not meet the definition of ship would not be covered by subpart II and would be subject to subpart MMMM on the initial compliance date of January 2, 2007.

In the Proposed Rules Section of this **Federal Register**, we are publishing a separate document that will serve as the proposal to amend the NESHAP for Shipbuilding and Ship Repair (Surface Coating) Operations (40 CFR part 63, subpart II) in the event that this direct final rule is withdrawn. If we receive any adverse comment or a request for a public hearing, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. We will address all public comments received on the proposed rule in a subsequent final rule, we will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule must do so at this time.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 27, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the direct final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Why are we amending the rule?

On December 15, 1995, EPA issued a NESHAP section 112 of the CAA for shipbuilding and ship repair (surface coating) operations (60 FR 64330). The shipbuilding and ship repair rule requires existing and new major sources to control emissions of hazardous air pollutants to the level achievable using maximum achievable (MACT) control technology. The rule applies to shipbuilding and ship repair operations at any facilities that are major sources, that apply marine coatings to "ships" and that meet the definition of "affected source" in 40 CFR 63.782 (Section 63.782 defines "affected source" as "any shipbuilding or ship repair facility having surface coating operations with a minimum 1,000 liters (L) (264 gallons annual marine coatings usage that is subject to this subpart.") "Ship building and ship repair operations," as defined in subpart II (40 CFR 63.782), means "any building, repair, repainting, converting, or alteration of ships."

In the December 6, 1994, proposed rule (59 FR 62681) the term "ship" was defined as "any marine or fresh-water vessel used for military or commercial operations." The term "commercial," in turn, was defined broadly as "any vessel not owned and operated by the U.S. military or the U.S. Coast Guard." During the public comment period on the proposed rule, EPA received public comments which expressed concern that the definition of "ship" in the proposed rule was too broad and could be read to cover facilities engaged in building or repairing vessels that are small in size and are intended for, or used for, only recreational use. In response to these comments, EPA added a definition for "pleasure craft" in the final rule and excluded "pleasure craft" as so defined from the definition of "ship." Specifically, EPA defined "ship" and "pleasure craft" in the final rule as follows:

- Ship means any marine or fresh-water vessel used for military or commercial operations, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. For purposes of this subpart, pleasure crafts and off-shore oil and gas drilling platforms are not considered ships.
- Pleasure craft, which is excluded from the definition of ship, is defined as any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters in length. A vessel rented exclusively to or chartered by individuals for such purposes shall be considered pleasure craft.

Although EPA had proposed a broad definition for the term "commercial" in the proposed rule, it did not adopt that definition in the final rule issued in 1995. It did, however, use the undefined term "commercial" in defining what constitutes a "ship." In creating the definition of "pleasure craft" in the final NESHAP and excluding pleasure craft from the definition of "ship," we intended that only those vessels less than 20 meters in length used by individuals for nonmilitary and noncommercial purposes (i.e., recreational purposes) would be exempt from subpart II. Our use of the terms "noncommercial, nonmilitary and recreational" in the definition of "pleasure craft" and our failure to adopt the proposed broad definition of "commercial" coupled with the "commercial and military" restriction in the definition of "ship" have led to questions as to whether the final NESHAP applies to shipbuilding and ship repair operations conducted on vessels that measure 20 meters or more in length, that are neither military nor commercial vessels. In reviewing this applicability question, we have determined that vessels measuring 20 meters or more in length that are neither military nor commercial do not meet the current definition of "ship" in 40 CFR 63.782, and are therefore not subject to the requirements of subpart II. Thus, the gap in coverage in the existing regulations relates to the following operations conducted at shipbuilding and ship repair facilities that meet the definition of affected source in 40 CFR 63.782: Shipbuilding and ship repair operations that are conducted on vessels 20 meters or greater in length that are designed and built for nonmilitary and noncommercial operations. Because we had intended to cover such operations in the 1995 final NESHAP, we are issuing these amendments to fill this unintended gap in the existing regulations.

Specifically, these amendments fill the gap by, amending the regulatory definition of "ship" to cover, among other things, all marine or fresh-water vessels measuring 20 meters or more in length; including a definition of "commercial" to clarify which vessels less than 20 meters are subject to subpart II; and eliminating the term "pleasure craft" in subpart II, because that definition has created unnecessary confusion. In reviewing the definition of pleasure craft, we realized that the definition was too limiting because it defined pleasure craft by reference to a vessel's actual use. Although defining pleasure craft in such a manner may be appropriate for purposes of ship repair activities, it is not an appropriate criterion for ship building activities because it is unrealistic to expect a shipbuilder to know definitively at the time of construction of the vessel whether the vessel will be used for recreational or commercial purposes.

In summary, these amendments fill an unintended gap in the coverage of subpart II by establishing that shipbuilding and ship repair operations performed on all marine or fresh-water vessels measuring 20 meters or more in length are subject to the requirements of subpart II regardless of the purpose for which the vessel is designed, built, or used. These amendments also clarify that subpart II shall not be construed to apply to coating activities that are subject to emission limitations or work practices under the NESHAP for boat manufacturing at 40 CFR part 63 subpart VVVV.

II. What amendments are we making to the rule?

Specifically, we are: (1) Revising the definition of ship to include all vessels measuring 20 meters or more in length regardless of the purpose for which the vessel is constructed or used and any vessels that are less than 20 meters in length, designed and built specifically for military or commercial purposes; (2) including a definition of commercial to further identify those nonmilitary vessels that are less than 20 meters in length that we consider to meet the definition of ship in subpart II as those that are specifically designed and built for the purposes of generating compensation for products or services; (3) eliminating the term "pleasure

craft"; and (4) excluding from subpart II those coating activities that are subject to emission limitations or work practices under the NESHAP for boat manufacturing at 40 CFR part 63 subpart VVVV. As a result of this action, shipbuilding and ship repair operations on all marine or fresh-water vessels measuring 20 meters or more in length, regardless of the purpose for which the vessel is constructed or used, will now be subject to subpart II, not subpart MMMM which contains the default requirements for any metal surface coating not specifically covered by another NESHAP.

The compliance period for the shipbuilding and ship repair operations that are subject to subpart II for the first time as the result of these amendments is described below in section III.

The revised definitions are as follows:

• Commercial means any enterprise or activity that receives compensation for products and/or services rendered.

• Ship means all marine or fresh-water vessels that are either (1) 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or (2) that are less than 20 meters in length and are designed and built specifically for military or commercial purposes. This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, tankers, container ships, patrol and pilot boats, yachts, and dredges. For purposes of this subpart, offshore oil and gas drilling platforms are not ships.

III. What are the compliance dates?

We address the compliance date for those affected sources that conduct the type of operations that are, as the result of these amendments, newly subject to subpart II. Specifically, those existing affected sources that are engaged in the type of shipbuilding and ship repair operations that became subject to the Shipbuilding and Ship Repair NESHAP as the result of these amendments must comply with the requirements applicable to those operations by December 31, 2007. The 1-year compliance deadline allows these affected sources a reasonable period of time in which to deplete existing inventories of coatings and to plan and implement appropriate compliance procedures. Additionally, the 1-year period provides sources an opportunity to obtain compliant coatings and/or identify alternative methods of limiting emissions. The EPA does not expect that any new affected source engaged solely in the operations that are the subject of these amendments will be built; however, in the event that such a new facility is built, it must comply according to the schedule in 40 CFR 63.6(b). (For purposes of this discussion, a new affected source is an "affected source," as defined by 40 CFR 63.782, at which shipbuilding and ship repair operations are conducted exclusively on vessels 20 meters or greater in length that are designed and constructed for nonmilitary and noncommercial operations, for which construction or reconstruction is commenced after the date of this companion proposed rule.)

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this direct final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action may impose additional information collection burden for sources currently subject to and complying with subpart II. Sources currently complying with subpart II that choose to build or repair marine or fresh-water vessels that are 20 meters or more in length and are not either military or commercial vessels will need to expand their current subpart II recordkeeping and reporting to include these additional shipbuilding and ship repair activities. However, we believe that the additional information collection burden is minimal as the proportion of these activities at most shipyards is minimal; therefore, the information collection requests have not been revised. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0330 (EPA ICR No.1712.05).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the direct final rule on small entities, a small entity is defined as: (1) A small business mostly in the North American Industrial Classification System (NAICS) code 336611 that has less than 1000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local,

and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the direct final 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. Therefore, the direct final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not apply to small governments. Therefore, the direct final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires the 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."

The direct final rule does not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the direct final rule.

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

Executive Order 13175 (65 FR 67249, November 9, 2000) 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." The direct final rule does not have tribal implications, as specified in Executive Order 13175. 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 the direct final rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule is not subject to Executive Order 13045 because the rule (subpart II) is based on technology performance, not health or safety risks. Furthermore, the direct final rule has been determined not to be economically significant as defined under Executive Order 12866.

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

The direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

No new standard requirements are specified in the direct final rule. Therefore, the EPA is not proposing or adopting any voluntary consensus standards in the direct final rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing the direct final 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 direct final rule in the **Federal Register**. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 22, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 63, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart II—[Amended]

■ 2. Section 63.781 is amended by redesignating paragraphs (b), (c) and (d) as (c), (d) and (e) respectively and adding a new paragraph (b).

§ 63.781 Applicability.

* * * * *

(b) The provisions of this subpart do not apply to coating activities subject to emission limitations or work practices under 40 CFR part 63 subpart VVVV.

* * * * *

■ 3. Section 63.782 is amended by adding a definition for "Commercial", removing the definition of "Pleasure craft", and revising the definition of "Ship":

§ 63.782 Definitions.

* * * * *

Commercial means any enterprise or activity that receives compensation for products and/or services rendered.

* * * * *

Ship means all marine or fresh-water vessels that are either 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or that are less than 20 meters in length and are designed and built specifically for military or commercial purposes. This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, tankers, container ships, patrol and pilot boats, yachts, and dredges. For purposes of this subpart, offshore oil and gas drilling platforms are not ships.

* * * * *

■ 4. Section 63.784(a) is revised to read as follows:

§ 63.784 Compliance dates.

(a) Each owner or operator of an existing affected source shall comply within two years after the effective date of this subpart, except that the owner or operator of an existing affected source that conducts shipbuilding and ship repair operations that first became subject to this NESHAP on [date of publication of this direct final rule and FR cite], shall comply with the requirements of this subpart, as they apply to those operations, by December 31, 2007.

* * * * *

[FR Doc. E6–22426 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0769; FRL–8093–6]

Zeta–Cypermethrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the insecticide zeta–cypermethrin, in or on almond, hulls; animal feed, nongrass, group 18, forage; animal feed, nongrass, group 18, hay; berry, group 13; cilantro, leaves; food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments; fruit, pome, group 11; fruit, stone, group 12; grape; grass, forage, group 17; grass, hay, group 17; nut, tree, group 14; peanut; rapeseed; sunflower; sunflower, refined oil; turnip, greens; vegetable, cucurbit, group 9; and vegetable, root and tuber, group 1, except sugar beet. FMC Corporation and Interregional Research Project Number 4 (IR–4) 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 December 29, 2006. Objections and requests for hearings must be received on or before February 27, 2007, 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–2006–0769. 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 Room S–4400, One Potomac Yard (South Building), 2777 South Crystal Drive, Arlington, VA 22202–3553. 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: Linda DeLuise, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 305–5428; e–mail address: *deluise.linda@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 andfarmers, 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*.

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–2006–0769 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 February 27, 2007.

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–2006–0769, 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 Avenue, NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Room S-4400, One Potomac Yard (South Building), 2777 South Crystal Drive, Arlington, VA 22202-3553. 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 November 8, 2000 (65 FR 67003) (FRL–6750–2); August 2, 2002 (67 FR 50430) (FRL–7185–9); July 16, 2003 (68 FR 42030) (FRL–7314–7); March 16, 2005 (70 FR 12874) (FRL–7705–2); May 10, 2006 (71 FR 27243) (FRL–8067–8); and August 25, 2006 (71 FR 50414) (FRL–8088–9), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 1F3994; PP 2F6444; PP 3E6677; PP 3F6577; PP 4F6893; and PP 5F6896) by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103-7597 and Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390. These petitions requested that 40 CFR 180.418 be amended by establishing a tolerance for residues of the insecticide zeta-cypermethrin, (*S*)-cyano(3-phenoxyphenyl)methyl (±)-cis-trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate), in or on barley, grain at 0.5 parts per million (ppm) (5F6896); barley, hay at 2 ppm (5F6896); barley, straw at 4 ppm (5F6896); berries group at 0.5 ppm (5F6896); canola, meal at 0.05 ppm (5F6896); canola, oil at 0.6 ppm (5F6896); canola, seed at 0.05 ppm (5F6896); cilantro at 10 ppm (3E6677); cucurbit vegetables at 0.1 ppm (2F6444); food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.05 ppm (4F6893); fruit, pome, group 11 at 0.6 ppm (3F6577); fruit, stone, group 12 at 0.9 ppm (3F6577); grapes at 1 ppm (5F6896); grass, forage at 7 ppm (5F6896); grass, hay at 22 ppm (5F6896); grass, straw at 8 ppm (5F6896); grass, screenings at 12 ppm (5F6896); juice, grape at 0.05 ppm (5F6896); nongrass animal feed, forage at 10 ppm (5F6896); nongrass animal feed, hay at 33 ppm (5F6896); peanuts at 0.05 ppm (2F6444); raisins at 0.2 ppm (5F6896); root and tuber vegetables, roots at 0.1 ppm (2F6444); sunflower at 0.2 ppm (1F3994); sunflower oil at 0.2 ppm (1F3994); tree nut group, nutmeat at 0.05 ppm (5F6896); tree nut group, hulls at 3 ppm (5F6896); and turnip greens at 14 ppm (3E6677). These notices included a summary of the petition prepared by FMC Corporation, the registrant, and IR-4. There were no comments received in response to these notices of filing.

The proposed tolerances were later amended as follows: almond, hulls at 6 ppm (5F6896); animal feed, nongrass, group 18, forage at 8 ppm (5F6896); animal feed, nongrass, group 18, hay at 40 ppm (5F6896); berry, group 13 at 0.8 ppm (5F6896); cilantro, leaves at 10 ppm (3E6677); food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.05 ppm (4F6893); fruit, pome, group 11 at 2 ppm (3F6577); fruit, stone, group 12 at 1 ppm (3F6577); grape at 2 ppm (5F6896); grass, forage, group 17 at 10 ppm (5F6896); grass, hay, group 17 at 35 ppm (5F6896); nut, tree, group 14 at 0.05 ppm (5F6896); peanut at 0.05 ppm (2F6444); rapeseed at 0.2 ppm (5F6896); sunflower at 0.2 ppm (1F3994); sunflower, refined oil at 0.5 ppm (1F3994); turnip, greens at 14 ppm (3E6677); vegetable, cucurbit, group 9 at 0.2 ppm (2F6444); and vegetable, root and tuber, group 1, except sugar beet at 0.1 ppm (2F6444).

For various reasons, EPA has decided not to establish several of the proposed tolerances. The proposed tolerances for canola meal, canola oil, grape juice and raisins oil are not being established because grape and canola processing studies indicate that residues in these processed commodities do not concentrate above the tolerance level in raw commodity. The proposed tolerances in barley grain, hay and straw are not being established because there was an inadequate number of residue field trials submitted in support of these tolerances. The proposed tolerances for grass screenings and grass straw are not being established because these commodities are not significant livestock feed items.

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 a tolerance for residues of zeta-cypermethrin, in or on almond, hulls at 6 ppm; animal feed, nongrass, group 18, forage at 8 ppm; animal feed, nongrass, group 18, hay at 40 ppm; berry, group 13 at 0.8 ppm; cilantro, leaves at 10 ppm; food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.05 ppm; fruit, pome, group 11 at 2 ppm; fruit, stone, group 12 at 1 ppm; grape at 2 ppm; grass, forage, group 17 at 10 ppm; grass, hay, group 17 at 35 ppm; nut, tree, group 14 at 0.05 ppm; peanut at 0.05 ppm; rapeseed at 0.2 ppm; sunflower at 0.2 ppm; sunflower, refined oil at 0.5 ppm; turnip, greens at 14 ppm; vegetable, cucurbit, group 9 at 0.2 ppm; and vegetable, root and tuber, group 1, except sugar beet at 0.1 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 its validity, completeness and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicology database for zeta-cypermethrin/cypermethrin is complete, and there are no data gaps. The specific quality is relatively high and the toxicity profile of zeta-cypermethrin can be characterized for all effects, including potential developmental, reproductive, neurotoxic, carcinogenic and mutagenic effects.

More detailed information on the studies received and the nature of the toxic effects caused by zeta-cypermethrin 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 in the document entitled, zeta-cypermethrin: Revised Human Health Risk Assessment for Proposed Uses on Numerous Raw Agricultural Commodities. Petitions: 3F6577, 3E6677, 2F6444, 4F6893 and 5F6896 for the Establishment of Tolerances on Various Raw Agricultural, Processed Commodities and Food Items in Food Handling Establishments. PC Code: 109702, D334263. Regulatory Action: Section 3. Risk Assessment Type: Zeta-Cypermethrin/Cypermethrin Aggregate," dated November 29, 2006, by going to *http://www.regulations.gov*, and searching for docket ID number EPA–HQ–OPP–2006–0769. Locate and click on the hyperlink for EPA document ID number EPA–HQ–OPP–2006–0769–0031. Double-click on the document to view the referenced information on pages 16-20.

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 and 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/pesticides/health/human.htm.*

A summary of the toxicological endpoints for zeta-cypermethrin used for human risk assessment is shown below in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, UF*	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (U.S. general population including infants and children)	NOAEL = 10 mg/kg/day UF = 100x Acute RfD = 0.1 mg/kg/day	FQPA SF = 1x aPAD = acute RfD ÷ FQPA SF = 0.1 mg/kg/day	Acute neurotoxicity study - rat (zeta-cypermethrin); LOAEL = 50 mg/kg/day based on clinical signs of neurotoxicity and changes in the FOB.
Chronic Dietary (All populations)	NOAEL = 6 mg/kg/day UF = 100x Chronic RfD = 0.06 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD ÷ FQPA SF = 0.06 mg/kg/day	Chronic feeding study - dog; LOAEL = 20.4/18.1 mg/kg/day based on clinical signs of neurotoxicity and mortality in males, and decreased body weight and body weight gain in females.
Short- and Intermediate-Term Incidental Oral (1 day to 6 months)	NOAEL = 7.4 mg/kg/day	Residential LOC for MOE = 100 Occupational LOC for MOE = N/A	Developmental neurotoxicity study - rat (zeta-cypermethrin); LOAEL = 17 mg/kg/day based on decreased body weight in the offspring.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Dose Used in Risk Assessment, UF*	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short- and Intermediate-Term Dermal (Infants and Children Only; 1 day to 6 months)	NOAEL = 7.4 mg/kg/day (dermal absorption rate = 2.5%)	Residential LOC for MOE = 100	Developmental neurotoxicity study - rat (zeta-cypermethrin); LOAEL = 17 mg/kg/day based on decreased body weight in the offspring.
Short- and Intermediate-Term Dermal (Adults, Workers; 1 day to 6 months)	None.	Occupational LOC for MOE = N/A	No systemic effects were observed in a 21-day dermal study (zeta-cypermethrin) up to 1,000 mg/kg/day and there is no developmental concern. No hazard identified to support quantification of risk.
Long-Term Dermal (≤6 months)	NOAEL = 6 mg/kg/day (dermal absorption rate = 2.5%)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	Chronic feeding study - dog; LOAEL = 20.4/18.1 mg/kg/day based on clinical signs of neurotoxicity and mortality in males, and decreased body weight and body weight gain in females.
Short- and Intermediate-Term Inhalation (1 to 6 months)	NOAEL = 2.7 mg/kg/day (inhalation absorption rate = 100% oral equivalent)	Residential LOC for MOE = 100 Occupational LOC for MOE = 100	21-day inhalation study - rat; LOAEL = 0.05 mg/kg/day based on decreases in body weight and salivation.
Long-Term Inhalation (≤6 months)	NOAEL = 2.7 mg/kg/day (inhalation absorption rate = 100% oral equivalent)	Residential LOC for MOE = 300 Occupational LOC for MOE = 300 (For the lack of an alternative study. Route-to-route estimation would result in a less protective endpoint.)	21-day inhalation study - rat; LOAEL = 0.05 mg/kg/day based on decreases in body weight and salivation.
Cancer (oral, dermal, inhalation)	Zeta-Cypermethrin has been classified as a Category C (possible human carcinogen); therefore, no quantification is required. The chronic RfD/PAD will adequately account for all chronic toxicity effects, including carcinogenicity, likely to result from exposure to this pesticide.		

*UF = uncertainty factor; FQPA SF = any additional safety factor retained to account for data deficiencies or residual concerns unique to the FQPA; NOAEL = no observed adverse effect level; LOAEL = lowest observed adverse effect level; PAD = population adjusted dose (a = acute, c = chronic); RfD = reference dose; MOE = margin of exposure; LOC = level of concern; and N/A = not applicable.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.418) for the residues of zeta-cypermethrin, (S)-cyano(3-phenoxyphenyl)methyl (±)-cis-trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate), in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from zeta-cypermethrin in food. Modeled drinking water estimates were included in both the acute and chronic dietary exposure analyses 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.

The Agency conducted an unrefined acute dietary exposure assessment using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™, Version 2.03). This analysis evaluated the individual food consumption 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 acute analysis is based on Tier 1 assumptions of tolerance-level residues for existing uses and Agency-recommended tolerance levels for the numerous proposed new uses and 100% crop treated (CT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, the DEEM-FCID™ analysis evaluated the individual food consumption data as reported by respondents in the USDA 1994-1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity.Anticipated residues (averages for crop field trials) were calculated for the numerous proposed new uses from field trial data. 100% CT was assumed for all proposed new uses except for non-grass animal feed; and grass fodder, forage and hay. For existing uses, anticipated residues are based on USDA PDP monitoring data, crop field trial data and empirical processing factors and may be considered refined.

iii. *Cancer.* Zeta-cypermethrin was classified as a group "C" (possible human carcinogen), based on an increased incidence of lung adenonas and adenomas plus carcinomas combined in female mice. The evidence was not considered strong enough to warrant a quantitative estimation of human cancer risk. Risk assessments based on endpoint selected for the chronic population adjusted dose (cPAD) will be protective of any potential carcinogenic risk from exposure to zeta-cypermethrin for the U.S. general population and all population subgroups, including infants and children. Additionally, EPA relied

on the chronic exposure assessment in assessing cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must, pursuant to section 408(f)(1), require that data be provided 5 years after the tolerance is established, modified or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

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

The Agency used PCT information as follows:

For cypermethrin: broccoli, 6%; bulb crops, 16%; cabbage, 3%; cauliflower, 13%; celery, 1%; cole crops, 3%; collards, 9%; cotton, 5%; garlic, 13%; greens, mustard, 8%; greens, turnips, 4%; kale, 13%; lettuce, 26%; onions, 15%; pecans, 5%; and spinach, 2%.

For zeta-cypermethrin: bulb crops, 4%; cabbage, 1%; carrots, 1%; cole crops, 1%; corn, field, <1%; cotton, 4%; lettuce, 17%; onions, 13%; peanuts, <1%; pecans, 9%; sorghum, <1%; soybeans, <1%; sweet corn, <1%; and wheat, winter, <1%.

The Agency believes that the three conditions, listed in Unit III.C.1.iv., have been met with regard to the PCT estimates. With respect to Condition 1, PCT estimates for existing uses are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. EPA estimates projected percent crop treated (PPCT) for a new pesticide use by assuming that the PCT during the pesticide's initial 5 years of use on a specific use site will not exceed the average PCT of the market leader (i.e., the one with the greatest PCT) on that site over the three most recent surveys. Comparisons are only made among pesticides of the same pesticide types (i.e., the dominant insecticide on the use site is selected for comparison with the new insecticide). The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses data from the U.S. Department of Agriculture/National Agricultural Statistics Service (USDA/NASS) as the source for the PCT data because they are publicly available. When a specific use site is not surveyed by USDA/NASS, EPA uses proprietary data and calculates the estimated PCT.

The estimated PPCT, based on the average PCT of the market leader, is appropriate for use in the chronic dietary risk assessment. This method of estimating a PPCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. Predominant factors that bear on whether the estimated PPCT could be exceeded include pest pressure concerns, relative efficacies, pest prevalence and other factors. Although PPCT data (estimates) for crop group 18: nongrass animal feeds (forage and hay) and crop group 17: grass forage, fodder and hay are limited, estimates are provided (PPCT) for alfalfa hay, other hay and pasture/rangeland. The estimate for pasture/rangeland may understate the PPCT for grasses since the rangeland component probably receives less treatment than the pasture component (the latter which contains more grass than does rangeland). It is unlikely that actual PCT for zeta-cypermethrin will exceed the estimated PPCT for this chemical on each of these 3 crops during the next 5 years.

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

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for zeta-cypermethrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of zeta-cypermethrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the PRZM/EXAMS (surface water) and SCI-GROW (ground water) models, the estimated environmental concentrations (EECs) of zeta-cypermethrin for acute exposures are estimated to be 1.04 parts per billion (ppb) for surface water and 0.0036 ppb for ground water. The EECs for chronic exposures are estimated to be 0.013 ppb for surface water and 0.0036 ppb for ground water.

The estimated drinking water concentrations (EDWCs) for zeta-cypermethrin were calculated based on 6 aerial applications of cypermethrin at a maximum application rate of 0.10 lbs. a.i./acre/season to Brassica leafy vegetables with a 7–day re-treatment interval (RTI). Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™, Version 2.03). For acute dietary risk assessment, the peak water concentration value of 1.04 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the annual average concentration of 0.013 ppb was used to assess the contribution to drinking water.

The ground water screening concentration is 0.0036 ppb. These values generally represent upper-bound estimates of the concentrations that might be found in surface water and ground water due to the use of cypermethrin on Brassica leafy vegetables, which has the highest application rate among both cypermethrin and zeta-cypermethrin on all crops over which the chemicals are applied.

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/or flea and tick control on pets).

For zeta-cypermethrin/cypermethrin, there is a potential for exposure in residential settings during application by homeowners who use products containing zeta-cypermethrin/cypermethrin. There is a potential for exposure in residential settings from entering areas treated with zeta-cypermethrin/cypermethrin, such as residential lawns, indoor surfaces and spaces, outdoor surfaces, and animal premises that could lead to non-occupational exposure to adults and children. As a result, risk assessments have been completed for residential handler scenarios and for post-application scenarios.

Short- and intermediate-term dermal exposure risk assessments were not conducted for adults, due to the lack of an appropriate toxicity endpoint of concern for this population subgroup. Short- and intermediate-term dermal exposure risk assessments were not conducted for infants and children because no potential exposure to infants and children is anticipated under the residential handler scenarios.

A long-term dermal exposure assessment was not conducted, since there is no potential for long-term exposures via the proposed uses of zeta-cypermethrin. There is potential for short- and intermediate-term inhalation exposure in residential handler settings during the application process for adult homeowners who use products containing zeta-cypermethrin.

Short- and intermediate-term inhalation exposure assessments were not conducted for infants and children because no potential exposure to infants and children is anticipated under the residential handler scenarios. A long-term inhalation exposure assessment was not conducted, since there are no potential long-term exposures via the proposed uses of zeta-cypermethrin.

These residential risk assessments assumed the maximum application rates allowed by product labels and that residents would wear shorts and short-sleeved shirts with no gloves when applying zeta-cypermethrin. It was also assumed that the size of a lawn or garden treated by a homeowner is 0.5 acres.There is also a potential for exposure in residential settings from entering areas treated with zeta-cypermethrin, such as residential lawns, indoor surfaces and spaces and outdoor surfaces that could lead to non-occupational exposures to adults and children.

The post-application risk assessment included high-end assumptions for factors such as exposure duration and skin surface area. The 0.15 lb. a.i./acre application rate for turf was used in the model to estimate post-application residential exposure of toddlers. Since this rate is equal to or higher than many of the agricultural application rates, this scenario is protective of any exposure of farm children via spray drift from agricultural zeta-cypermethrin/cypermethrin applications. Such use of the Agency's Standard Operating Procedures for Residential Assessment results in reasonable worst case estimates of risks.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Cypermethrin is a member of the pyrethroid class of pesticides. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids interact with sodium channels, there are multiple types of sodium channels and it is currently unknown whether the pyrethroids have similar effects on all channels.

EPA does not have a clear understanding at this time of effects on key downstream neuronal function (e.g., nerve excitability). Further, EPA has not determined how these key events interact to produce their compound-specific patterns of neurotoxicity. There is ongoing research by the Agency's Office of Research and Development and pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. This research is expected to be completed by 2007. When available, the Agency will consider this research and make a determination of common mechanism as a basis for assessing cumulative risk. Information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism can be found 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 ten-fold margin of safety for infants and children in the case of threshold effects to account for pre- and/or post-natal 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. *Pre-natal and post-natal sensitivity.* In the last tolerance rulemaking for zeta-cypermethrin, February 12, 2002 (67 FR 6422), EPA removed the FQPA 10x safety factor based on its conclusion that the data showed no concern for increased sensitivity due to pre- and/or post-natal exposure and that the lack of a required developmental neurotoxicity (DNT) study in the rat did not raise residual concerns regarding the safety of children, because the DNT study had not been required based on special concern for the developing fetuses or young. After release of its revised policy statement on the FQPA children's safety factor, EPA revisited its FQPA safety factor decision and determined that, given the lack of certainty regarding the results of the then absent DNT study, it was necessary to retain the full 10x FQPA safety factor as a database uncertainty factor. In 2005, that additional safety factor was incorporated into the preliminary risk assessment for cypermethrin and zeta-cypermethrin in connection with the reregistration and tolerance reassessment decision for these pesticides.With the subsequent receipt and evaluation of the DNT study for

zeta-cypermethrin (2005, MRID 46670402), the toxicology database for FQPA assessment is now complete.

In the acute and subchronic neurotoxicity studies, clinical signs of neurotoxicity typical of pyrethroids were observed (i.e., gait abnormalities, decreased motor activity, notable changes in the functional observational battery (FOB) and tremors); however, no neuropathology was observed. In the other guideline studies, tremors and gait abnormalities were observed in both dogs and rats following oral exposure, and similar clinical signs were seen in the rat inhalation study. There is no evidence of increased susceptibility of fetuses following *in utero* exposure in the developmental toxicity studies in rats or rabbits or in the offspring following pre- and/or post-natal exposure in the 2-generation rat reproduction study.

In the DNT study, there was limited evidence of increased susceptibility of the offspring. No toxicity was observed in the maternal animals at the highest dose tested, while decreased body weight, decreased subsession motor activity and changes in brain morphometry were seen in the offspring at this same dose. An in-depth analysis of the effects seen in the pups revealed that these effects were of low concern because: Body weight decreases were seen only during late lactation (post-natal days 13-21) when the pups are potentially exposed to higher levels of the chemical via both milk and feed; the decreases in motor activity are not considered biologically significant since they were seen only in the subsession data (not in total or ambulatory counts), only in one sex (females), only on post-natal day 21 (not in measurements taken at three other time periods) and the differences did not reach statistical significance; and the sole brain morphometric change (statistically significant increase in the mean vertical thickness of the cortex) was determined to occur in isolation, only in female pups on day 21, and was not considered biologically significant because when the values of individual treated animals were compared with individual control animals, the incidence and magnitude of the change suggested a low concern.No statistically or biologically significant changes were seen in any other brain areas in male or female pups at any time period. Thus, the only biologically significant effect observed in the DNT study was the change in offspring body weights.

Based on these factors, the limited susceptibility seen in the DNT was determined to be of low concern. Therefore, there are no residual uncertainties for pre- and/or postnatal toxicity. There are no residual uncertainties identified in the exposure databases. The chronic and cancer dietary food exposure assessments utilize anticipated residues calculated from field trial data and PCT data for all commodities. Although refined, the assessments are based on reliable data and will not underestimate exposure/risk. The drinking water exposure is based on conservative modeling estimates. The residential exposure assessment utilizes residential SOPs for the adult handler and post-application scenarios and to assess post-application exposure to children, as well as incidental oral ingestion by toddlers. The residential SOPs are based on reasonable worst-case assumptions and will not likely underestimate exposure/risk. These assessments are unlikely to underestimate the potential exposure to infants and children resulting from the use of zeta-cypermethrin/cypermethrin.

3. *Conclusion.* Based on the data discussed above, the FQPA safety factor can be removed (i.e., reduced to 1x) due to the completeness of the toxicology database, the lack of residual concerns regarding pre- and/or post-natal toxicity and the reliance on exposure data unlikely to underestimate exposure to the pesticide. Thus, a FQPA safety factor of 1x is appropriate for zeta-cypermethrin.

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against EDWCs. The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary risk assessments can be found at *http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf.*

More recently, the Agency has used another approach to estimate aggregate exposure through food, drinking water and residential pathways. In this approach, modeled surface and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actually body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential uses to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

1. *Acute risk.* Using the exposure assumptions discussed in Unit III.C.1.i., the acute dietary exposure from food and drinking water to zeta-cypermethrin will occupy 30% of the aPAD for the U.S. general population and 54% of the aPAD for children (1-2 years old), the most highly exposed population subgroup.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to zeta-cypermethrin from food and drinking water will utilize 1% of the cPAD for the U.S. general population and 3% of the cPAD for children (1-2 years old), the most highly exposed population subgroup.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus average (chronic) exposure levels to food and water (considered to be a background exposure level).Zeta-cypermethrin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for zeta-cypermethrin. Short-term risks were estimated for toddlers' incidental oral exposures outdoors on turf and indoors on treated surfaces. The latter were based on uses of cypermethrin, due to its higher application rate compared to zeta-cypermethrin. Short-term risks for adult dermal exposure were not evaluated because no short-term dermal endpoint applicable to the adult population was identified.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate MOEs of 8,600 for the U.S. general population; 8,500 for all infants (<1 year old); and 780 for children (1-2 years old), the population subgroup at greatest exposure. These aggregated MOEs do not exceed the Agency's LOC for aggregate exposure to food, water and residential uses.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term exposure is not expected from residential uses of zeta-cypermethrin.

5. *Aggregate cancer risk for U.S. population.* The Agency considers the chronic aggregate risk assessment, making use of the cPAD, to be protective of any aggregate cancer risk. See Unit III.E.2. for more detail.

6. *Determination of safety.* Based on these risk assessments, estimates of acute aggregate, chronic aggregate and short-term aggregate (food, water and residential uses) risk do not exceed EPA's level of concern. As a result, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. general population and all population subgroups, including infants and children from aggregate exposure to zeta-cypermethrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement analytical methodology for cypermethrin and; therefore, zeta-cypermethrin residues is available in PAM Volume II. PAM Volume II lists Methods I and II for the determination of residues of cypermethrin *per se* in/on plant and livestock commodities, respectively. Both are gas chromatography (GC) methods with electron capture detection and have undergone successful Agency method tryout. Method I has a detection limit of 0.01 ppm and Method II has detection limits of 0.005 ppm for milk and 0.01 ppm for livestock tissues.These methods are not stereo specific; thus no distinction is made between residues of cypermethrin (all 8 stereoisomers) and zeta-cypermethrin (an enriched isomer form of cypermethrin). Agency reviews of recent zeta-cypermethrin petitions (PP 8F4970, PP 4F3012, PP 9F6040, PP 9F6037 and PP 0F6207) required the petitioner to submit a revised section F to add the phrase "and its inactive R-isomers" after the chemical name zeta-cypermethrin in the tolerance expression, since the PAM Volume II method is not stereospecific.

B. International Residue Limits

No specific CODEX, Canadian or Mexican maximum residue limits (MRLs) or tolerances have been established for zeta-cypermethrin. There are CODEX MRLs for cypermethrin residues in/on various plant and livestock commodities and the CODEX and U.S. tolerances are in harmony with respect to MRL/tolerance expression in that both regulate the parent compound, cypermethrin, since enforcement methods do not distinguish between cypermethrin and zeta-cypermethrin. During review of residue data associated with the current pesticide petitions (zeta-cypermethrin), attempts were made to harmonize residue levels whenever possible.

V. Conclusion

Therefore, the tolerance is established for residues of zeta-cypermethrin, (S)-cyano(3-phenoxyphenyl)methyl (±)-cis-trans-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate), in or on almond, hulls at 6 ppm; animal feed, nongrass, group 18, forage at 8 ppm; animal feed, nongrass, group 18, hay at 40 ppm; berry, group 13 at 0.8 ppm; cilantro, leaves at 10 ppm; food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.05 ppm; fruit, pome, group 11 at 2 ppm; fruit, stone, group 12 at 1 ppm; grape at 2 ppm; grass, forage, group 17 at 10 ppm; grass, hay, group 17 at 35 ppm; nut, tree, group 14 at 0.05 ppm; peanut at 0.05 ppm; rapeseed at 0.2 ppm; sunflower at 0.2 ppm; sunflower, refined oil at 0.5 ppm; turnip, greens at 14 ppm; vegetable, cucurbit, group 9 at 0.2 ppm; and vegetable, root and tuber, group 1, except sugar beet at 0.1 ppm.

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: December 21, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.418 is amended by alphabetically adding commodities to the table in paragraph (a)(2) to read as follows:

§ 180.418 Cypermethrin and an isomer zeta-cypermethrin; tolerances for residues.

(a)* * *

(2) * * *

Commodity	Parts per million
* * * * *	
Almond, hulls	6
Animal feed, nongrass, group 18, forage	8
Animal feed, nongrass, group 18, hay	40
* * * * *	
Berry, group 13	0.8
* * * * *	
Cilantro, leaves	10
* * * * *	
Food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments	0.05
Fruit, pome, group 11	2
Fruit, stone, group 12	1
* * * * *	
Grape	2
Grass, forage, group 17	10
Grass, hay, group 17	35
* * * * *	
Nut, tree, group 14	0.05
* * * * *	
Peanut	0.05
* * * * *	
Rapeseed	0.2
* * * * *	
Sunflower	0.2
Sunflower, refined oil	0.5
* * * * *	
Turnip, greens	14
* * * * *	
Vegetable, cucurbit, group 9	0.2
* * * * *	
Vegetable, root and tuber, group 1, except sugar beet	0.1
* * * * *	

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[FR Doc. E6–22288 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075–1217–02; I.D. 121806C]

Fisheries of the Northeastern United States; Tilefish Fishery; Quota Harvested for Part-time Category

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

ACTION: Temporary rule; tilefish Part-time permit category closure.

SUMMARY: NMFS announces that the percentage of the tilefish annual total allowable landings (TAL) available to the Part-time permit category for the 2007 fishing year has been harvested. Commercial vessels fishing under the Part-time tilefish category may not harvest tilefish from within the Golden Tilefish Management Unit for the remainder of the 2007 fishing year (through October 31, 2007). Regulations governing the tilefish fishery require publication of this notification to advise the public of this closure.

DATES: Effective 0001 hrs local time, December 29, 2006, through 2400 hrs local time, October 31, 2007.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, at (978) 281–9220.

SUPPLEMENTARY INFORMATION: Regulations governing the tilefish fishery are found at 50 CFR part 648. The regulations require annual specification of a TAL for federally permitted tilefish vessels harvesting tilefish from within the Golden Tilefish Management Unit. The Golden Tilefish Management Unit is defined as an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36′ N. lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone, and northward to the U.S.-Canada border. After 5 percent of the TAL is deducted to reflect landings by vessels issued an open-access Incidental permit category, and after up to 3 percent of the TAL is set aside for research purposes, should research TAL be set aside, the remaining TAL is distributed among three tilefish limited access permit categories: Full-time tier 1 category (66 percent), Full-time tier 2 category (15 percent), and the Part-time category (19 percent).

The TAL for tilefish for the 2007 fishing year was set at 1.995 million lb (905,172 kg) and then adjusted downward by 5 percent to 1,895,250 lb (859,671 kg) to account for incidental catch. There was no research set-aside for the 2007 fishing year. Thus, the Part-time permit category quota for the 2007 fishing year, which is equal to 19 percent of the TAL, was specified at 360,098 lb (163,338 kg). However, due to an over-harvest in the 2006 fishing year, the quota for the Part-time permit category was adjusted downward by 92,935 lb (42,155 kg) to 267,163 lb (121,183 kg). Notification of the 2007 Part-time permit category quota for the 2007 fishing year was published in the **Federal Register** on October 31, 2006 (71 FR 63703).

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial tilefish quota for each fishing year using dealer reports, vessel catch reports, and other available information to determine when the quota for each limited access permit category is projected to have been harvested. NMFS is required to publish notification in the **Federal Register** notifying commercial vessels and dealer permit holders that, effective

upon a specific date, the tilefish TAL for the specific limited access category has been harvested and no commercial quota is available for harvesting tilefish by that category for the remainder of the fishing year, from within the Golden Tilefish Management Unit.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2007 tilefish TAL for the Part-time category has been harvested. Therefore, effective 0001 hr local time, December 29, 2006, further landings of tilefish harvested from within the Golden Tilefish Management Unit by tilefish vessels holding Part-time category Federal fisheries permits are prohibited through October 31, 2007. The 2008 fishing year for commercial tilefish harvest will open on November 1, 2007. Federally permitted dealers are also advised that, effective December 29, 2006, they may not purchase tilefish from Part-time category federally permitted tilefish vessels who land tilefish harvested from within the Golden Tilefish Management Unit for the remainder of the 2007 fishing year (through October 31, 2007).

Classification

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

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

Dated: December 22, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9918 Filed 12–26–06; 8:51 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060424108–6204–02; I.D. 121906B]

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish Individual Fishing Quota Cost Recovery Program

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

ACTION: Notification of standard prices and fee percentage.

SUMMARY: NMFS publishes IFQ standard prices for the individual fishing quota (IFQ) cost recovery program in the halibut and sablefish fisheries of the North Pacific. This action is intended to provide holders of halibut and sablefish IFQ permits with the 2006 standard prices and fee percentage to calculate the required payment for IFQ cost recovery fees due by January 31, 2007.

DATES: Effective December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Troie Zuniga, Fee Coordinator, 907–586–7231.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the halibut and sablefish IFQ programs in the North Pacific. The IFQ programs are limited access systems authorized by section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982. Fishing under the IFQ programs began in March 1995. Regulations implementing the IFQ program are set forth at 50 CFR part 679.

In 1996, the Magnuson-Stevens Act was amended (by Public Law 104–297) to, among other things, require the Secretary of Commerce to "collect a fee to recover the actual costs directly related to the management and enforcement of any . . . individual fishing quota program" (section 304(d)(2)(A)). Section 304(d)(2) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

On March 20, 2000, NMFS published regulations implementing the IFQ cost recovery program (65 FR 14919), which are set forth at § 679.45. Under the regulations, an IFQ permit holder incurs a cost recovery fee liability for every pound of IFQ halibut and IFQ sablefish that is landed on his or her IFQ permit(s). The IFQ permit holder is responsible for self-collecting the fee liability for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting a fee liability payment to NMFS on or before the due date of January 31 following the year in which the IFQ landings were made. The dollar amount of the fee due is determined by multiplying the annual IFQ fee percentage (3 percent or less) by the ex-vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

Standard Prices

The fee liability is based on the sum of all payments of monetary worth made to fishermen for the sale of the fish during the year. This includes any retro-payments (e.g., bonuses, delayed partial payments, post-season payments) made to the IFQ permit holder for previously landed IFQ halibut or sablefish.

For purposes of calculating IFQ cost recovery fees, NMFS distinguishes between two types of ex-vessel value: "actual" and "standard." "Actual" ex-vessel value is the amount of all compensation, monetary or non-monetary, that an IFQ permit holder received as payment for his or her IFQ fish sold. "Standard" ex-vessel value is the default value on which to base fee liability calculations. However, IFQ permit holders have the option of using actual ex-vessel value if they can satisfactorily document them.

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. These standard prices are used, along with estimates of IFQ halibut and IFQ sablefish landings, to calculate standard values. The standard prices are described in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) is the weight (in pounds), for an IFQ landing calculated as the round weight for sablefish and headed and gutted net weight for halibut. NMFS calculates the standard prices to closely reflect the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings by month and port or port-group. The standard prices for IFQ halibut and IFQ sablefish are listed in the following tables. Data from ports are combined as necessary to protect confidentiality.

Fee Percentage

Section 304(d)(2)(B) of the Magnuson-Stevens Act provides for a maximum fee of 3 percent of the ex-vessel value of fish harvested under an IFQ Program. NMFS annually sets a fee percentage for sablefish and halibut IFQ holders that is based on the actual annual costs associated with certain management and enforcement functions as well as the standard ex-vessel value of the catch subject to the IFQ fee for the current year. The method used by NMFS to calculate the IFQ fee percentage is described at § 679.45(d)(2)(ii).

Regulations at § 679.45(d) require NMFS to publish the IFQ fee percentage for the halibut and sablefish IFQ fisheries in the **Federal Register** during

or before the last quarter of each year. For the 2006 sablefish and halibut IFQ fishing season, IFQ permit holders are to use a fee liability percentage of 1.0 percent to calculate his or her fee for landed IFQ in pounds. The IFQ permit holder is responsible for submitting the fee liability payment to NMFS on or before January 31, 2007.

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2006 IFQ SEASON

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX- VESSEL PRICE ($)	SABLEFISH STANDARD EX- VESSEL PRICE ($)
CORDOVA	February 28	–	–
	March 31	3.36	–
	April 30	3.16	2.33
	May 31	3.42	–
	June 30	3.50	2.59
	July 31	–	–
	August 31	4.08	–
	September 30	4.20	–
	October 31	4.20	–
	November 30	4.20	–
DUTCH HARBOR	February 28	–	–
	March 31	–	–
	April 30	–	–
	May 31	–	–
	June 30	3.53	–
	July 31	3.38	2.71
	August 31	3.81	–
	September 30	–	–
	October 31	–	–
	November 30	–	–
HOMER	February 28	–	–
	March 31	–	–
	April 30	–	–
	May 31	3.64	–
	June 30	3.64	–
	July 31	4.03	–
	August 31	4.06	–
	September 30	4.17	–
	October 31	4.17	–
	November 30	4.17	–
KETCHIKAN	February 28	–	–
	March 31	–	–
	April 30	–	–
	May 31	–	–
	June 30	3.82	–

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2006 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	HALIBUT STANDARD EX- VESSEL PRICE ($)	SABLEFISH STANDARD EX- VESSEL PRICE ($)
	July 31 August 31	– –	– –
	September 30	–	–
	October 31	–	–
	November 30	–	–
KODIAK	February 28	3.40	2.31
	March 31	3.40	2.31
	April 30	3.18	2.32
	May 31	3.37	2.37
	June 30	3.47	2.48
	July 31	3.73	2.86
	August 31	3.89	2.52
	September 30	4.18	2.68
	October 31	4.18	2.68
	November 30	4.18	2.68
PETERSBURG	February 28	–	–
	March 31	3.45	–
	April 30	3.28	–
	May 31	3.49	–
	June 30	3.55	–
	July 31	3.76	–
	August 31 September 30	4.01 –	– –
	October 31	–	–
	November 30	–	–
SEWARD	February 28	3.57	2.20
	March 31	3.57	2.20
	April 30	–	–
	May 31	–	–
	June 30	–	–
	July 31	–	–
	August 31	4.10	–
	September 30	–	–
	October 31	–	–
	November 30	–	–
SITKA	February 28	3.57	2.37

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY LANDING LOCATION FOR 2006 IFQ SEASON—Continued

LANDING LOCATION	PERIOD ENDING	**HALIBUT** STANDARD EX- VESSEL PRICE ($)	**SABLEFISH** STANDARD EX- VESSEL PRICE ($)
	March 31	3.57	2.37
	April 30	3.19	2.36
	May 31	3.59	2.51
	June 30	3.72	2.64
	July 31	3.93	2.92
	August 31	4.02	2.64
	September 30	4.13	2.73
	October 31	4.13	2.73
	November 30	4.13	2.73
YAKUTAT	February 28	–	–
	March 31	–	–
	April 30	3.30	–
	May 31	3.29	–
	June 30	–	–
	July 31	–	–
	August 31	–	–
	September 30	–	–
	October 31	–	–
	November 30	–	–

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY PORT GROUP FOR 2006 IFQ SEASON

PORT GROUP	PERIOD ENDING	**HALIBUT** STANDARD EX -VESSEL PRICE ($)	**SABLEFISH** STANDARD EX-VESSEL PRICE ($)
BERING SEA[1]	February 28	–	–
	March 31	–	–
	April 30	–	2.24
	May 31	3.28	2.20
	June 30	3.46	2.34
	July 31	3.48	2.38
	August 31	3.78	2.21
	September 30	3.86	2.26
	October 31	3.86	2.26
	November 30	3.86	2.26
CENTRAL GULF[2]	February 28	3.49	2.28
	March 31	3.49	2.28
	April 30	3.20	2.45

REGISTERED BUYER STANDARD EX-VESSEL PRICES BY PORT GROUP FOR 2006 IFQ SEASON—Continued

PORT GROUP	PERIOD ENDING	HALIBUT STANDARD EX -VESSEL PRICE ($)	SABLEFISH STANDARD EX-VESSEL PRICE ($)
	May 31	3.42	2.44
	June 30	3.47	2.53
	July 31	3.81	2.58
	August 31	3.97	2.52
	September 30	4.10	2.51
	October 31	4.10	2.51
	November 30	4.10	2.51
SOUTHEAST[3]	February 28	3.54	2.34
	March 31	3.54	2.34
	April 30	3.34	2.38
	May 31 June 30	3.54 3.68	2.38 2.63
	July 31	3.77	2.88
	August 31	4.01	2.67
	September 30	4.18	2.62
	October 31	4.18	2.62
	November 30	4.18	2.62
ALL[4]	February 28	3.50	2.32
	March 31	3.50	2.32
	April 30	3.26	2.41
	May 31	3.45	2.40
	June 30	3.54	2.53
	July 31	3.71	2.58
	August 31	3.92	2.50
	September 30	4.06	2.51
	October 31	4.06	2.51
	November 30	4.06	2.51

[1] *Landing locations Within Port Group - Bering Sea:* Adak, Akutan, Akutan Bay, Atka, Bristol Bay, Chefornak, Dillingham, Captains Bay, Dutch Harbor, Egegik, Ikatan Bay, Hooper Bay, King Cove, King Salmon, Kipnuk, Mekoryuk, Naknek, Nome, Quinhagak, Savoonga, St. George, St. Lawrence, St. Paul, Togiak, Toksook Bay, Tununak, Beaver Inlet, Ugadaga Bay, Unalaska

[2] *Landing Locations Within Port Group - Central Gulf of Alaska:* Anchor Point, Anchorage, Alitak, Chignik, Cordova, Eagle River, False Pass, West Anchor Cove, Girdwood, Chinitna Bay, Halibut Cove, Homer, Kasilof, Kenai, Kenai River, Kodiak, Port Bailey, Nikiski, Ninilchik, Old Harbor, Palmer, Sand Point, Seldovia, Resurrection Bay, Seward, Valdez, Whittier

[3] *Landing Locations Within Port Group - Southeast Alaska:* Angoon, Baranof Warm Springs, Craig, Edna Bay, Elfin Cove, Excursion Inlet, Gustavus, Haines, Hollis, Hoonah, Hyder, Auke Bay, Douglas, Tee Harbor, Juneau, Kake, Ketchikan, Klawock, Metlakatla, Pelican, Petersburg, Portage Bay, Port Alexander, Port Graham, Port Protection, Point Baker, Sitka, Skagway, Tenakee Springs, Thorne Bay, Wrangell, Yakutat

[4] *Landing Locations Within Port Group - All:* **For Alaska:** All landing locations included in 1, 2, and 3. **For California:** Eureka, Fort Bragg, Other California. **For Oregon:** Astoria, Aurora, Lincoln City, Newport, Warrenton, Other Oregon. **For Washington:** Anacortes, Bellevue, Bellingham, Nagai Island, Edmonds, Everett, Granite Falls, Ilwaco, La Conner, Port Angeles, Port Orchard, Port Townsend, Rainier, Fox Island, Mercer Island, Seattle, Standwood, Other Washington. **For Canada:** Port Hardy, Port Edward, Prince Rupert, Vancouver, Haines Junction, Other Canada

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

Dated: December 21, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–9917 Filed 12–22–06; 2:59 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 250
Friday, December 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EERE–2006–DET–0136]

RIN 1904–AB57

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Battery Chargers and External Power Supplies

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of two documents relating to DOE's plans for developing energy conservation standards for battery chargers and external power supplies.

SUMMARY: As required by the Energy Policy Act of 2005, the Department of Energy (DOE) will hold a "scoping workshop" (i.e., an informal public meeting) to discuss and receive comments on its plans for developing energy conservation standards for battery chargers and external power supplies. DOE encourages written comments on these subjects. To inform stakeholders and facilitate this process, DOE has prepared two documents, available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.*

DATES: DOE will hold a public meeting on Wednesday, January 24, 2007, from 9 a.m. to 5 p.m. in Washington, DC. Any person requesting to speak at the public meeting should submit a request to speak before 4 p.m., Friday, January 12, 2007. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Friday, January 12, 2007. Written comments are welcome and should be submitted by Friday, February 16, 2007.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Stakeholders may submit comments, identified by docket number EERE–2006–DET–0136 and/or regulatory information number (RIN) 1904–AB57, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: BCEPSTP@ee.doe.gov.* Include docket number EERE–2006–DET–0136 and/or RIN 1904–AB57 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Battery Chargers and External Power Supplies, EERE–2006–DET–0136 and/or RIN 1904–AB57, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, Forrestal Building, Room 1J–018 (Resource Room of the Building Technologies Program), 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9127, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Victor Petrolati, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–4549. E-mail: *victor.petrolati@ee.doe.gov.* Francine B. Pinto, Esq. or Chris Calamita, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Christopher.Calamita@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act (EPCA), as amended established an energy conservation program for major household appliances. (42 U.S.C. 6291–6309) Section 135(c)(4) of the Energy Policy Act of 2005 (EPACT 2005), Pub. L. 109–58, amended section 325 of EPCA in part, by adding a new subsection 325(u). Section 325(u)(1)(E) directs DOE to determine whether energy conservation standards are warranted for battery chargers and external power supplies. (42 U.S.C. 6295(u)(1)(E)) As part of that process, EPCA requires that DOE hold a scoping workshop not later than February 8, 2007, to discuss and receive comments on plans for developing energy conservation standards for energy use of battery chargers and external power supplies. (42 U.S.C. 6295(u)(1)(D))

Section 135(a)(3) of EPACT 2005 amends section 321 of EPCA, by adding subsection 321(32), which defines the term "battery charger" as a "device that charges batteries for consumer products, including battery chargers embedded in other consumer products." (42 U.S.C. 6291(32)) Similarly, section 135(a)(3) of EPACT 2005 amends section 321 of EPCA, by adding subsection 321(36), which defines the term "external power supply" as "an external power supply circuit that is used to convert household electric current into DC [direct current] or lower-voltage AC [alternating current] to operate a consumer product." (42 U.S.C. 6291(36)) DOE incorporated these two definitions into 10 CFR part 430 in a final rule published on December 8, 2006. (71 FR 71340)

As required by EPCA, DOE has scheduled a scoping workshop to be held on January 24, 2007, to discuss plans for developing energy conservation standards for battery chargers and external power supplies. In addition, DOE prepared two documents that constitute supporting material for this scoping workshop. The first is called "Plans for Developing Energy Conservation Standards for Battery Chargers and External Power Supplies." This document describes the procedural and analytical approach DOE anticipates using to evaluate whether

energy conservation standards are warranted for battery chargers and external power supplies, and to develop such standards should the DOE make a positive determination. The second is called "The Current and Projected Future Market for Battery Chargers and External Power Supplies." This document presents an initial market and technology assessment for battery chargers and external power supplies. It also discusses potential product classes and criteria DOE is considering in establishing product classes. Copies of both documents are available at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.*

DOE encourages those who wish to participate in the scoping workshop to obtain the two documents and be prepared to discuss their contents. Throughout each document, DOE identifies various issues on which it particularly seeks comments from stakeholders. These issues are summarized in an appendix to each document. As the two documents identify separate issues, one must read both documents in order to identify all of the issues on which DOE seeks comment. During the scoping workshop, DOE will address each item and provide an opportunity for discussion. However, stakeholders should not feel limited to comment on only those items identified by DOE. Stakeholders are welcome to comment on any part of either document. DOE is also interested in receiving viewpoints on all relevant issues that participants believe would affect DOE's action on energy conservation standards for these products.

The scoping workshop will be conducted in an informal, facilitated, conference style. A court reporter will be present to prepare a transcript of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

DOE welcomes all interested parties, whether or not they participate in the scoping workshop, to submit in writing by Friday, February 16, 2007, comments and information on the matters addressed in the two documents and on other matters relevant to consideration of energy conservation standards for battery chargers and external power supplies.

After the scoping workshop and the expiration of the period for submitting written comments, DOE will review the comments received and continue its work on determining whether energy conservation standards are warranted for battery chargers and external power supplies.

Anyone who would like to participate in the scoping workshop, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding battery chargers and external power supplies should contact Ms. Brenda Edwards-Jones at (202) 586–2945, or visit DOE's homepage for battery chargers and external power supplies (*http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html*) and click on the "Register for E-mail Updates" link.

Issued in Washington, DC, on December 22, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E6–22437 Filed 12–28–06; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Notice of Intent to Request Public Comments

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its ongoing systematic review of all Federal Trade Commission rules and guides, the Commission gives notice that, during 2007, it intends to request public comments on the rules and guides listed below. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rules and guides; possible conflict between the rules and guides and state, local, or other federal laws or regulations; and the effect on the rules and guides of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the rules and guides should be inferred from the notice of intent to publish requests for comments. In addition, the Commission announces a revised 10-year regulatory review schedule.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the contact person listed for the particular rule under **SUPPLEMENTARY INFORMATION** below.

SUPPLEMENTARY INFORMATION: The Commission intends to initiate a review of and solicit public comments on the following rules and guides during 2007:

(1) *Guides for Select Leather and Imitation Leather Products,* 16 CFR part 24. Agency Contact: Susan E. Arthur, (214) 979–9370, Federal Trade Commission, Southwest Region, 1999 Bryan St., Suite 2150, Dallas, TX 75201.

(2) *Mail or Telephone Order Merchandise Rule,* 16 CFR part 435. Agency Contact: Joel Brewer, (202) 326–2967, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW., Washington, DC 20580.

(3) *Guide Concerning Fuel Economy Advertising for New Automobiles,* 16 CFR part 259. Agency Contact: Hampton Newsome, (202) 326–2889, Bureau of Consumer Protection, Division of Enforcement, 600 Pennsylvania Ave., NW, Washington, DC 20580.

As part of its ongoing program to review all current Commission rules and guides, the Commission also has tentatively scheduled reviews of other rules and guides for 2008 through 2017. A copy of this tentative schedule is appended. The Commission, in its discretion, may modify or reorder the schedule in the future to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

APPENDIX—REGULATORY REVIEW MODIFIED TEN-YEAR SCHEDULE

16 CFR part	Topic	Year to review
500	Regulations Under Section 4 of the Fair Packaging and Labeling Act (FPLA)	2008
501	Exemptions from Part 500 of the FPLA	2008
502	Regulations Under Section 5(C) of the FPLA	2008
503	Statements of General Policy or Interpretations Under the FPLA	2008
306	Automotive Fuel Ratings, Certification and Posting Rule	2008

APPENDIX—REGULATORY REVIEW MODIFIED TEN-YEAR SCHEDULE—Continued

16 CFR part	Topic	Year to review
424	Retail Food Store Advertising and Marketing Practices Rule	2008
429	Rule concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations	2008
444	Credit Practices Rule	2008
254	Guides for Private Vocational and Distance Education Schools	2009
260	Guides for the Use of Environmental Marketing Claims	2009
300	Rules and Regulations under the Wool Products Labeling Act	2009
301	Rules and Regulations under the Fur Products Labeling Act	2009
303	Rules and Regulations under the Textile Fiber Products Identification Act	2009
425	Rule Concerning the Use of Negative Option Plans	2009
239	Guides for the Advertising of Warranties and Guarantees	2010
433	Preservation of Consumers' Claims and Defenses Rule	2010
700	Interpretations of Magnuson-Moss Warranty Act	2010
701	Disclosure of Written Consumer Product Warranty Terms and Conditions	2010
702	Pre-sale Availability of Written Warranty Terms	2010
703	Informal Dispute Settlement Procedures	2010
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements	2011
23	Guides for the Jewelry, Precious Metals, and Pewter Industries	2011
423	Care Labeling Rule	2011
20	Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry	2012
233	Guides Against Deceptive Pricing	2012
238	Guides Against Bait Advertising	2012
240	Guides for Advertising Allowances and Other Merchandising Payments and Services	2012
251	Guide Concerning Use of the Word "Free" and Similar Representations	2012
310	Telemarketing Sales Rule	2013
801	Hart-Scott-Rodino Antitrust Improvements Act Coverage Rules	2013
802	Hart-Scott-Rodino Antitrust Improvements Act Exemption Rules	2013
803	Hart-Scott-Rodino Antitrust Improvements Act Transmittal Rules	2013
304	Rules and Regulations under the Hobby Protection Act	2014
309	Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles	2014
314	Standards for Safeguarding Customer Information	2014
315	Contact Lens Rule	2015
316	Rules Implementing the CAN-SPAM Act of 2003	2015
456	Ophthalmic Practice Rules	2015
603	Fair Credit Reporting Act (FCRA) Rules—Definitions	2015
610	FCRA Rules—Free Annual File Disclosures	2015
611	FCRA Rules—Prohibition Against Circumventing Treatment as a Nationwide Consumer Reporting Agency	2015
613	FCRA Rules—Duration of Active Duty Alerts	2015
614	FCRA Rules—Appropriate Proof of Identity	2015
698	FCRA Rules—Summaries, Notices, and Forms	2015
460	Labeling and Advertising of Home Insulation	2016
682	FCRA Rules—Disposal of Consumer Report Information and Records	2016
410	Deceptive Advertising as to Sizes of Viewable Pictures Shown by Television Receiving Sets	2017
312	Children's Online Privacy Protection Rule	2017

[FR Doc. E6–22407 Filed 12–28–06; 8:45 am]
BILLING CODE 6750–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AL32

Schedule for Rating Disabilities; Evaluation of Multiple Scars

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: In a document published in the **Federal Register** at 67 FR 65915 on October 29, 2002, the Department of Veterans Affairs (VA) proposed to amend that portion of its Schedule for Rating Disabilities that addresses the Skin in order to clarify how to evaluate multiple superficial or deep scars in a uniform and consistent manner. Based on the nature of the public comments received, VA has decided that it would be appropriate to revise the proposed rule and publish a new proposed rule. This document withdraws that proposed rule.

DATES: The proposed rule is withdrawn as of December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: The purpose of VA's notice of proposed rulemaking was to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (38 CFR part 4) by revising § 4.118, that portion of the Schedule that addresses scars. The intended effect of the rulemaking was to clarify the method of evaluating multiple superficial and deep scars and provide directions that promote consistent evaluations. VA has carefully considered the comments received on the proposed rule and has decided to withdraw that proposal. Accordingly, VA is withdrawing the proposal and is developing a new proposal, which it intends to publish at a later date.

Approved: December 6, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E6–22340 Filed 12–28–06; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0357; FRL–8264–3]

RIN 2060–AO03

National Emission Standards for Hazardous Air Pollutants: Shipbuilding and Ship Repair (Surface Coating) Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 15, 1995, EPA issued national emission standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act for shipbuilding and ship repair (surface coating) operations (subpart II). The NESHAP requires existing and new major sources to control emissions of hazardous air pollutants to the extent achievable by the use of maximum achievable control technology. The proposal is intended to close an unintended gap in the scope of activities subject to the NESHAP by amending the definition of "ship" to include all marine or fresh-water vessels that are either (1) 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or (2) less than 20 meters in length and designed and built specifically for military or commercial purposes. All shipbuilding and ship repair coating operations performed on "ships," as so defined, are subject to subpart II if they take place at an "affected source," as defined in 40 CFR 63.782. The only exception is that this NESHAP shall not be construed to apply to coating activities that are subject to emission limitations or work practices under the NESHAP for boat manufacturing at 40 CFR part 63, subpart VVVV. We have also added a definition of "commercial" to clarify the types of nonmilitary vessels less than 20 meters that we consider to be ships. The amended definition of "ship" renders the term "pleasure craft" unnecessary and the amendments, therefore, eliminate the use of that term in 40 CFR part 63, subpart II.

DATES: *Comments.* Written comments must be received on or before January 29, 2007 unless a public hearing is requested by January 8, 2007. If a public hearing is requested, written comments must be received on or before February 12, 2007.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing, a public hearing will be held on January 16, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA--HQ–OAR–2002–0093, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov and serageldin.mohamed@epa.gov.*
- *Fax:* (202) 566–1741 and (919) 541–3470.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: Air and Radiation Docket (6102T), EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0357, (Legacy No. A–92–11). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, EPA (C404–02), Attention Docket ID No. EPA–HQ–OAR–2004–0357, (Legacy No. A–92–11), Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI.

The 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, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2002–0093, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

NOTE: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

Public Hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: For further information contact Dr. Mohamed Serageldin, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711; telephone number (919) 541–2379; fax

number (919) 541–3470; e-mail address: *serageldin.mohamed@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Facilities that are engaged in shipbuilding and ship repair operations. The term ship means all marine or fresh-water vessels that are either (1) 20 meters or more in length regardless of the purpose for which the vessel is constructed or used, or (2) that are less than 20 meters in length and are designed and built specifically for military or commercial purposes. This includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, tankers, container ships, patrol and pilot boats, yachts, and dredges.
	Note: An offshore oil and gas drilling platform is not considered a ship for purposes of this regulation.
Federal government	Federal Agencies which undertake shipbuilding or repair operations see above) such as the Navy and Coast Guard.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this rule.

To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.781 of the rule, as well as in the direct final rule. If you have any questions regarding the applicability of this rule to a particular activity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Submitting CBI. Do not submit information which you claim to be CBI to EPA through 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Dr. Mohamed Serageldin, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, NC 27711, telephone number (919) 541–2379, e-mail address: *serageldin.mohamed@epa.gov*, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Dr. Serageldin to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg/*. The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

Direct Final Rule. The proposed amendments appear in the Rules and Regulations Section of this **Federal Register** as a direct final rule. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule.

We are taking direct final action because we view the amendments as noncontroversial and anticipate no adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule. If we receive no material adverse comment, we will take no further action on the proposed rule. If we receive material adverse comment or a public hearing is requested, we will withdraw only the amendments, sections, or paragraphs of the direct final rule on which we received material adverse comment. We will publish a timely withdrawal in the **Federal Register** indicating which will become effective and which are being withdrawn. If part or all of the direct final rule in the Rules and Regulations section of this **Federal Register** is withdrawn, all comments pertaining to the amendments will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this proposed rule. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, a small entity is defined as: (1) A small business according to Small Business Administration size standards for companies mainly identified by NAICS codes 336611 (shipbuilding and repairing) with 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the proposed rule. This action broadens the scope of the category through revision of the definition of ship which may impact facilities currently complying with subpart II, none of which are small entities. The direct final rule will not impose any new requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome

comments on issues related to such impacts.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 22, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–22428 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 71, No. 250
Friday, December 29, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Northern Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, Grasslands, and the Regional Office of the Northern Region to publish legal notices for public comment and decisions subject to appeal and predecisional administrative review under 36 CFR 215, 217, and 218. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after January 2, 2007. The list of newspapers will remain in effect until another notice is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Appeals and Litigation Group Leader; Northern Region; P.O. Box 7669; Missoula, Montana 59807, Phone: (406) 327–3696.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review and Lewiston Tribune.

Beaverhead/Deerlodge NF—Montana Standard
Bitterroot NF—Ravalli Republic
Clearwater NF—Lewiston Tribune
Custer NF—Billings Gazette (Montana)
Rapid City Journal (South Dakota)
Dakota Prairie Grasslands——Bismarck Tribune (North and South Dakota)
Flathead NF——Daily Inter Lake
Gallatin NF—Bozeman Chronicle
Helena NF—Independent Record
Idaho Panhandle NFs—Coeur d'Alene Press
Kootenai NF—Daily Inter Lake
Lewis & Clark NF—Great Falls Tribune
Lolo NF—Missoulian
Nez Perce NF—Lewiston Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: December 22, 2006.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 06–9926 Filed 12–28–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oil and Gas Leasing EIS on Lands Administered by the Dixie National Forest

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Dixie National Forest gives notice of the intent to prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental and human effects of oil and gas leasing on lands administered by the Dixie National Forest. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 requires the Forest Service to evaluate National Forest System lands for potential oil and gas leasing.

The EIS would analyze all lands with a federally-owned mineral estate within the Dixie National Forest.

As the agency responsible for lease issuance and administration, the Bureau of Land Management (BLM) will participate as a cooperating agency.

DATES: Comments concerning the scope of the analysis should be received within 30 days from date of publication of this notice in the **Federal Register** to be most useful. The draft environmental impact statement is expected winter 2007/2008, and the final environmental impact statement is expected summer 2008.

ADDRESSES: Susan Baughman, Oil and Gas Leasing Project Manager, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, Utah 84720; phone: (435) 865–3703; fax: (435) 865–3791; e-mail: *dixie_oil_gas_eis_comments@fs.fed.us.* E-mailed comments must be submitted in MS Word (*.doc) or rich text format (*.rtf) and should include the project name in the subject line. Written comments may also be submitted at the above address during regular business hours of 8 a.m. to 5 p.m., Monday–Friday.

FOR FURTHER INFORMATION CONTACT: Susan Baughman, Oil and Gas Leasing Project Manager, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, Utah 84720; *phone:* (435) 865–3703.

SUPPLEMENTARY INFORMATION: The EIS analysis area includes the entire Dixie National Forest (approximately 1,710,677 acres), with the exception of designated wilderness areas (approximately 82,840 acres) for a total study area of approximately 1,627,837 acres.

The Department of Interior, BLM, acts as the onshore leasing agent for the Federal government. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 states that the BLM cannot lease over the objection of the Forest Service and authorizes the Forest Service to regulate all surface disturbing activities conducted pursuant to a lease. Therefore, the Forest Service has established an incremental decision-making framework for the consideration of oil and gas leasing activities on National Forest System lands. In general, the various steps that are undertaken are: (1) Forest Service leasing analysis; (2) Forest Service notification to BLM of lands administratively available for leasing; (3) Forest Service review and verification of BLM leasing proposals; (4) BLM assessment of Forest Service conditions of surface occupancy; (5) BLM offers lease; (6) BLM issues lease;

(7) Forest Service review and approval of lessee's surface use plan of operations; (8) BLM review and approval of lessee's application for permit to drill; and (9) ensure final reclamation.

Based upon the Forest Service leasing analysis (step 1 from above), the Forest Service decides whether or not lands will be available for leasing and decides under what conditions (stipulations) the leases will be issued. This EIS will fulfill this step.

Purpose and Need for Action

The purpose of the proposed action is to complete a forest-wide leasing analysis, to comply with the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This requires the Forest Service to analyze lands under its jurisdiction that are legally available for leasing to meet the federal regulatory requirements of 36 CFR 228.102 and in accordance with the National Environmental Policy Act of 1969. The need is to be responsive to requests for oil and gas leasing on the Dixie National Forest.

Since the Federal Onshore Oil and Gas Leasing Reform Act of 1987 was signed into law, no new oil and gas leases have been authorized on the Dixie National Forest. However the oil and gas industry continued to express interest in leasing and interest has recently escalated due to the increased demand for oil and gas, high prices, and discoveries of oil and gas reserves in other areas with similar geologic conditions. The BLM Utah State Office has received numerous written expressions of interest for leasing portions of the Dixie National Forest over the past several years.

Proposed Action

The Forest Supervisor of the Dixie National Forest and Utah State Director, Bureau of Land Management propose to conduct the analysis and decide which lands to make available for oil and gas leasing. The analysis area includes lands administered by the Dixie National Forest. As part of the analysis, the Forest Service will identify areas that would be available for leasing subject to the terms and conditions of the standard oil and gas lease form, or subject to constraints that would require the use of lease stipulations such as those prohibiting surface occupancy. The analysis will also: (1) Identify alternatives to the proposed action, including that of not allowing leasing (no action), (2) project the type/amount of post-leasing activity that is reasonably foreseeable, (3) analyze the reasonably foreseeable impacts of projected post-leasing activity [36 CFR 228.102(c)], and (4) be used to develop an amendment to the Forest Plan if necessary.

Possible Alternatives

All alternatives studied in detail must fall within the scope of the purpose and need for action and will generally tier to and comply with the Dixie Forest Plan. Law requires evaluation of a "no-action alternative." Under the No Action/No Lease alternative, no oil and gas leasing would occur. Alternatives to be evaluated would range from the No Action/No Lease alternative (most restrictive) to the Standard Lease Terms alternative (least restrictive) where all lands legally open to leasing would be made administratively available for leasing with only the standard BLM terms and conditions contained on BLM Lease Form 3100–11. Other alternatives which fall somewhere between the No Action/No Leasing alternative and Lease with Standard Terms alternative would also be developed and evaluated, which would involve making some lands unavailable for leasing and other lands available for leasing with lease stipulations for the protection of other resources and interests.

The Forest is expecting that the public input will generate either thematic concerns or area-specific issues that may be addressed by modifying the proposed action to create a new alternative or alternatives.

Lead and Cooperating Agencies

The Forest Service is the lead agency. The Bureau of Land Management and State of Utah will participate as cooperating agencies.

Responsible Officials

Kevin Schulkoski, Acting Forest Supervisor, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, Utah, 84720.

Nature of Decision To Be Made

The Forest Supervisor, Dixie National Forest, will decide which lands with federal mineral ownership administered by the Dixie National Forest will be administratively available for oil and gas leasing, along with associated conditions or constraints for the protection of non-mineral interests [36 CFR 228.102(d)]. The Forest Supervisor will also authorize the BLM to offer specific lands for lease, subject to the Forest Service ensuring that the required stipulations are attached to the leases [36 CFR 228.102(e)]. The Forest Service proposes to amend the Forest Plan to incorporate the leasing decision and other site-specific changes as indicated in the analysis.

The BLM is responsible for issuing and administration of oil and gas leases under the Mineral Leasing Act of 1920, as amended, and Federal Regulations in 43 CFR 3101.7. The BLM Utah State Director must decide whether or not to offer for lease specific lands authorized for leasing by the Dixie National Forest and with what stipulations.

Scoping Process

The first formal opportunity to comment on the Dixie National Forest Oil and Gas Leasing Analysis Project is during the scoping process (40 CFR 1501.7), which begins with the issuance of this Notice of Intent.

Mail comments to: Susan Baughman, Oil and Gas Leasing Project Manager, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, Utah 84720. The Forest Service requests comments on the nature and scope of the environmental, social, and economic issues, and possible alternatives related to oil and gas leasing on lands administered by the Dixie National Forest.

A series of public opportunities are scheduled to describe the proposal and to provide an opportunity for public input. Three scoping meetings are planned:

January 16: 5 p.m. to 7 p.m., Best Western Abbey Inn, 1129 South Bluff, St. George, Utah.

January 17: 11 a.m. to 2 p.m., 5 p.m. to 7 p.m., Cannonville Visitor Center, 10 Center Street, Cannonville, Utah.

January 18: 5 p.m. to 7 p.m., Heritage Center, 105 North 100 East, Cedar City, Utah. Written comments will be accepted at these meetings. The Forest Service will work with tribal governments to address issues that would significantly or uniquely affect them.

Preliminary Issues

Issues that may be analyzed in all alternatives include: the socioeconomic effects of oil and gas leasing and subsequent activities; effects on terrestrial and aquatic flora and fauna, including threatened and endangered species, sensitive species, and management indicator species; effects on both developed and dispersed recreation; effects on air resources; effects on water resources, including wetlands, floodplains, riparian areas, culinary and municipal water systems, and groundwater; effects on visual resources; effects of leasing stipulations and mitigation measures on oil and gas exploration and development activity; effects on soils and geologic hazards;

effects on cultural and traditional heritage resources; effects on transportation; effects on upland vegetation; effects on riparian vegetation; effects on inventoried roadless areas; effects on other mineral resource extraction activities; and effects on noxious weeds and invasive species. Specific issues will be developed through review of public comments and internal review.

Comment Requested

This Notice of Intent initiates the scoping process which guides the development of the environmental impact statement. The Forest has also received substantial input at public meetings held for the Forest Plan revision, including issues relative to mineral exploration and development. Through these efforts the Forest has an understanding of the broad range of perspectives on the resource issues and social values attributed to resource activities on the Dixie National Forest. Consequently site-specific comments or concerns are the most important types of information needed for this EIS. Because the Oil and Gas Leasing EIS is a stand-alone document, only public comment letters which address relevant issues and concerns will be considered and formally addressed in an appendix in the final environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement is expected to 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, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the providing comments during the scoping comment period and during the comment period following the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing their points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: December 19, 2006.

Kevin R. Schulkoski,

Acting Forest Supervisor.

[FR Doc. E6–22038 Filed 12–28–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–357–812

Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review and Intent Not to Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping order on honey from Argentina. The review covers four firms, one of which was selected as a mandatory respondent (see "Background" section of this notice for further explanation). The period of review (POR) is December 1, 2004, through November 30, 2005.

We preliminarily determine that sales of honey from Argentina have not been made below the normal value (NV) for the respondent firm, Seylinco S.A. (Seylinco). In addition, we will preliminarily apply the *de minimis* rate calculated for Seylinco as the review–specific rate for those companies subject to this review but not selected as respondents (*i.e.*, Mielar S.A./Compania Apicola Argentina S.A. (Mielar/CAA) and El Mana S.A.). For more detail, *see* the "Background" section below; *see also* "Preliminary Results of Review," below. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) a statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

EFFECTIVE DATE: December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke, Deborah Scott, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482–5604, (202) 482–2657, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina. *See Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001). On December 1, 2005, the Department published its opportunity to request a review. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005). On December 30, 2005, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2004, through November 30, 2005. Petitioners requested that the Department review entries of subject merchandise made by 42 Argentine producers/exporters. In addition, the Department received individual requests for review from four Argentine exporters, all of which were named in the petitioners' request for review. On January 6, 2006, petitioners withdrew their request for review with respect to 23 of the companies listed in their

original request. On February 1, 2006, the Department initiated a review of the 19 remaining companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006).

On February 2, 2006, the Department issued quantity and value questionnaires to each of the 19 companies covered by the review. These questionnaires requested export and production volume data for the POR. Sixteen companies submitted a response. On March 10, 2006, petitioners timely withdrew their request for review of 12 of the 19 companies. Accordingly, the Department published a notice of partial rescission in response to petitioners' withdrawal of their request for review of these 12 companies. See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18066 (April 10, 2006).

On April 4, 2006, the Department determined that because it was not feasible to examine all seven of the remaining producers/exporters of subject merchandise, the most appropriate methodology for purposes of this review was to select the four largest producers/exporters by export volume as respondents: Asociacion de Cooperativas Argentinas (ACA), Nexco S.A. (Nexco), HoneyMax S.A. (HoneyMax), and Seylinco. The Department stated it would apply a review–specific average margin to those companies not selected, *i.e.*, Mielar/CAA and El Mana S.A. *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration from David Cordell, International Trade Compliance Analyst, Office 7 entitled "Selection of Respondents," dated April 4, 2006.

On August 4, 2006, petitioners withdrew their request for an administrative review of Nexco. On August 21, 2006, petitioners and HoneyMax submitted letters withdrawing their requests for an administrative review of HoneyMax. Accordingly, on September 6, 2006, the Department published a notice of partial rescission of review with regard to Nexco and HoneyMax. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 52526 (September 6, 2006). On September 11, 2006, petitioners and ACA submitted letters withdrawing their requests for an administrative review of ACA. Thus, on October 17, 2006, the Department published a notice of partial rescission of review with regard to ACA. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 61018 (October 17, 2006).

With respect to the single remaining respondent, Seylinco, the chronology of this review is as follows. On April 5, 2006, the Department issued sections A, B, and C of the antidumping questionnaire to Seylinco. We received Seylinco's response to section A on April 26, 2006, and its response to sections B and C on May 26, 2006. On June 28, 2006, petitioners filed comments regarding Seylinco's response to sections A through C of the Department's questionnaire and Seylinco responded to these comments on July 10, 2006. The Department issued a supplemental questionnaire for sections A, B, and C on July 31, 2006, to which Seylinco responded on August 17, 2006. On August 25, 2006, we issued a second supplemental questionnaire for sections A, B, and C. Petitioners submitted further comments pertaining to Seylinco's questionnaire responses for sections A, B, and C on August 28, 2006. On August 29, 2006, Seylinco provided its response to the Department's second supplemental questionnaire and on September 8, 2006, Seylinco filed comments regarding petitioners' August 28, 2006 submission.

On June 13, 2006, petitioners submitted a letter alleging that Seylinco made comparison market sales of honey at prices below the cost of production (COP) during the POR. Seylinco submitted comments related to petitioners' cost allegation on June 21, 2006 and July 31, 2006. On August 24, 2006, the Department determined that petitioners' COP allegation provided a reasonable basis on which to initiate a COP investigation for Seylinco and selected the three largest beekeeper suppliers from which to obtain COP data. *See* Memorandum to Richard Weible, Director Office 7, from the Team, regarding "Petitioners Allegations of Sales Below the Cost of Production in the December 1, 2004–November 30, 2005 Administrative Review," dated August 24, 2006 (Cost Initiation Memorandum). *See also* Memorandum to Richard Weible, Director Office 7, from the Team, regarding "Selection of Cost of Production Respondents," dated August 24, 2006 (Cost Selection Memorandum).

On September 5, 2006, the Department issued section D of the antidumping questionnaire to solicit cost of production data from the three selected beekeeper suppliers (Beekeeper 1, Beekeeper 2 and Beekeeper 3).[1] On September 15, 2006, Seylinco's counsel informed the Department it was unable to obtain cost information from one of the selected beekeepers (Beekeeper 2) and requested that the Department choose another beekeeper from whom to obtain cost data. Beekeeper 2 claimed that its aviary operations were a sideline business and, as a result, he did not maintain the cost data requested by the Department. Beekeeper 1 and Beekeeper 3 filed responses to section D of the Department's questionnaire on October 10, 2006. On October 12, 2006, the Department sent a second request to Seylinco's counsel seeking Beekeeper 2's production costs. Seylinco's counsel responded to this request on October 20, 2006, explaining again that Beekeeper 2 was not able to provide the requested cost information. On October 20, 2006, the Department issued a supplemental questionnaire for section D to Beekeeper 1 and Beekeeper 3, to which they responded on November 8, 2006.[2] Finally, on November 22, 2006, the Department again requested that Beekeeper 2 provide a response to the Department's section D questionnaire. On December 6, 2006, Seylinco's counsel yet again responded that Beekeeper 2 was unable to submit the requested cost data.

Petitioners filed pre–preliminary comments on December 7, 2006, which Seylinco addressed in its comments submitted on December 13, 2006. On September 6, 2006, the Department extended the time limit for issuance of the preliminary results of this administrative review to December 20, 2006. *See Honey from Argentina: Extension of Time Limit for Preliminary Results of Administrative Review of Antidumping Duty Order*, 71 FR 52526 (September 6, 2006).

Scope of the Review

The merchandise covered by this order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise covered by this order is currently classifiable under

[1] The three beekeepers' names are business proprietary information.

[2] On November 9, 2006, Seylinco's counsel submitted a correction to its November 8, 2006 supplemental section D response.

subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under this order is dispositive.

Intent Not To Revoke In Part

The Department's procedures for revoking an antidumping duty order, whether in whole or in part, are found at 19 CFR 351.222. Section 351.222(e) of the Department's regulations requires, *inter alia*, that a company requesting revocation submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold subject merchandise in commercial quantities in each of the three years forming the basis of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. In determining whether to revoke an antidumping duty order in part, the Department must ascertain that the party sold merchandise at not less than normal value (*i.e.*, zero or *de minimis* margins) for a period of at least three consecutive years. *See* 19 CFR 351.222(b)(2); *see also Stainless Steel Flanges from India: Notice of Final Results of Antidumping Administrative Review and Revocation in Part*, 70 FR 39997 (July 12, 2005).

On December 28, 2005, Seylinco submitted a request for revocation of the antidumping duty order with the requisite certifications set forth in 19 CFR 351.222(e). Seylinco based its request on the absence of dumping for three consecutive review periods, the 2002–2003, 2003–2004 and current administrative reviews. The Department found zero dumping margins in both the 2002–2003 and 2003–2004 administrative reviews. *See Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 71 FR 26333 (May 4, 2006); and *Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 70 FR 19926 (April 15, 2005).

In the current administrative review, we have preliminarily determined a weighted–average margin of zero percent for Seylinco. The margin calculated during the current review period constitutes one of the three consecutive reviews cited by Seylinco to support its request for revocation under section 351.222(b) of the Department's regulations. However, pursuant to 19 CFR 351.222(d)(1) we have also examined Seylinco's shipments over the past three PORs and have preliminarily determined that Seylinco has not shipped in commercial quantities in each of the three years forming the basis of the request for revocation. Accordingly, we hereby preliminarily find that relative to shipment levels characteristic of the respondent and the industry as a whole, Seylinco is not eligible for revocation of the order. *See* Memorandum to Richard Weible, Director, through Robert James, Program Manager, from Maryanne Burke, Case Analyst: "Request by Seylinco S.A. (Seylinco) for Revocation in the Antidumping Duty Administrative Review of Honey from Argentina," dated December 20, 2006.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Tariff Act), we verified sales information provided by Seylinco, using standard verification procedures such as the examination of relevant sales and financial records. We also conducted verification of the reported costs of respondent beekeeper suppliers. Our verification results are outlined in the public and proprietary versions of our verification reports, which are on file in the Central Records Unit (CRU) in room B–099 of the main Department building. *See* Memorandum to the File, from the Team, regarding "Verification of the Sales Response of Seylinco S.A. in the Antidumping Administrative Review of Honey from Argentina," dated December 7, 2006. *See also* Memorandum to Neal Halper, Director Office of Accounting, from Margaret Pusey, regarding "Verification of the Cost Response of Beekeeper 1 in the Antidumping Review of Honey from Argentina" and Memorandum to Neal Halper, Director Office of Accounting, from Margaret Pusey, regarding "Verification of the Cost Response of Beekeeper 3 in the Antidumping Review of Honey from Argentina Seylinco Cost Verification Report," dated December 20, 2006.

Product Comparison

In accordance with section 771(16) of the Tariff Act, we considered all sales of honey covered by the description in the "Scope of the Review" section of this notice, *supra*, which were sold in the appropriate third–country market, Germany, during the POR to be the foreign like product for the purpose of determining appropriate product comparisons to honey sold in the United States. For our discussion of market viability and selection of comparison market, *see* the "Normal Value" section of this notice, *infra*. We matched products based on the physical characteristics reported by Seylinco. Where there were no sales of identical merchandise in the third–country market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value (CV), as appropriate.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as export price (EP) or the constructed export price (CEP). The NV LOT is that of the starting–price sales in the home market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Tariff Act. In this review, Seylinco claimed only EP sales.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act.

Seylinco reported a single LOT for all U.S. and third–country sales. Seylinco claimed that its sales were made directly to unaffiliated customers in both the United States and Germany and that the selling activities in both markets are identical. For Seylinco, we preliminarily determine that all reported sales are made at the same LOT, and therefore have not made a LOT adjustment. *See* "Analysis Memorandum for Preliminary Results of the Antidumping Duty Review on Honey from Argentina for Seylinco S.A." (Seylinco Preliminary Analysis Memorandum) from Maryanne Burke to the File, dated December 20, 2006.

Export Price

Section 772(a) of the Tariff Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. . .," as adjusted under section 772(c). Section 772(b) of the Tariff Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d). Seylinco classified its U.S. sales as EP because all of its sales were made before the date of importation directly to unaffiliated purchasers in the U.S. market. For purposes of these preliminary results, we have accepted Seylinco's classification.

Normal Value

1. Selection of Comparison Market

In accordance with section 773(a)(1)(C) of the Tariff Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compare each company's aggregate volume of home market sales of the foreign like product to its aggregate volume of U.S. sales of subject merchandise. Because Seylinco did not have any home market sales, we preliminarily find that Seylinco's home market did not provide a viable basis for calculating NV.

When sales in the home market are not suitable to serve as the basis for NV, section 773(a)(1)(B)(ii) of the Tariff Act provides that sales to a third–country market may be utilized if (i) the prices in such market are representative; (ii) the aggregate quantity of the foreign like product sold by the producer or exporter in the third–country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (iii) the Department does not determine that a particular market situation in the third–country market prevents a proper comparison with the U.S. price. Seylinco reported Germany as its largest third–country market during the POR in terms of volume of sales. Furthermore, the aggregate quantity of such sales is greater than five percent of sales to the United States. The Department preliminarily determines that the prices in Germany are representative and no particular market situation exists that would prevent a proper comparison to EP. As a result, we based NV on Seylinco's sales to Germany.

In summary, therefore, NV for Seylinco is based on third–country (German) market sales to unaffiliated purchasers made in commercial quantities and in the ordinary course of trade. For NV, we used the prices at which the foreign like product was first sold for consumption in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the EP. We calculated NV as noted in the "Price–to-Price Comparisons" section of this notice.

2. Cost of Production

Background

As noted above, in response to petitioners' cost allegation that Seylinco sold the foreign like product at prices below its COP, the Department initiated a cost investigation of Seylinco. Based upon the determination that petitioners' allegation established reasonable grounds to believe or suspect sales below cost, the Department instructed Beekeeper 2 to respond to section D of the questionnaire on September 5, 2006. See Cost Initiation Memorandum.

A. Cost of Production Analysis

To calculate a COP and CV for the merchandise under consideration, the Department selected the three largest beekeepers by volume who supplied honey to Seylinco during the POR. *See* Cost Selection Memorandum.

B. Calculation of COP

We calculated an average COP for Seylinco in the following manner: first, we calculated a simple average based on the costs of two respondent suppliers, Beekeeper 1 and Beekeeper 3, which we applied to both beekeepers. Second, for all other beekeepers who supplied honey to Seylinco during the POR but were not chosen as respondents, we applied this same simple average of Beekeeper 1's and Beekeeper 3's costs. Third, as explained below in the "Use of Facts Otherwise Available" section of this notice, for Seylinco's non–responsive supplier, Beekeeper 2, we have used adverse facts available (AFA) for the COP in accordance with section 776 of the Tariff Act. We applied our facts available cost figure to the share of Seylinco's total honey supplied by Beekeeper 2. In so doing, we limited our application of AFA to the quantity of honey supplied by Beekeeper 2. For additional detail, *see* Memorandum to Neal M. Halper, Director of Office of Accounting, from Margaret M. Pusey, regarding "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Seylinco S.A. Beekeeper Respondents," dated December 20, 2006 (Cost Calculation and Adjustment Memorandum).

Beekeeper Cost Respondent Adjustments

We relied on the COP data submitted by the two responsive beekeepers in their cost questionnaire response, except for the following adjustments:

Common Adjustments

We adjusted the reported feed costs for Beekeepers 1 and 3 to reflect the data available from public sources.

Individual Beekeeper Adjustments

Beekeeper 1

We adjusted feed cost to exclude value–added tax (VAT), other variable costs to exclude costs arising from non–honey businesses, and rent expense for the actual number of hives located on the fields used in the rent calculation. We also adjusted repairs, improvements, and other fixed costs for typographical errors.

Beekeeper 2

Beekeeper 2 failed to respond to the Department's three requests for cost information. Therefore, pursuant to sections 776(a) and 776(b) of the Tariff Act, the Department applied AFA in calculating Beekeeper 2's COP. As described below under "Adverse Facts Available" the Department used the highest monthly cost, adjusted for inflation from the 1999 *Gestion Apicola* cost studies presented in petitioners' sales below cost allegation dated June 13, 2006.

Beekeeper 3

We adjusted improvement and drum costs to exclude VAT. We also adjusted production volume to reflect the actual weight of honey sales during the POR. *See* Cost Calculation and Adjustment Memorandum.

C. Test of Third–Country Prices and Results of the Cost of Production Test

We calculated a simple average COP using the COP of Seylinco's two responding suppliers (Beekeeper 1 and Beekeeper 3) which was applied to both beekeepers as well as all other beekeeper suppliers from whom

information was not requested. We then calculated a weighted–average rate to include the unresponsive supplier's (Beekeeper 2's) COP which is based on AFA. In determining whether to disregard third–country market sales made at prices below the COP, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, we examined: (1) whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's third-country market sales of a given model (*i.e.*, CONNUM) were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's third–country market sales of a given model were at prices less than COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act; and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

We found Seylinco did not have any models for which 20 percent or more of sales volume (by weight) were below cost during the POR. Therefore we did not disregard any of Seylinco's third–country market sales and included all such sales in our calculation of NV.

Use of Facts Otherwise Available

Section 776(a) of the Tariff Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: (1) withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Tariff Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

As discussed in the "Background" section above, on three separate occasions the Department requested that Beekeeper 2 respond to the Department's section D cost questionnaire. Beekeeper 2 instead declined to provide the requested data, asserting that its operations are focused in agricultural pollination, not honey production. Beekeeper 2 insisted its costs "are not representative of operations whose focus is on maximizing the production of honey." *See* Seylinco's December 6, 2006, submission at 5. Thus, Beekeeper 2 has failed to supply the information necessary for the Department to conduct a complete cost analysis of this review. As Beekeeper 2 is a producer and supplier of honey to Seylinco, we find, in accordance with sections 776(a)(2)(A) and (C) of the Tariff Act, that the use of facts otherwise available is appropriate in calculating COP for Beekeeper 2.

In selecting from the facts otherwise available, section 776(b) of the Tariff Act authorizes the Department to use an adverse inference if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1, at 870 (1994) (SAA). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); *see also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*). We find that Beekeeper 2 failed to cooperate by not acting to the best of its ability in this proceeding and preliminarily determine that the application of AFA is warranted within the meaning of section 776(b) of the Tariff Act.

The Department acknowledges the assertions by Beekeeper 2 and Seylinco that Beekeeper 2 primarily is a pollinator and that its costs are structured for pollination, not beekeeping. We note, however, that these are mere assertions which are unverified, and unverifiable given Beekeeper 2's refusal to supply cost data. More importantly, because Beekeeper 2 engages in beekeeping, it is also a producer of honey and therefore an "interested party" within the meaning of sections 771(9) and 776(b) of the Tariff Act. Therefore, it is appropriate to apply an adverse inference for Beekeeper 2's failure to provide requested information and failure to cooperate to the best of his abilities. Consistent with *Nippon*, we find that Beekeeper 2 failed to put forth its maximum efforts to provide the information; indeed, it did not attempt at all to provide the information. It simply refused. We note that our practice is to apply AFA when a supplier to the respondent fails to provide requested information and fails to cooperate to the best of its ability. *See Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile*, 70 FR 6618 (February 8, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

Section 776(b) of the Tariff Act provides that the Department may use as AFA, information derived from (1) the petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record. In selecting an AFA rate from among the possible sources of information, we have used the cost of production from the 1999 *Gestion Apicola* cost studies originally submitted with the antidumping petition and placed on the record of this review. The Department has relied on the 1999 *Gestion Apicola* cost studies as a basis of facts otherwise available in the first administrative review of this order. *See Honey from Argentina: Final Results of Antidumping Duty Review*, 69 FR 30283 (May 27, 2004) and accompanying Issues and Decision Memorandum at Comment 1. We also used the 1999 *Gestion Apicola* cost studies as a basis for the Department's cost investigation of Seylinco for this segment of the proceeding. *See* Cost Initiation Memorandum. In determining an adverse inference for COP data in these preliminary results, we have assigned the highest monthly per–unit COP value cited in the 1999 *Gestion Apicola* cost studies as adjusted for inflation. *See* Cost Calculation and Adjustment Memorandum. The Department finds that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Tariff Act).

Price–to-Price Comparisons

We based NV on the third–country prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Tariff Act. Where appropriate, we made circumstance–of-sale adjustments for credit pursuant to section 773(a)(6)(C) of the Tariff Act. We also made adjustments, where applicable, for other direct selling expenses, in accordance with section 773(a)(6)(C) of the Tariff Act. *See* Seylinco's Analysis Memorandum, dated December 20, 2006. Additionally, we adjusted gross unit price for billing adjustments, where applicable.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47049, 47055 (August 7, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the Argentine peso. Therefore, we made currency conversions based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted–average dumping margins exist for the period December 1, 2004, through November 30, 2005:

Manufacturer / Exporter	Weighted–Average Margin (percentage)
Seylinco S.A.	0.00
El Mana S.A.	0.00
Mielar/CAA	0.00

While the Department has, for these preliminary results, applied the calculated *de minimis* rate for the sole remaining mandatory respondent, Seylinco, as the review–specific average for the non–reviewed companies, Mielar/CAA and El Mana, we invite comments from interested partes regarding the calculation of the review–specific average. Specifically, we invite interested parties to comment on the rate to be applied to Mielar/CAA and El Mana, considering, but not limited to, the following factors: a) the Department has limited its examination of respondents pursuant to section 777A(c)(2)(B) of the Act resulting in the selection of four companies accounting for a significant share of imports during the POR; b) the Department is now examining only one selected company (because of the rescission of the reviews of other selected companies); and (c) the Department preliminarily has determined that the weighted–average margin for the one examined company is zero. The requirements for filing comments on this issue are discussed immediately below.

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) a statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting case briefs, rebuttal briefs, and written comments should provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for Seylinco we calculated importer–specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all Seylinco, El Mana S.A. and Mielar/CAA entries made during the POR. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for all companies reviewed (*i.e.*, Seylinco, El Mana S.A. and Mielar/CAA) will be the rates established in the final results of review; (2) for any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company–specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all–others" rate from the investigation (30.24 percent). *See Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina*, 66 FR 50611 (Oct. 4, 2001), *Notice of Amended Final Determination of Sales at Less Than Fair Value; Honey From Argentina*, 66 FR 58434 (Nov. 21, 2001), and *Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672 (Dec. 10, 2001).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 20, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–22327 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–821, C–570–907, C–580–857]

Coated Free Sheet Paper from Indonesia, the People's Republic of China and the Republic of Korea: Notice of Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Sean Carey (Indonesia), David Layton or David Neubacher (PRC), and Eric Greynolds or Darla Brown (Korea), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–5823, (202) 482–1391 and (202) 482–3964, and (202) 482–6071 and (202) 482–2849, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2006, the Department of Commerce (the Department) initiated the countervailing duty investigations of coated free sheet paper (CFS) from Indonesia, the People's Republic of China (PRC) and the Republic of Korea (Korea). *See Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper From the People's Republic of China, Indonesia, and the Republic of Korea*, 71 FR 68546 (November 27, 2006). Currently, the preliminary determinations are due no later than January 24, 2007.

Postponement of Due Date for Preliminary Determinations

On December 19, 2006, NewPage Corporation (petitioner) submitted letters requesting that the Department postpone the preliminary determinations of the countervailing duty investigations of CFS from Indonesia, the PRC and Korea by 65 days. Under section 703(c)(1)(A) of the Act, the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until not later than the 130th day after the date on which the administering authority initiates an investigation if the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b) (section 703(b) of the Act). Accordingly, we are extending the due date for the preliminary determinations by 65 days to no later than March 30, 2007.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: December 22, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–22417 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Malcolm Baldrige National Quality Award and Examiner Applications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to JoAnne M. Surette, Baldrige National Quality Program, Administration Building, Room 621, 100 Bureau Drive, Stop 1020, National Institute of Standards and Technology, Gaithersburg, MD 20899–1020; telephone (301) 975–5267, fax (301) 948–3716, e-mail *Joanne.surette@nist.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce is responsible for the Baldrige National Quality Program and the Malcolm Baldrige National Quality Award. Directly associated with this Award is the Malcolm Baldrige Board of Examiners, an integral part of the National Quality Program. NIST, an agency of the Department's Technology Administration, manages the Baldrige Program. Applicants for the Malcolm Baldrige National Quality Award are required to perform two steps: (1) the applicant organization certifies that it meets eligibility requirements; and (2) the applicant organization prepares and completes an application form and the application process. The Malcolm Baldrige National Quality Award Program Office will assist with or offer advice on any questions or issues that the applicant may have concerning the eligibility process or in completing the self-certification forms. NIST will use the application package to assess and provide feedback on the applicant's quality and performance practices.

The application to be a member of the Malcolm Baldrige Board of Examiners is a one-step process. Each year the Award Program recruits highly skilled experts in the fields of manufacturing, service, small business, health care, and education, the five Award eligibility categories, to evaluate the applications that the Program receives. Examiners serve for a one-year term; participation on the board is entirely voluntary.

II. Method of Collection

Award applicants must comply in writing according to the Baldrige Award Application Forms available at *http://www.baldrige.nist.gov/Award_Application.htm*.

The application for the 2007 Board of Examiners can be found at *http://www.baldrige.nist.gov/Examiner_Application.htm*.

III. Data

OMB Number: 0693–0006.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; not-for profit institutions; and individuals or households.

Estimated Number of Respondents: 900 (Award, 100; and Board of Examiners, 800.

Estimated Time Per Response: Applications for the Malcolm Baldrige Quality Award, 74 hours; and Applications for Board of Examiners, 30 minutes.

Estimated Total Annual Burden Hours: 7,800.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 22, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–22337 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The U.S. Government's ownership interest in the inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 222, Room A155, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188 , fax 301–869–2751, or e-mail: *mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (CRADA) with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

[NIST Docket Number: 04–014]

Title: Ultra-Wideband Moisture Detector for Building Assemblies.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Department of Commerce, and Intelligent Automation, Inc. The invention consists of an antenna array, ultra-wideband radios, signal processing chips, and software. The resulting device allows a user to scan a wall assembly to determine areas of potential moisture accumulation. The software uses the signals received at the antenna array to generate real-time images of the moisture state of the wall. Additional applications for this invention include location of pipes, wires, and studs in walls.

[NIST Docket Number: 05–013]

Title: Iris Digester-Evaporator Interface.

Abstract: The domestic rights within the United States to this invention are owned by the U.S. Government, as represented by the Department of Commerce. The IRIS Digester-Evaporator interface was invented to overcome problems encountered when an inductively coupled plasma mass spectrometry (ICP-MS) was coupled directly to the continuous flow from reversed phase liquid chromatography. The main problems encountered were: high background signal, first increasing and then decreasing in magnitude during the course of a chromatographic gradient of organic solvent, analyte transport difficulties, and carbon build up on the ICP-MS sampling cones from organic solvents. This device produces partial digestion of the sample using nitric acid, aiding analyte transport and detection. After evaporating the organic solvent and nitric acid, the device allows the sample to be sent to ICP-MS in a highly aqueous effluent, the preferred solvent. Through this process, a continuous flow from reverse phase liquid chromatography systems with gradient elution can be easily handled by existing ICP-MS instruments.

Dated: December 20, 2006.

James E. Hill,

Acting Deputy Director.

[FR Doc. E6–22432 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 061212329–6329–01]

Proposed Voluntary Product Standard PS 1–06, Structural Plywood

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: This notice advises the public that the National Institute of Standards and Technology (NIST) is distributing a proposed revision of Voluntary Product Standard (PS) 1–95, Construction and Industrial Plywood. This standard, prepared by the Standing Committee for PS 1, establishes requirements, for those who choose to adhere to the standard, for the principal types and grades of structural plywood and provides a basis for common understanding among producers, distributors, and users of the product. Interested parties are invited to review the proposed standard and submit comments to NIST.

DATES: Written comments regarding the proposed revision, PS 1–06, should be submitted to the Standards Services Division, NIST, no later than February 27, 2007.

ADDRESSES: An electronic copy (an Adobe Acrobat File) of the proposed standard, PS 1–06, can be obtained at the following Web site *ts.nist.gov/docvps*. This site also includes an electronic copy of PS 1–95 (the existing standard), a summary of significant changes, and a form for submitting comments. Written comments on the proposed revision should be submitted to Ms. JoAnne Overman, Standards Services Division, NIST, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899–2100. Electronic comments may be submitted to *joanne.overman@nist.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. JoAnne Overman, Standards Services Division, National Institute of Standards and Technology, telephone: (301) 975–4037; fax: 301–975–4715, e-mail: *joanne.overman@nist.gov*.

SUPPLEMENTARY INFORMATION: Proposed Voluntary Product Standard PS 1–06 establishes requirements, for those who choose to adhere to the standard, for the principal types and grades of structural plywood. This standard covers the wood species, veneer grading, adhesive bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content,

and packing of plywood intended for construction and industrial uses.

The proposed revision of the standard, PS 1–95, Construction and Industrial Plywood, has been developed and is being processed in accordance with Department of Commerce provisions in Title 15 Code of Federal Regulations Part 10, Procedures for the Development of Voluntary Product Standards, as amended (published June 20, 1986). The Standing Committee for PS 1 is responsible for maintaining, revising, and interpreting the standard and comprises producers, distributors, users, and others with an interest in the standard.

After reviewing the standard, the Committee determined that portions of it were obsolete and technically inadequate and needed to be revised to reflect current industry practices. The Committee held meetings to review the standard and make needed changes. Much of the work was performed by the document's sponsor, APA—The Engineered Wood Association. Committee members voted on the revision and it was approved by at least three-quarters of the membership. The Committee submitted a report to NIST with the voting results and the draft revised standard. NIST has determined that the revised standard should be issued for public comment.

Included in this standard are test methods to determine compliance and a glossary of trade terms and definitions. A quality certification program is provided whereby qualified testing agencies inspect, sample, and test products identified as complying with this standard. Information on species grouping is provided in Appendix A; information on reinspecting practices is provided in Appendix B; and information on the maintenance, history, and current edition of the standard is provided in Appendix C.

This Voluntary Product Standard incorporates the International System of Units (SI) as well as U.S. customary units of measurement. In conversion of U.S. customary units where exact placement is not an issue, such as nail spacing, approximate conversions to SI units are made to yield more easily recognizable numbers. In critical matters, such as panel thickness, more precise conversions to SI units are made. For nominal U.S. customary units, actual dimensions in SI units are given. The values given in SI units are the standard. The values in parentheses are for information only. Advisory notes in this standard and Appendices B and C shall not be considered mandatory.

This revision includes the following changes:

(1) Name Change—Since its inception in 1966 when three regional plywood standards were consolidated, the title of PS 1 has been Construction and Industrial Plywood. This revision changes the name to Structural Plywood as that name is more consistent with marketplace terminology.

(2) Deletion of Interior and Intermediate Bond Classifications—Provisions, test methods, and criteria for plywood manufactured with Interior and Intermediate Bond Classifications were removed from the standard because the use of such adhesive systems had become rare since the industry had transitioned to moisture resistant adhesives in the 1950s.

(3) Mold/bacteria tests—Test methods and associated criteria for assessing the potential for mold and bacteria growth on the adhesives used to manufacture plywood were eliminated. Those methods were developed and relevant only to the Interior and Intermediate types of adhesives used decades ago and which had long become obsolete since the industry switched to moisture resistant adhesives.

(4) Terminology—Terminology related to Bond Classifications was revised to clarify that adhesive classification methods were specific to wet bonding strength and did not address other modes of natural degradation of plywood. In addition, the terminology "Interior Bonded with Exterior Glue" was replaced with its alternate term "Exposure 1" as that term has become common in the marketplace.

(5) Performance Testing Language—Language clarifying the sampling and pass/fail criteria of performance testing was revised to be consistent with the language in PS 2–04, Performance Standard for Wood-Based Structural-Use Panels.

(6) Table 1—This Table was modified to better reflect the species included in the various Groups and the text referring to Table 1 was also modified accordingly.

(7) Appendix A on Assignment of Species Grouping—This mandatory appendix was added to the standard to clarify the process by which species had been evaluated for tabulation in Table 1.

(8) Overlays—The prescriptive definitions of High Density Overlays (HDO) and Medium Density Overlays (MDO) were revised to reflect commercially available products based on input from producers of overlays and overlaid plywood. In addition, HDO grades were differentiated into HDO-concrete form and HDO-industrial and MDO grades were differentiated into MDO-concrete form and MDO-general to recognize that overlays are designed and manufactured to satisfy specific end-use requirements.

(9) Repairs—The size permitted for synthetic repairs was modified to create compatibility with permissible wood repairs.

(10) Exterior Plywood Grades—Table 3 on Exterior Plywood Grades was revised to incorporate new grades of overlaid plywood and concrete form grades.

(11) Underlayment—Section 5.6.3 on Underlayment was revised to clarify the grade and intended end-use.

(12) Minimum Grade for Exposure 1—Table 2 on Exposure 1 grades was revised to permit D-D grade only for plywood qualified through performance testing specified in PS 1 or PS 2. This change creates compatibility with the minimum grade permitted in PS 2.

Concurrent with this **Federal Register** Notice, the proposed Voluntary Product Standard PS 1–06 is being distributed by the National Institute of Standards and Technology to national experts and other interested parties for review and comment, in order to ensure that the standard constitutes acceptable industry practice. All public comments will be reviewed and considered. The Standing Committee for PS 1 and NIST will revise the standard accordingly.

Dated: December 20, 2006.

James E. Hill,

Acting Deputy Director.

[FR Doc. E6–22435 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Highly Migratory Species Dealer Reporting Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dianne Stephan, Highly Migratory Species Division, Northeast Regional Office, at 978–281–9397, or *Dianne.Stephan@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. NMFS must also comply with implementing the United States' international obligations as set forth in the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). NMFS must collect domestic landings data for Atlantic highly migratory species via dealer reports in order to provide information vital for fishery management. In addition, the United States must monitor the import, export, and re-export of bluefin tuna, frozen bigeye tuna and swordfish in order to comply with international obligations established through membership in the International Commission for the Conservation of Atlantic Tunas (ICCAT). ICCAT has implemented a trade monitoring program for bluefin tuna, frozen bigeye tuna and swordfish to discourage illegal, unregulated and unreported fishing activities as well as further understanding of catches and international trade for these species. Similar objectives are the basis for the Southern bluefin tuna trade monitoring program established by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). Although the United States is not a member of the CCSBT, effective management of the Southern bluefin tuna resource is in the best interest of United States fish dealers involved in the commerce of this species. Thus, the United States has implemented the CCSBT trade monitoring program, along with the analogous ICCAT programs.

This collection serves as a family of forms for Atlantic highly migratory species dealer reporting requirements including the purchase of highly migratory species from fishermen and the import, export, and/or re-export of highly migratory species.

II. Method of Collection

Information may be mailed or faxed.

III. Data

OMB Number: 0648–0040.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,280.

Estimated Time Per Response: 5 minutes each for statistical documents and re-export certificates; 1 minute for tagging, 2 hours for validation; 15 minutes for HMS International Trade biweekly report; 15 minutes for Southeast Region HMS biweekly dealer report and Northeast Region trip tickets; 3 minutes for Southeast Region HMS biweekly dealer negative reporting; 15 minutes for Atlantic BFT biweekly dealer report; and 2 minutes for Atlantic bluefin tuna landing cards.

Estimated Total Annual Burden Hours: 46,427.

Estimated Total Annual Cost to Public: $19,862.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 22, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–22336 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Highly Migratory Species Vessel Chartering Permits

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 27, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karyl Brewster-Geisz, National Marine Fisheries Service at (301) 713–2347 or *Karyl.Brewster-Geisz@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) issues Atlantic Highly Migratory Species (HMS) Chartering Permits to applicable vessels to allow U.S. fishing vessels to fish for HMS within the Exclusive Economic Zone (EEZ) of other nations in a manner consistent with another country's regulations. The permits collect data consistent with an International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendation that states that at the time of the chartering arrangement, the chartering and flag Contracting parties shall provide specific information concerning the charter to the ICCAT Executive Secretary, including vessel details, target species, duration, and consent of the flag Contracting Party or Cooperating non-Contracting Party, Entity, or Fishing Entity. Current regulations require U.S. vessels to

submit information regarding their chartering arrangements. The information collected from chartering permit applications will be used to ensure that vessels entering into chartering agreements comply with ICCAT conservation and management measures. The NMFS would use information submitted in applications for chartering arrangements, and other applicable notifications (such as termination notifications from the applicant indicating a desire to terminate their chartering agreement), to monitor the activities and durations of such arrangements targeting HMS in the Atlantic Ocean. NMFS would report this information annually to the Executive Secretary of ICCAT as a means of demonstrating compliance with ICCAT's conservation and management recommendations.

II. Method of Collection

Information is submitted on forms or other written format, and may be submitted electronically by e-mail.

III. Data

OMB Number: 0648–0495.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit organizations.
Estimated Number of Respondents: 10.
Estimated Time Per Response: 40 minutes for a Chartering permit application; and 5 minutes for a termination notification.
Estimated Total Annual Burden Hours: 8.
Estimated Total Annual Cost to Public: $8.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 22, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–22338 Filed 12–28–06; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122106C]

Marine Mammals; File No. 555–1870

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that James T. Harvey, Ph.D., Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, has applied in due form for a permit to conduct scientific research on harbor seals (*Phoca vitulina*).

DATES: Written, telefaxed, or e-mail comments must be received on or before January 29, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 555–1870.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Dr. Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to examine the biology and ecology of harbor seals and monitor health and condition of coastal populations of harbor seals in California, Oregon, Washington, and Alaska over a 5-year period. The primary hypotheses are: (1) actual abundance can be determined using aerial surveys and a correction factor, and distinct stocks exist latitudinally; (2) seals are a major (>5%) source of natural mortality for nearshore fishes and cephalopods; (3) pollutants and anthropogenic inputs are compromising seal health; (4) human disturbance causes increased energetic costs and seals can have significant effects on fisheries; (5) dispersal of juvenile harbor seals increases survival; and (6) male harbor seals establish underwater territories and maintain hierarchies using underwater vocalizations and aggression. To test these hypotheses researchers will capture a maximum of 670 harbor seals annually. An additional 2,910 individuals may be taken annually via Level B harassment by incidental disturbance during capture or scat collection and exposure to playback of vocalizations. Animals captured would have some or all of the following procedures done: mass and morphometrics, blubber depth and biopsy, lavage/enema, flipper tagging and instrument application, blood sample, swabs, and skin and hair sampling. The applicant requests up to two incidental mortalities per year.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562)980–4018.

Dated: December 20, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–22332 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act

December 22, 2006.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Directive to the Commissioner of Customs and Border Protection.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Mali shall be treated as "handloomed, handmade, folklore articles, or ethnic printed fabrics" and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Mali with an appropriate visa will qualify for duty-free treatment.

EFFECTIVE DATE: January 16, 2007.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) ("AGOA"), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) ("AGOA Acceleration Act") (19 U.S.C. §§ 3721(a) and (b)(6)); Sections 2 and 5 of Executive Order No. 13191 of January 17, 2001; Sections 25-27 and Paras. 13-14 of Presidential Proclamation 7912 of June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including hand-loomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further expanded AGOA by adding ethnic printed fabrics to the list of textile and apparel products made in the beneficiary sub-Saharan African countries that may be eligible for the preferential treatment described in section 112(a) of the AGOA. In Executive Order 13191 (January 17, 2001) and Presidential Proclamation 7912 (June 29, 2005), the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being hand-loomed, handmade, folklore articles, or ethnic printed fabrics. (66 FR 7271-72 and 70 FR 37959, 37961 & 63)

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of nine groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, hand-loomed, folklore articles, or ethnic printed fabrics.

CITA has consulted with Malian authorities and has determined that hand-loomed fabrics, hand-loomed articles (e.g., hand-loomed rugs, scarves, place mats, and tablecloths), handmade articles made from hand-loomed fabrics, the folklore articles described in Annex A, and ethnic printed fabrics described in Annex B to this notice, if produced in and exported from Mali, are eligible for preferential tariff treatment under section 112(a) of the AGOA, as amended. After further consultations with Malian authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles or ethnic printed fabrics. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping "9".

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 2006.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements ("CITA"), pursuant to Sections 112(a) and (b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) ("AGOA"), as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108-274) ("AGOA Acceleration Act") (19 U.S.C. §§ 3721(a) and (b)(6)), Executive Order No. 13191 of January 17, 2001, and Presidential Proclamation 7912 of June 29, 2005, has determined, effective on January 16, 2007, that the following articles shall be treated as "handloomed, handmade, folklore articles, and ethnic printed fabrics" under the AGOA: (a) handloomed fabrics, handloomed articles (e.g., handloomed rugs, scarves, placemats, and tablecloths), and hand-made articles made from handloomed fabrics, if made in Mali from fabric handloomed in Mali; (b) the folklore articles described in Annex A; and (c) ethnic printed fabrics described in Annex B, if made in Mali. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping "9", in accordance with the provisions of the Visa Arrangement between the Government of Mali and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After further consultations with Malian authorities, CITA may determine that additional textile and apparel goods shall be treated as folklore articles or ethnic printed fabrics.

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

ANNEX A: Malian Folklore Products

CITA has determined that the following textile and apparel goods shall be treated as folklore articles for purposes of the AGOA if made in Mali. Articles must be ornamented in characteristic Malian or regional folk style. An article may not include modern features such as zippers, elastic, elasticized fabrics, snaps, or hook-and-pile fasteners (such as velcroc or similar holding fabric). An article may not incorporate patterns that are not traditional or historical to Mali, such as airplanes, buses, cowboys, or cartoon characters and may not incorporate designs referencing holidays or festivals not common to traditional Malian culture, such as Halloween and Thanksgiving.

Eligible folklore articles:

(a) Hand-woven Blanket/Tapestry: Strips of handloomed cotton or wool or wool-cotton blend fabric, 3-10 inches wide, hand or machine sewn together to make a larger piece of fabric. Dimensions and designs depend on use. Uses include scarves, body wrap, blankets, bedspreads, and interior room decoration accessory. Designs are woven into the fabric using dyed yarns or painted, stenciled or printed after assembly.

(b) Women's Boubou: A loose-fitting garment with large open armholes made of bright solid colored machine-made African brocade (also called basin) or hand-woven fabric. It is accompanied by a matching wrap skirt and head wrap. The garment is decorated with hand or machine-sewn embroidery around a round or U-shaped neckline.

(c) **Ladies' Long Traditional Boubou:** This ladies' dress is a loose-fitting garment with matching scarf and head wrap of bright colored machine-made fabric characteristic of ethnic printed fabrics, or of hand-woven fabrics. Garment is decorated with lace attached around the neckline, bottom hem, and sleeves.

(d) **Men's Boubou of Ethnic Printed Fabrics:** This loose-fitting two-piece set is an ankle-length pullover outer tunic with matching trousers. The tunic has oversized armholes and an asymmetrical neckline with a center chest pocket. The garment is embroidered around the neckline. The trousers are secured at the waist by a drawstring and may be baggy with extra-fullness at the thighs and may contain side seam pockets.

(e) **Men's Boubou of African Brocade (Basin) Fabric:** This loose fitting three-piece set contains an ankle length pullover outer tunic, and inner tunic, and matching trousers. The outer tunic has oversized armholes and an asymmetrical neckline with a center chest pocket and is embroidered around the neckline. The inner tunic is embroidered around the neckline and may have pockets. The trousers are secured at the waist by a drawstring and are baggy with extra-fullness at the thighs and may contain pockets.

(f) **Bologan Poncho:** The "poncho" is loosely constructed made of several strips of narrow hand-woven fabrics hand or machine sewn together, with a slit for a neck opening. The garment is patterned with geometric-designed mud cloth.

(g) **Dogon Hunter's Tunic:** A loose-fitting upper garment made by hand or machine sewing several strips of narrow hand-woven fabrics together, it is decorated with metal staples forming geometric designs. The garment is dyed a solid dark blue or dark brown in color.

ANNEX B: Malian Ethnic Printed Fabrics

Each ethnic print must meet all of the criteria listed below:

(A) selvedge on both edges

(B) width of less than 50 inches

(C) classifiable under subheading 5208.52.30 [1] or 5208.52.40[2] of the Harmonized Tariff Schedule of the United States

(D) contains designs, symbols, and other characteristics of African prints normally produced for and sold in Africa by the piece.

(E) made from fabric woven in the U.S. using U.S. yarn or woven in one or more eligible sub-Saharan beneficiary countries using U.S or African yarn

(F) printed, including waxed, in one or more eligible sub-Saharan beneficiary countries

[FR Doc. E6–22328 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing over 100g/m2 but not more than 200 g/m2, of yarn number 42 or lower

[2] printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing over 100g/m2 but not more than 200g/m2, of yarn numbers 43-68

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Republic of Vietnam

December 22, 2006.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, U.S. Customs and Border Protection.

EFFECTIVE DATE: December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the U.S. Customs and Border Protection Web site (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of July 17, 2003, as amended, between the Governments of the United States and the Socialist Republic of Vietnam, establishes limits, until the Socialist Republic of Vietnam's entry into the World Trade Organization (WTO), for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Socialist Republic of Vietnam. The current limits for certain categories are being increased for carryforward applied from the 2007 limits, and the limits for 2007 are being reduced to account for this carryforward being applied to the current limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to the Office of Textiles and Apparel Web site at http://otexa.ita.doc.gov). See 70 FR 75156 (December 19, 2005), and 70 FR 76998 (December 22, 2006) respectively.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 22, 2006.

Commissioner,

U.S. Customs and Border Protection, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on December 13, 2005 and December 19, 2006, by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton, wool, and man–made fiber textiles and textile products, produced or manufactured in Vietnam and exported during the twelve-month period which began on January 1, 2006 and extends through December 31, 2006, and the twelve-month period which begins on January 1, 2007 and extends through December 31, 2007, respectively.

Effective on December 29, 2006, you are directed to increase the 2006 limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
200	151,132 kilograms.
332	241,370 dozen pairs.
334/335	903,044 dozen.
338/339	18,464,333 dozen.
340/640	2,697,101 dozen.
341/641	1,044,925 dozen.
342/642	774,271 dozen.
347/348	9,740,910 dozen.
359-S/659-S [2]	720,326 kilograms.
440	2,945 dozen.
620	8,731,714 square meters.
632	405,529 dozen pairs.
638/639	1,637,741 dozen.
647/648	2,585,569 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2005.

[2] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Also, effective on December 29, 2006, you are directed to reduce the 2007 limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Vietnam:

Category	Restraint limit [1]
200	371,188 kilograms.
332	1,237,293 dozen pairs.
334/335	798,278 dozen.
338/339	16,238,783 dozen.

Category	Restraint limit [1]
340/640	2,457,533 dozen.
341/641	942,299 dozen.
342/642	686,600 dozen.
347/348	8,670,346 dozen.
359-S/659-S [2]	649,579 kilograms.
440	2,606 dozen.
620	7,874,136 square meters.
632	625,966 dozen pairs.
638/639	1,476,892 dozen.
647/648	2,401,605 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2006.

[2] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E6–22347 Filed 12–28–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–OS–0225]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: December 29, 2006.

ADDRESSES: OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Irvin at (703) 696–4940.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject tot he Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 22, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DODDS 22

SYSTEM NAME:

DOD Dependent Children's School Program Files (June 12, 1997, 62 FR 32089).

REASON:

The system of records is maintained under the Office of the Secretary notice DODEA 26, entitled, Department of Defense Education Activity Dependent Children's School Program Files (November 1, 2006, 71 FR 64247).

[FR Doc. 06–9928 Filed 12–28–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, HQ USAF Scientific Advisory Board, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to hold the winter quarterly meeting, discuss the results of the Fiscal Year 2007 Science and Technology Quality Review, and plan for accomplishing the five, Air Force leadership-directed studies for Fiscal Year 2007. The titles of the five studies are: Implications of Cyber Warfare, Operational Utility of Small Satellites, Theater Ballistic Missile Threat Assessment, Thermal Management Technology Solutions, Use and Sustainment of Composites in Aircraft. The meeting will be open to the public from 8 a.m. to 9 a.m. for opening remarks from the Chair and a briefing from Public Affairs on relations with the media. The remainder of the meeting will be closed to the public to discuss matters covered under subsection (c), subparagraphs (1), (4), and (9)(B) of Section 552b, Title 5, United States Code.

DATES: 16 January 2007.

ADDRESSES: 1560 Wilson Blvd., Suite 400, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: To attend the open portion of the 16 January 2007 meeting, contact Lieutenant Colonel Kyle Gresham, Deputy Executive Director, Air Force Scientific Advisory Board, 1180 Air Force Pentagon, Washington, DC 20330–1040, (703) 697–4811.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E6–22387 Filed 12–28–06; 8:45 am]

BILLING CODE 5001–04–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA) of the Final Environmental Impact Statement (FEIS) in Support of New Facilities for the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), Fort Detrick, MD

AGENCY: U.S. Army Medical Research and Material Command, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army announces the availability of an FEIS which evaluates the potential environmental impacts of the construction and operation of new USAMRIID facilities and the decommissioning and demolition and/or re-use of existing USAMRIID facilities at Fort Detrick.

DATES: The waiting period for the FEIS will end 30 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: Caree Vander Linden, USAMRIID Public Affairs, 1425 Porter Street, Fort Detrick, MD 21702–5011; telephone (301) 619–2285; fax: (301) 619–4625, or through the public USAMRIID EIS Web site at *http://www.usamriid.army.mil/eis.*

SUPPLEMENTARY INFORMATION: The Proposed Action and subject of the EIS is the construction and operation of new USAMRIID facilities and the decommissioning and demolition and/or re-use of existing USAMRIID facilities at Fort Detrick.

The proposed new USAMRIID facilities would provide biocontainment laboratory space, animal facilities, and administrative offices, as well as operational and administrative support facilities. These new facilities would be located adjacent to the existing

USAMRIID facilities within the National Interagency Biodefense Campus on Area A of Fort Detrick and near the biomedical research facilities of mission partners, including the Agricultural Research Service Foreign Disease-Weed Research Unit of the U.S. Department of Agriculture, the National Institute of Allergy and Infectious Diseases' Integrated Research Facility, and the Department of Homeland Security's National Biodefense Analysis and Countermeasures Center. The existing USAMRIID facilities on Area A would be decommissioned and either demolished and/or re-used following occupancy of the new USAMRIID facilities.

The construction would occur in two stages. Stage 1 would provide approximately 700,000 gross square feet (gsf) of new building space for the replacement of outdated and compressed existing USAMRIID facilities in order to sustain the current mission and to expand medical test and evaluation (T&E) capacity in support of immediate Department of Defense (DoD) and national demand. Stage 2 would encompass approximately 400,000 gsf of new building space for the balance of USAMRIID's expanded mission and for additional capacity to meet intensified national requirements for medical test and evaluation in support of biodefense research as well as to accommodate increased collaborative efforts among USAMRIID's mission partners. In addition, approximately 200,000 gsf of the existing USAMRIID facilities may be renovated and re-used for laboratory or non-laboratory use, to be determined by evolving biodefense requirements.

The significant issues analyzed in the FEIS included: Safety of laboratory operations and demolition of the existing biocontainment laboratories; public health and safety; handling, collection, treatment, and disposal of research wastes; water supply and other utility requirements; traffic; pollution prevention; and analysis of other risks to include discussion of the risk of terrorist attack. In addition, possible adverse health and safety impacts on laboratory workers in the proposed new USAMRIID facilities and on nearby residents during the operational phase of the project were identified and evaluated. The risks were deemed to be negligible and mitigable through adherence to "Biosafety in Microbiological and Biomedical Laboratories" (BMBL) and other standards for safe operational practices.

Three alternatives were considered: Construction and Operation of New USAMRIID Facilities and Decommissioning and Demolition of the Existing USAMRIID Facilities on Area A of Fort Detrick, Maryland (Alternate I), Construction and Operation of New USAMRIID Facilities and Decommissioning and Partial Demolition of the Existing USAMRIID Facilities and Re-Use of the Remaining Facilities on Area A of Fort Detrick, Maryland (Alternate II), and the No Action Alternative, under which the proposed new USAMRIID facilities would not be built and operated and the existing USAMRIID facilities would not be decommissioned and demolished and/or re-used.

Following the end of the 30-day waiting period, a decision will be made by the U.S. Army as to which of the alternatives will be implemented. This decision will be based on consideration of a number of factors. These factors include, but are not limited to, environmental considerations, laws and regulations, mission needs (at Fort Detrick as well as from a national perspective), budget considerations, schedule, and public concerns. A Record of Decision will then be executed.

Dated: December 18, 2006.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health).

[FR Doc. 06–9837 Filed 12–28–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–351–003]

Bluewater Gas Storage, LLC; Notice of Compliance Filing

December 21, 2006.

Take notice that, on December 15, 2006, Bluewater Gas Storage, LLC (Bluewater) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Original Sheet No. 106, to be effective December 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 5, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22351 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–615–002]

California Independent System Operator Corporation; Notice Inviting Comments

December 21, 2006.

On December 14 and 15, 2006, the Commission held a technical conference to address issues related to the California Independent System Operator Corporation's (CAISO) electric tariff, which reflects the Market Redesign and Technology Upgrade (MRTU). The purpose of the technical conference was to provide parties an opportunity to identify and discuss solutions to resolve alleged MRTU-related seams issues that exist between the CAISO and neighboring systems, in accordance with the directive of the Commission's September 21, 2006 Order conditionally accepting the CAISO's proposed MRTU electric tariff.

All interested persons are invited to file written comments no later than January 16, 2007 in relation to the issues that were the subject of the technical conference. Those filing comments are encouraged to specifically identify any seams concerns they may have, prioritize which of those concerns they believe must be addressed prior to the

implementation of MRTU, and propose a workplan for addressing those concerns.

Filing Requirements for Paper and Electronic Filings

Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. The Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

Documents filed electronically via the Internet must be prepared in MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov*, click on "e-Filing" and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Do not submit comments to this e-mail address.

For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to the above-referenced docket number.

All written comments will be placed in the Commission's public files and will be available for inspection at the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22357 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos.CP06–85–002; CP07–41–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

December 21, 2006.

On December 15, 2006, in Docket No. CP06–85–002 , CenterPoint Energy Gas Transmission Company (CEGT), pursuant to section 7(c) of the Natural Gas Act, as amended, and section 157 Subpart A of the Federal Energy Regulatory Commission's (Commission) regulations, filed requests to modify the certificated Phase I and Phase II Line CP facilities to increase the certificated capacity of Line CP by approximately 36,000 Dth/d and to increase the maximum allowable operating pressure from 1000 psig to 1168 psig, pending approval by the Department of Transportation of CEGT's petition for waiver of DOT's regulations to allow CEGT to operate Line CP at 80 percent of Specified Minimum Yield Strength. In Docket No.CP07–41–000, CEGT seeks authorization to construct, own and operate 30,000 hp of additional compression for a Phase III Expansion of Line CP that will increase the capacity of the line by an additional 280,000 Dth/d. CEGT would install a 15, 000 hp compressor respectively at the new Westdale Station in Red River Parish, Louisiana and at the existing Panola Station in Panola County, Texas, all as more fully described in the application. CEGT seeks issuance of the requested authorizations by May 1, 2007 so that facilities may be operable in time for the 2007–2008 winter heating season.

Questions concerning the application should be directed to: Lawrence O. Thomas, Director-Rates & Regulatory at CenterPoint Energy Gas Transmission Co., P.O. Box 21734, Shreveport, Louisiana 71151, or by calling (318) 429–2804; Mark C. Schroeder, Vice President & General Counsel at CenterPoint Energy Gas Transmission Co., P.O. Box 1700, Houston, TX 77210–1700, or by calling (713) 207–3395; and, Richard D. Avil, Jr. and Jonathan Christian at Jones Day, 51 Louisiana Ave., NW., Washington, DC 20001 or by calling 202–879–3939.

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, 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.

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.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 23, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22353 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–111–000]

Cheyenne Plains Gas Pipeline Company, LLC; Notice of Proposed Changes In Ferc Gas Tariff

December 21, 2006.

Take notice that on December 18, 2006, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the

following tariff sheet to become effective December 18, 2006:

Fifth Revised Sheet No. 1,
First Revised Sheet No. 22,
Original Sheet No. 22A,
First Revised Sheet No. 23,
Original Sheet No. 23A,
First Revised Sheet No. 24,
Original Sheet No. 24A,
First Revised Sheet No. 25,
Original Sheet No. 25A,
First Revised Sheet No. 26,
Original Sheet No. 26A,
Original Sheet No. 27,
Original Sheet No. 27A.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22367 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–114–000]

Cheyenne Plains Gas Pipeline Company, LLC; Notice Of Tariff Filing

December 21, 2006.

Take notice that on December 20, 2006, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 28 and Original Sheet No. 28A, to become effective December 20, 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22370 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. Cp07–39–000]

Columbia Gas Transmission Corporation; Notice of Application

December 21, 2006.

Take notice that on December 15, 2006, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE, Charleston, West Virginia 25314 filed in Docket No. CP07–39–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, for authorization to abandon by sale to Chesapeake Appalachia, LLC (Chesapeake) certain natural gas facilities located in Boone, Lincoln, and Putnam Counties, West Virginia. Columbia further requests that the Commission finds the facilities, when sold, as exempt from the Commission's jurisdiction pursuant to Section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Fredric J. George, Lead Counsel, Columbia Gas Transmission Corporation, PO Box 1273, Charleston, West Virginia 25325–1273, or call (304) 357–2359.

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 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.

The Commission strongly encourages electronic filings of comments protests and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web (*http://www.ferc.gov*) site under the "e-Filing" link.

Comment Date: January 10, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22355 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–155–000]

Consumers Energy Company And Entergy Nuclear palisades, LLC; Notice of Filing

December 22, 2006.

Take notice that on December 8, 2006, Consumers Energy Company and Entergy Services, Inc. on behalf of Entergy Nuclear Palisades, LLC (Applicants) filed a Joint Application for approval under section 203 of the Federal Power Act. On December 12, 2006, Applicants filed additional information in response to FERC's November 21, 2006 request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on December 29, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22374 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–5–000]

Cranberry Pipeline Corporation; Notice of Petition for Rate Approval

December 22, 2006.

Take notice that on December 18, 2006, Cranberry Pipeline Corporation (Cranberry) filed, pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve rates applicable to interruptible transportation service rendered on its system in the State of West Virginia, and firm and interruptible storage rates for both Cranberry's X–1 and Raleigh Storage Fields. These rates will be applicable to the interruptible transportation, and firm and interruptible storage of natural gas, under Section 311(a)(2) of the Natural Gas Policy Act of 1978.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 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*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time January 8, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22363 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–417–002]

Dominion Cove Point LNG, LP; Notice Of Compliance Filing

December 21, 2006.

Take notice that on December 19, 2006, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective, after the stipulated five-month suspension period, on January 1, 2007:

Substitute Seventh Revised Sheet No. 5, Substitute Seventh Revised Sheet No. 6, Substitute Sixth Revised Sheet No. 7, Substitute Seventh Revised Sheet No. 8, Substitute Seventh Revised Sheet No. 11, Substitute Third Revised Sheet No. 12.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 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 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*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22366 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–36–001]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

December 22, 2006.

Take notice that on December 18, 2006, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective December 22, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22378 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–112–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in Ferc Gas Tariff

December 21, 2006.

Take notice that on December 19, 2006, Enbridge Pipelines (KPC) (Enbridge KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 367, to become effective January 18, 2007.

Enbridge KPC states that copies of its filing have been served on all affected customers of Enbridge KPC and any interested state commissions.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22368 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–113–000]

Enbridge Pipelines (Midla) L.L.C., Notice of Proposed Changes in Ferc Gas Tariff

December 21, 2006.

Take notice that on December 19, 2006, Enbridge Pipelines (Midla) L.L.C. (Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective January 18, 2007:

First Revised Sheet No. 190,
Original Sheet No. 191,
Original Sheet No. 192.

Midla states that copies of its filing have been mailed or, if requested, emailed to all affected customers of Midla and any interested state commissions. However, due to the voluminous nature of this filing, Midla is not providing copies of the filed agreements or red-lines of such agreements as part of each service copy. Midla states that the entire filing will be available in its offices and that it will provide copies of such agreements to any affected customer or interested state commission who requests such copies.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22369 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–115–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in Ferc Gas Tariff

December 21, 2006.

Take notice that on December 20, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective January 19, 2007:

Third Revised Sheet No. 135,
Third Revised Sheet No. 138,
Third Revised Sheet No. 139.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22371 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–32–000]

Gulf South Pipeline Company, LP; Notice of Application

December 21, 2006.

Take notice that on December 11, 2006, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP07–32–000, an application pursuant to sections and 7(c) of the Natural Gas Act (NGA) to authorize Gulf South to site, construct, and operate facilities consisting of 111 miles of pipeline, 45,080 horsepower of compression, interconnecting facilities and appurtenant facilities (Southeast Expansion Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Additionally, beginning October 1, 2008, Gulf South expects to lease additional capacity on the Southeast Expansion Project to Boardwalk Pipeline Partners, LP's Gulf Crossing Project which is currently in the Commission's pre-filing process in Docket No. PF07–1–000. The instant filing may be also viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to J. Kyle Stephens, Director of Certificates, 20 East Greenway Plaza, Houston, Texas 77046 or by telephone at 713–544–7309 or telecopy to 713–544–3540.

On June 20, 2006, the Commission staff granted Gulf South's request to utilize the Commission's Pre-Filing Process for its Southeast Expansion Project and assigned Docket No. PF06–31–000 to staff activities involved therein. Now, as of the filing of Gulf South's application on December 11, 2006, the Commission's Pre-Filing Process for these projects has ended. From this time forward, Gulf South's proceeding will be conducted in Docket No. CP07–32–000, as noted in the caption of this Notice.

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 below listed comment date, 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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Motions to intervene, protests and comments 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. The Commission strongly encourages electronic filings.

Comment Date: January 11, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22354 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–103–001]

LSP Oakland, LLC; Notice of Filing

December 22, 2006.

Take notice that on December 20, 2006, LSP Oakland, LLC submitted for filing a revision to Tariff Sheet No. 144 of its Reliability Must-Run Agreement with the California Independent System Operator Corporation.

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 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 email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on January 10, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22375 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–157–000]

Macquarie Cook Power, Inc.; Notice of Issuance of Order

December 21, 2006.

Macquarie Cook Power, Inc. (Macquarie Cook) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Macquarie Cook also requested waivers of various Commission regulations. In particular, Macquarie Cook requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Macquarie Cook.

On December 21, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Macquarie Cook should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 22, 2007.

Absent a request to be heard in opposition by the deadline above, Macquarie Cook is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Macquarie Cook, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Macquarie Cook's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22358 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–116–000]

National Fuel Gas Supply Corporation; Notice Of Proposed Changes In Ferc Gas Tariff

December 22, 2006.

Take notice that on December 21, 2006, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty Ninth Revised Sheet No. 8, with a proposed effective date of January 1, 2007.

National states that copies of its filing were served upon the its jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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 online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22377 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–120]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in Ferc Gas Tariff And Negotiated Rates

December 22, 2006.

Take notice that on December 21, 2006, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2007, and related Rate Schedule FTS

Service Agreements with a Negotiated Rate Exhibit.

Third Revised Sheet No. 26A.02
Third Revised Sheet No. 414A.01

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22373 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RR07–8–000]

Delegation Agreement Between the North American Electric Reliability Corporation and Florida Reliability Coordinating Council; Notice of Filing

December 21, 2006.

On December 21, 2006, the North American Electric Reliability Corporation (NERC) submitted for Commission approval a delegation agreement between NERC and the Florida Reliability Coordinating Council. The delegation agreement has been assigned to the existing docket number referenced above, which was created for a draft version of the agreement previously filed for informational purposes.

The Commission encourages electronic submission of comments 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 email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Interested parties may file comments on this filing on or before January 10, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22350 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC06–153–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

December 21, 2006.

Take notice that on September 7, 2006, Transcontinental Gas Pipe Line Corporation (Transco) submitted a filing containing a proposal for revising its methodology for calculating natural gas inventories and valuation of gas imbalances. On September 18, 2006, Transco filed an attachment to the September 7, 2006 filing that was omitted. On October 18, 2006, Transco filed a request to use Account 439, Adjustments to retained earnings, in connection with Transco restatement of its 2004 FERC Form 2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on January 4, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22372 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–3–000]

BP West Coast Products LLC, Chevron Products Company, ExxonMobil Oil Corporation, Tesoro Refining and Marketing Company, and Valero Marketing & Supply Company, Complainants, v. SFPP, L.P., Respondent; Notice of Complaint

December 21, 2006.

Take notice that on December 20, 2006, BP West Coast Products LLC, Chevron Products Company, ExxonMobil Oil Corporation, Tesoro Refining and Marketing Company, and Valero Marketing & Supply Company (Indicated Shippers) filed a formal complaint against SFPP, L.P. pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206; the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2; sections 1(4), 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act 49 U.S.C. App. 1(4), 1(5), 8, 9, 13, 15, and 16 (1984).

Complainant alleges that SFPP, L.P. (SFPP) North Line rates are unjust and unreasonable. Complainants request that the Commission determine that SFPP's 2005 North Line index rate increase is unjust and unreasonable; determine that SFPP overcharged the Indicated Shippers for shipments of refined petroleum products from Concord, CA to Reno, NV from July 1, 2005 to the present date and is continuing to overcharge the Indicated Shippers for such shipments; order SFPP to pay refunds, reparations and/or damages, plus interest, to the Indicated Shippers for shipments made to them on the North Line from July 1, 2005 to the present; grant the Indicated Shippers such other, different or additional relief as the Commission may determine to be appropriate.

Indicated Shippers certify that copies of the complaint were served on the contracts for SFPP as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 9, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22359 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–365–001; CP06–366–001; CP06–376–001; CP06–377–001]

Columbia Riverkeeper, Sierra Club, Landowners and Citizens for a Safe Community, RiverVision, Wahkiakum Friends of the River, Friends of Living Oregon Waters, Willapa Hills Audubon Society, Fisherman's Protective Union, Peter Huhtala, and Christian Bock Complainants vs. NorthernStar Energy LLC, Bradwood Landing LLC, Federal Energy Regulatory Commission Decisional Staff Respondents; Notice of Complaint

December 21, 2006.

Take notice that on December 20, 2006, Columbia Riverkeeper, Sierra Club, Landowners and Citizens for a Safe Community, RiverVision, Wahkiakum Friends of the River, Friends of Living Oregon Waters, Willapa Hills Audubon Society, Fisherman's Protective Union, Peter Huhtala, and Christian Bock (hereinafter collectively, Columbia Riverkeeper) filed a complaint against Bradwood Landing LLC (Bradwood) and NorthernStar Energy LLC (NorthernStar) under sections 3 and 7 of the Natural Gas Act, and 18 CFR 385.206, alleging violations of the ex parte contact prohibition of 18 CFR 385.2201(b) in connection with a meeting held in Portland, Oregon on December 14, 2006, relating to the Biological Assessment for Bradwood Landing/NorthernStar project attended by Bradwood, NorthernStar, the Commission staff and others.

Columbia Riverkeeper certifies that copies of the complaint were served on the contacts for Bradwood and NorthernStar.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 9, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22352 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–25–000]

Louisiana Public Service Commission; Complainant v. Entergy Corporation, Entergy Services, inc., Entergy Louisiana, L.L.C., Entergy Arkansas, inc., Entergy Mississippi, inc., Entergy New Orieans, inc., Entergy Guif States Respondents; Notice of Complaint

December 21, 2006.

Take notice that on December 18, 2006, pursuant to Rule 206 of the Rules and Practice and Procedure and Sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d and 824e, Louisiana Public Service Commission (complainant) filed a formal complaint against Entergy Arkansas, Inc. (respondent) seeking remedy for the attempted withdrawal of the respondent from the Entergy System Agreement and a determination that rough production cost equalization shall not be disrupted by any departure of the respondent and that the respondent shall continue to bear the cost responsibility already assigned to it by the Commission's Orders, including the cost associated with a final remedy for cost discrimination found in the Commission's Opinion Nos. 480 and 480–A.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 8, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22356 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM06–10–000]

New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities; Notice of New Docket Prefix "QM"

December 21, 2006.

On October 20, 2006, the Commission issued Order No. 688[1] which would modify the mandatory power purchase obligation for electric utilities under the Public Utility Regulatory Policies Act of 1978 (PURPA). Order No. 688 implements a mandate of the Energy Policy Act of 2005. The final rule, "New PURPA Section 210(m) Regulations, Applicable to Small Power Production and Cogeneration Facilities," takes effect 60 days after publication in the **Federal Register** or January 2, 2007.

Notice is hereby given that a new docket prefix "QM" has been established for certain applications under Order No. 688. A new "QM" docket number will be assigned to applications filed under the following sections of the Commission's regulations:

1. 18 CFR 292.310: Application by an electric utility for a Commission determination that they may be relieved of the PURPA obligation to purchase power from qualifying facilities on a service territory-wide basis;
2. 18 CFR 292.311: Application by a qualifying facility, State agency, or other affected person for a Commission order reinstating the utility's obligation to purchase;
3. 18 CFR 292.312: Application by an electric utility for relief from the obligation to sell power on a service territory-wide basis, or a single qualifying facility basis; and
4. 18 CFR 292.313: Application by a qualifying facility, a State agency, or other affected person for a Commission order reinstating the electric utility's obligation to sell.

Filing guidelines for "QM" filings are attached to this notice and will be posted on the Commission's Web site at *http://www.ferc.gov/help/how-to.asp*. The Commission encourages electronic filing of all QM applications, provided the content is entirely in the public domain. If the application contains Privileged or Critical Energy Infrastructure Information, you must file on paper.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22364 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

[1] New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities, FERC Statutes and Regulations ¶ 31,233 (2006) (Order No. 688), 71 FR 64,342 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 21, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–22–000.

Applicants: Dogwood Energy LLC.

Description: Dogwood Energy LLC submits a Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/18/2006.

Accession Number: 20061220–0156.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–405–006; EL02–107–003.

Applicants: Entergy Services Inc.

Description: Entergy Arkansas, Inc acting as agent for Entergy Arkansas, Inc. et al submits a compliance filing, pursuant to FERC's 11/17/06 Order.

Filed Date: 12/18/2006.

Accession Number: 20061220–0155.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Docket Numbers: ER04–230–028; ER01–3155–018; ER01–1385–027; EL01–45–026.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits its ninth Quarterly Report regarding its efforts to efficiently utilize combined cycle units in the NYISO markets.

Filed Date: 12/15/2006.

Accession Number: 20061215–5019.

Comment Date: 5 p.m. Eastern Time on Friday, January 05, 2007.

Docket Numbers: ER06–278–005.

Applicants: Nevada Hydro Company, Inc.

Description: Nevada Hydro Company, Inc. submits an amendment to its Application, pursuant to the Commission's Order issued 11/17/06.

Filed Date: 12/18/2006.

Accession Number: 20061218–5046.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Docket Numbers: ER06–1094–011.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits a compliance filing to revise its OATT, pursuant to the Commission's 11/16/06 order.

Filed Date: 12/18/2006.

Accession Number: 20061220–0157.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Docket Numbers: ER06–1514–001.

Applicants: Rochester Gas and Electric Corporation.

Description: Rochester Gas and Electric Corp submits a Third Revised Service Agreement 329 in compliance with FERC's 11/16/06 Order.

Filed Date: 12/15/2006.

Accession Number: 20061220–0199.

Comment Date: 5 p.m. Eastern Time on Friday, January 05, 2007.

Docket Numbers: ER07–64–002.

Applicants: ALLETE, Inc.

Description: ALLETE, Inc et al submits a letter to inform the Commission the CMEC Distribution Tariff should be designated as Minnesota Power, Inc Rate Schedule FERC 176.

Filed Date: 12/18/2006.

Accession Number: 20061220–0158.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Docket Numbers: ER07–147–001.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas and Electric Co submits a revised Service Agreement 14 to FERC Electric Tariff, Second Revised Volume 11.

Filed Date: 12/19/2006.

Accession Number: 20061220–0160.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 9, 2007.

Docket Numbers: ER07–148–001.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas and Electric Co submits the revised Service Agreement 18 to FERC Electric Tariff, Second Revised Volume 11.

Filed Date: 12/19/2006.

Accession Number: 20061220–0159.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 09, 2007.

Docket Numbers: ER07–321–000; ER05–212–002.

Applicants: Monongahela Power Company.

Description: Monongahela Power Company submits two agreements, to be made effective 1/1/07 pursuant to the Commission's 10/21/06 order.

Filed Date: 12/08/2006.

Accession Number: 20061218–0146.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–329–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a Letter Agreement with PPM Energy Inc.

Filed Date: 12/18/2006.

Accession Number: 20061219–0061.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Docket Numbers: ER07–330–000.

Applicants: Entergy Services Inc.

Description: Entergy Services Inc. on behalf of Entergy Mississippi, Inc submits an Agreement for the Lease of Silver Creek Substation.

Filed Date: 12/18/2006.

Accession Number: 20061219–0060.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Docket Numbers: ER07–331–000.

Applicants: TransCanada Energy Ltd.

Description: TransCanada Energy Marketing Ltd submits an application for acceptance of market-base rate authority, waivers and blanket authority.

Filed Date: 12/18/2006.

Accession Number: 20061220–0125.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Docket Numbers: ER07–332–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Wholesale Market Participation Agreement with Schrack Farms Partnership and PPL Electric Utilities Corporation.

Filed Date: 12/18/2006.

Accession Number: 20061219–0059.

Comment Date: 5 p.m. Eastern Time on Monday, January 08, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22349 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–420–000]

Bayou Casotte Energy, LLC; Notice of Availability of the Final Environmental Impact Statement for the Casotte Landing Lng Project

December 22, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) in cooperation with the U.S. Coast Guard (Coast Guard); U.S. Army Corps of Engineers (COE); U.S. Environmental Protection Agency (EPA), U.S. Department of the Interior, Fish and Wildlife Service (FWS); U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries); and the Mississippi Department of Marine Resources (MDMR) has prepared this final Environmental Impact Statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities, and including operation of LNG vessels in the waterway from the territorial seas until moored at the facility, all referred to as the Casotte Landing LNG Project, as proposed by Bayou Casotte Energy, LLC in the above-referenced docket.

This final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the Casotte Landing LNG Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The Coast Guard proposed action requiring NEPA, is issuance of a Letter of Recommendation (LOR) of waterway suitability for LNG vessel traffic with the conditions referenced in the Description of the Proposed Action (Section 2.0 in the EIS). The final EIS evaluates alternatives to the proposed actions (*i.e.*, FERC's proposed approval of the Project and the Coast Guard's proposed action of issuing a Letter of Recommendation finding the waterway to be suitable for LNG vessel traffic with conditions), including the Coast Guard alternatives, system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives. The final EIS also contains our Essential Fish Habitat Assessment.

The general purpose of the Casotte Landing LNG Project is to provide up to 1.3 billion cubic feet per day (Bcfd) of natural gas to markets in the United States.

The final EIS addresses the potential environmental effects of construction and operation of the following facilities near the City of Pascagoula in Jackson County, Mississippi: a ship unloading facility with a single berth capable of receiving LNG ships with cargo capacities of up to 200,000 cubic meters (m^3);

- three 160,000 m^3 (net capacity) full containment LNG storage tanks;
- a closed-loop intermediate fluid vaporizer system utilizing cooling water from the adjacent Chevron Pascagoula Refinery as a heat source, sized for a normal sendout of 1.3 Bcfd;
- various ancillary buildings and facilities;
- five pipeline interconnects originating from a 1.5-mile-long, 36-inch-diameter spur ;
- associated pipeline support facilities, including two meter stations at interconnects with the existing pipeline systems; and
- integrally related nonjurisdictional facilities would include a natural gas liquid (NGL) extraction system and pipeline, electric transmission lines, an electric substation, a waste heat water circulation system, and the relocation of two of the Chevron Pascagoula Refinery crude oil tanker berths.

The analysis also includes operation of LNG vessels in the waterway from the territorial seas until moored at the proposed LNG terminal.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies of the final EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, CD copies of the final EIS have been mailed to Federal, State, and local agencies; elected officials; public interest groups; individuals and affected landowners; libraries; newspapers; and parties to these proceedings.

In accordance with CEQ's regulations implementing NEPA, no agency decision on a proposed action may be made until 30 days after the EPA publishes a NOA of the final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal process that allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. Should the FERC issue authorization for the Casotte Landing LNG Project for the proposed action, it would be subject to a 30-day rehearing period. Therefore, the FERC could issue its decision concurrently with the EPA's NOA.

Additional information about the project is available from the Commission'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* or toll free at 1–866–208–3676, or for TTY at (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Information about the project is also available from the Coast Guard by contacting Captain James Bjostad, Captain of the Port, Sector Mobile, at (251) 441–5960.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22379 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2195–011]

Clackamas River Hydroelectric Project, Portland General Electric Company Clackamas County, Oregon; Notice of Availability of the Final Enivironmental Impact Statement for the Clackamas River Hydroeletric Project

December 21, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR)(18 CFR Part 380 [FERC Order No. 486, 52 FR 47897]) the Office of Energy Projects staff (staff) reviewed the application for a New Major License for the Clackamas River Hydroelectric Project located on the Clackamas River, Clackamas County, Oregon. On June 16, 2006, a draft environmental impact statement (DEIS) was issued for the project. The public

was invited to comment on the DEIS. Staff has reviewed and responded to comments received and have prepared a final environmental impact statement (FEIS) for the project.

The FEIS contains staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the FEIS have been sent to federal, state, and local agencies; public interest groups; and individuals on the Commission's mailing list.

A copy of the FEIS is available for review at the Commission's Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number (P–2195), to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–2376, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: John Blair at (202) 502–6092 or at *john.blair@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22361 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos.: P–2197–073 and P–2206–030]

Alcoa Power Generating, Inc., Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

December 21, 2006.

Take notice that the following hydroelectric applications have been filed with Commission and are available for public inspection:

a. *Type of Applications:* New Major Licenses.

b. *Project Nos.:* P–2197–073 and P–2206–030.

c. *Dates filed:* April 25, 2006 and April 26, 2006.

d. *Applicants:* Alcoa Power Generating, Inc. and Carolina Power and Light Company d/b/a/ Progress Energy Carolinas, Inc.

e. *Names of Projects:* Yadkin Hydroelectric Project and Yadkin-Pee Dee River Hydroelectric Project.

f. *Locations:* The Yadkin Project is located on the Yadkin River in Davidson, Davie, Montgomery, Rowan, and Stanly Counties, North Carolina. The Yadkin-Pee Dee River Project is located on the Yadkin and Pee Dee Rivers in Anson, Montgomery, Richmond, and Stanly Counties, North Carolina. There are no federal lands affected by these projects.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* Yadkin Project-Mr. Gene Ellis, Licensing and Property Manager, Alcoa Power Generating, Inc., Yadkin Division, P.O. Box 576, NC Highway 740, Badin, NC 28009–0576.

Yadkin-Pee Dee Project-E. Michael Williams, Senior Vice President Power Operations, Progress Energy, 410 S. Wilmington Street PEB 13, Raleigh, North Carolina 27602; Telephone (919) 546–6640.

i. *FERC Contacts:* Stephen Bowler at (202) 502–6861 or stephen.bowler@ferc.gov, or Lee Emery at (202) 502–8379 or lee.emery@ferc.gov.

j. *Deadline for filing scoping comments:* February 26, 2007.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping 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 the instructions on the Commission's Web site (*http://www.ferc.gov*) under the

• I11"e-Filing" link.

k. This application is not ready for environmental analysis at this time.

l. The existing Yadkin Project consists of four developments on the Yadkin River: High Rock, Tuckertown, Narrows, and Falls. The High Rock development is the furthest upstream development, located at river mile (RM 253, and includes the following existing facilities: (1) A dam and spillway; (2) 10 flood gates; (3) a 14,400-acre reservoir, with a normal pool elevation of 623.9 feet U.S. Geological Survey (USGS) datum and a usable storage capacity of 217,400 acre-feet; and (4) a powerhouse, integral to the dam, containing three turbine-generator units with a total installed capacity of 32 megawatts (MW).

The Tuckertown development (RM 244.3) includes the following existing facilities: (1) dam; (2) spillway with 11 gates; (3) a 2,560-acre reservoir, with a normal pool elevation of 564.7 feet USGS and a usable storage capacity of 6,700 acre-feet; and (4) a powerhouse, integral to the dam, containing three turbine-generator units with a total installed capacity of 38 MW.

The Narrows development (RM 236.5) includes the following existing facilities: (1) A dam and spillway; (2) 22 flood gates and a trash gate; (3) an intake structure with four openings each with two gates; (4) four penstocks; (5) a powerhouse downstream of the dam; (6) a bypass spillway with 10 control gates and a trash gate; (7) a 5,355-acre reservoir, with a normal pool elevation of 509.8 feet USGS and a usable storage capacity of 129,100 acre-feet; and (8) four turbine-generators with a total installed capacity of 108 MW.

The Falls development (RM 234) includes the following constructed facilities: (1) A dam; (2) a spillway with 12 flood gates and a trash gate; (3) a 204-acre reservoir, with a normal pool elevation of 332.8 feet USGS and a usable storage capacity of 940 acre-feet; and (4) a powerhouse, integral to the dam, and containing three turbine-generators with a total installed capacity of 31 MW.

Alcoa Generating operates the High Rock development in a store-and-release mode and the Tuckertown, Narrows, and Falls developments in a run-of-river mode on a daily basis. The High Rock development provides storage for the three downstream developments. The maximum annual drawdown for High Rock is 13 feet.

The existing Yadkin-Pee Dee Project consists of the Tillery development on the Yadkin and Pee Dee Rivers and the Blewett Falls development on the Pee Dee River. The Tillery development (RM 218) includes the following existing facilities: (1) a dam and spillway; (2) 18 flood gates; (3) a trash sluice gate; (4) a 5,697-acre reservoir, with a normal pool elevation of 277.3 feet North American Vertical Datum of 1988 (NAVD 88) and a usable storage capacity of 84,150 acre-feet; (5) a powerhouse, integral to the dam, containing four turbine-generators with a total installed capacity of 84 MW; and (6) a small turbine powering a "house generator" with an installed capacity of 360 kW.

The Blewett Falls development (RM 188.2) includes the following existing facilities: (1) A dam and spillway; (2)

wooden flashboards; (3) a 2,866-acre reservoir, with a normal pool elevation of 177.2 feet NAVD 88 and a usable storage capacity of 30,893 acre-feet: (4) a powerhouse, integral to the dam, containing six pairs of turbine-generators, each pair with its own penstock and headgate, for a total installed capacity of 24.6 MW; and (5) a 900-foot-long tailrace channel.

The Tillery development is operated as a peaking facility with a typical drawdown of not more than 4 feet under normal conditions. The Blewett Falls development is operated as a re-regulating facility, smoothing out flows released from the upstream developments.

Alcoa Generating and Progress Energy propose to continue operating the projects with proposed protection and enhancement measures.

The proposed projects are described in detail in Scoping Document 1 (SD1).

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process.* The Commission intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings. FERC staff will conduct one agency scoping meeting and three public meetings. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meetings are primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or more of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Yadkin Evening Scoping Meeting #1

Date: Tuesday, January 23, 2007
Time: 7 p.m.–9 p.m. (EST)
Place: Edward C. Smith Civic Center (Old Carolina Theatre)
Address: 217 South Main St., Lexington, NC

Yadkin Evening Scoping Meeting #2

Date: Wednesday, January 24, 2007
Time: 7 p.m.–9 p.m. (EST)
Place: Stanly County Agri-Civic Center
Address: 26032–b Newt Road, Albemarle, NC

Yadkin-Pee Dee Evening Scoping Meeting

Date: Thursday, January 25, 2007
Time: 7 p.m.–9 p.m. (EST)
Place: Lockhart Taylor Center
At South Piedmont Community College
Address: 514 North Washington Street, Wadesboro, NC

Yadkin and Yadkin-Pee Dee Afternoon, Agency Scoping Meeting

Date: Wednesday, January 24, 2007
Time: 1 p.m.–5 p.m. (EST)
Place: Stanly County Agri-Civic Center
Address: 26032–b Newt Road, Albemarle, NC

Copies of the SD1 outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link (see item m above).

Site Visit. We will also conduct a tour of the project sites over a 4-day period. Those interested are invited to attend all or part of the tours. Advanced registration is required in order to allow travel logistics to be arranged. If you would like to participate in the Yadkin site visits, please contact Jody Cason at *jjcason@att.net* or 804–639–6278 no later than Friday, January 12, 2007. If you would like to participate in the Yadkin-Pee Dee site visits, please contact Sandie Upchurch at 910–439–5211, ext 1201, no later than Friday, January 12, 2007.

Yadkin Project Site Visits

Monday, January 22*
- 9–9:30 Badin Boat Access Area
- 9:45–12 Narrows dam
- 12–1 Lunch
- 1:15–3 Falls dam
- 3:30–4 Old Whitney Access Area (if needed)

Tuesday, January 23*
- 9–10:30 Salisbury pump station
- 10:45–11:15 Dutch Second Creek Access Area
- 11:30–12 Rowan County Tailrace Access below High Rock reservoir
- 12–1 Lunch 1:15–2:30 High Rock dam
- 2:45–4 Tuckertown dam

Yadkin-Pee Dee Project Site Visits

Wednesday, January 24*
- 9–11 Meet at Morrow Mountain State Park Tour Tillery Lake shore by van

Thursday, January 25*
- 9–9:30 Meet at Tillery powerhouse, safety orientation
- 9:30–11 Tour Tillery powerhouse and dam
- 11–12 Travel to Blewett powerhouse; lunch
- 12–12:15 Blewett orientation
- 12:15–1:15 Blewett powerhouse and spillway tour
- 1:15–1:30 Travel to Pee Dee boat ramp (Anson County)
- 1:30–2:30 Blewett Lake and Grassy Islands
- 2:30–2:45 Take out and depart

*Advanced registration is required in order to allow travel logistics to be arranged.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue;

(3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22362 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–111—Alabama and Georgia]

Alabama Power Company; Notice of Meeting To Conduct a Technical Conference for the Coosa River Project

December 21, 2006.

a. *Date and Time of Meeting:* Thursday, January 11, 2007, beginning at 9 a.m. (EST).

b. *Place:* Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

c. *FERC Contact:* Janet Hutzel at (202) 502–8675 or e-mail at *janet.hutzel@ferc.gov.*

d. *Purpose of Meeting:* To discuss the additional information request, issued on December 8, 2006, for the Coosa River Project.

e. *Proposed Agenda:* 1. Introduction; 2. Meeting Objectives; and 3. Discussion of the information requested for: (a) project operations and engineering, (b) water and aquatic resources, (c) terrestrial resources, and (d) recreation resources.

f. A summary of the meeting will be prepared for the project's record.

g. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate either in person or by phone. Please call Janet Hutzel at (202) 502–8675 by January 5, 2007, to RSVP and to receive specific instructions on how to participate.

h. FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22360 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–417–000]

Dominion Cove Point LNG; Notice of Informal Settlement Conference

December 22, 2006.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 9:30 a.m. (EST) on Thursday, January 11, 2007 and, if appropriate, continuing on Friday, January 12, 2007 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1656 (TTY); or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Gopal Swaminathan (202 502–6132).

Magalie R. Salas,

Secretary.

[FR Doc. E6–22376 Filed 12–28–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6682–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060075, ERP No. D–AFS–J65458–00, Wasatch-Cache National Forest Noxious Weed Treatment Program, Proposes to Treat Noxious Weeds 1.2 Million Acres of Wilderness and Non-Wilderness Areas, several counties, UT and Uinta County, WY.

Summary: EPA continues to have environmental concerns about potential impacts to source and ground water. The Final EIS should include a monitoring and adaptive management program to assure that program objectives are met.

Rating EC2.

EIS No. 20060213, ERP No. D–CGD–B03013–MA, Northeast Gateway Deepwater Port License Application to Import Liquefied Natural Gas (LNG) (USCG–2005–22219), Massachusetts Bay, City of Gloucester, MA.

Summary: EPA offered comments and suggestions about the analysis and discussion of impacts to air and water quality and to marine organisms as well as measures to avoid, minimize and mitigate for unavoidable impacts from the project.

Rating EC2.

EIS No. 20060325, ERP No. D–FRC–L05237–00, Hells Canyon Hydroelectric Project, Application for Relicensing to Authorize the Continued Operation of Hydroelectric Project, Snake River, Washington and Adams Counties, ID and Wallowa and Baker Counties, OR.

Summary: EPA expressed environmental objections based on impacts to water temperature. EPA requested additional analysis of the potential for temperature control structures to minimize water quality impacts.

Rating EO2.

EIS No. 20060395, ERP No. D–FRC–L05238–00, Klamath Hydroelectric Project, Continued Operation for Hydropower License FERC No. 2082–27, Klamath River, Klamath County, OR and Siskiyou County, CA.

Summary: EPA has environmental objections to the proposed relicensing in light of the potential for the project to continue to cause or contribute to water quality criteria exceedence and related adverse impacts on designated uses. EPA recommended that the final EIS analyze, as appropriate, mitigation measures that would help meet applicable water quality standards. EPA also recommended that the final EIS evaluate an alternative that demonstrates that the project's contribution to water quality standard exceedences would be addressed throughout the Project area or discuss why such an alternative was not considered reasonable.

Rating EO2.

EIS No. 20060443, ERP No. D–AFS–L65525–AK, Baht Timber Sale Project, Proposes to Harvest Timber and Temporary Road Construction on Zarembo Island, Wrangell Ranger District, Tongrass National Forest, AK.

Summary: EPA express environmental concerns about the potential for adverse impacts to water quality, aquatic resources, air quality, soils, and biological diversity from the proposed actions, especially related to roads. The Final EIS should include additional mitigation for impacts and more detail on the monitoring plan.

Rating EC2.

EIS No. 20060445, ERP No. D–NPS–J65474–MT, Avalanche Hazard Reduction Project, Issuance of Special Use Permit for the Use of Explosives

in the Park, Burlington Northern Santa Fe Railway, Glacier National Park, Flathead National Forest, Flathead and Glacier Counties, MT.

Summary: EPA supports new and expanded snowshed construction without the use of explosives, given the avalance hazard and impacts to wildlife. However, we expressed environmental concerns about barriers to wildlife travel, and recommended incorporating measures for wildlife passage into snowshed design and construction.

Rating EC2.

EIS No. 20060101, ERP No. DR–UAF–E11056–FL, Eglin Air Force Base and Hurlburt Field, New Revision to Preferred Alternatives, Military Family Housing Demolition, Construction, Renovation, and Leasing (DCR & L) Program, Okaloosa County, FL.

Summary: EPA requested that additional data and analysis be included in the final EIS.

Rating EC2.

EIS No. 20060361, ERP No. DS–NRS–D36121–WV, Lost River Subwatershed of the Potomac River Watershed Project, Construction of Site 16 on Lower Cove Run and Deletion of Site 23 on Upper Cove Run, US Army COE Section 404 Permit, Hardy County, WV.

Summary: EPA has environmental objections with the project due to potential adverse impacts to aquatic resources. EPA requested additional information regarding the need for the project, as well as analysis of alternatives, secondary and cumulative effects, and potential mitigation measures.

Rating EO2.

Final EISs

EIS No. 20060062, ERP No. F–AFS–J61104–CO, Copper Mountain Resort Trails and Facilities Improvements, Implementation, Special Use Permit, White River National Forest, Dillon Ranger District, Summit County, CO.

Summary: The final EIS addressed EPA's concerns with impacts to water quality from snowmaking, mitigation for wetlands impacts and impacts to wildlife. EPA recommended additional monitoring to assure that extensive wetland mitigation measures are successful and continue to function as designed.

EIS No. 20060123, ERP No. F–AFS–J65429–CO, Village at Wolf Creek Project, Application for Transportation and Utility Systems and Facilities, Proposed Development and Use of Road and Utility Corridors Crossing, National Forest System Lands to Access 287.5 Acres of Private Property Land, Mineral County, CO.

Summary: EPA continues to have environmental concerns about potential impacts to water quality, site hydrology and wetlands from the proposed action, especially from roads and new access.

EIS No. 20060172, ERP No. F–AFS–J65421–00, Grizzly Bear Conservation for the Greater Yellowstone Area National Forests, Implementation, Amend Six Forest Plans: Beaverhead–Deerlodge National Forest, Bridger–Teton National Forest, Caribou–Targhee National Forest, Custer National Forest, Gallatin National Forest and Shoshone National Forest, MT, WY, and ID.

Summary: The Final EIS addressed EPA's concerns in terms of limiting the number of roads, trails and campsites. However, the ROD should consider including a commitment to increase mitigation to the level of use over time as well as include a more comprehensive monitoring plan. Added protections to grizzly bear habitat will also protect water quality and other forest resources.

EIS No. 20060193, ERP No. F–AFS–J65435–UT, Ogden Ranger District Travel Plan, To Update the Travel Management Plan, Wasatch–Cache National Plan, Ogden Ranger District, Box Elder, Cache, Morgan, Weber and Rich Counties, UT.

Summary: EPA continues to express environmental concerns with the potential for adverse impacts to aquatic and terrestrial resources from the existing and proposed travel systems and particularly from unauthorized motorized trails.

EIS No. 20060409, ERP No. F–AFS–J65452–UT, Lake Project, Proposal to Maintain Vegetative Diversity and Recover Economic Value of Dead, Dying and High Risk to Mortality Trees, Manti–La Sal National Forest, Ferron/Price Ranger District, Emery and Sanpete Counties, UT.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060425, ERP No. F–AFS–K65298–CA, Kings River Project, Proposal to Restore Historical Pre–1850 Forest Conditions, Implementation, High Sierra Ranger District, Sierra National Forest, Fresno County, CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 26, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E6–22412 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6682–5]

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 12/18/2006 through 12/22/2006 pursuant to 40 CFR 1506.9.

EIS No. 20060526, Draft EIS, AFS, NM, Canadian River Tamarisk Control, Proposes to Control the Nonnative Invasive Species Tamarisk (also Known as salt cedar) Cibola National Forest, Canadian River, Harding and Mora Counties, New Mexico, Comment Period Ends: 02/12/2007, Contact: Keith Baker 505–346–3820

EIS No. 20060527, Final EIS, AFS, WI, Long Rail Vegetation and Transportation Management Project, Implementation, Eagle River-Florence Ranger District, Chequamegon-Nicolet National Forest, Florence and Forest Counties, WI, Wait Period Ends: 01/29/2007, Contact: Christine Brunner 714–479–2827 Ext 21

EIS No. 20060528, Final EIS, AFS, ID, Emerald Creek Garnet Area, To Provide a Public Recreational Area for Collecting Garnet Gemstone, U.S. Army COE Section 404 Permit, Idaho Panhandle National Forest, St. Joe Ranger District, Latah County, ID, Wait Period Ends: 01/29/2007, Contact: Tracy Gravelle 208–245–4517

EIS No. 20060529, Final EIS, AFS, OR, Maury Mountains Allotment Management Plan, To Implement or Eliminate Livestock Grazing in Six Allotments in the Maury Mountains of the Ochoco National Forest, Prineville, OR, Wait Period Ends: 01/29/2007, Contact: Kevin Keown 541–416–6484

EIS No. 20060530, Final EIS, USA, MD, U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), Construction and Operation of New USAMRIID Facilities and Decommissioning and Demolition and/or Re-use of Existing USAMRIID Facilities, Fort Detrick, MD, Wait Period Ends: 01/29/2007, Contact: Dave Hand 410–962–8154

EIS No. 20060531, Final EIS, FRC, OR, Clackamas River Hydroelectric Project, Application for Relicensing of a Existing 173 megawatt(MS) Project, (FERC No. 2195–011) Clackamas River Basin, Clackamas County, OR, Wait Period Ends: 01/29/2007 Contact: Andy Black 1–866–208–3372

EIS No. 20060532, Final EIS, BIA, AK, Cordova Oil Spill Response Facility, Construct an Oil Spill Response Facility at Shepard Point, NPDES Permit and U.S. Army COE Section 10 and 404 Permits, Cordova, AK, Wait Period Ends: 01/29/2007, Contact: Kristin K'eit 907–586–7423

EIS No. 20060533, Final EIS, FHW, VA, I–73 Location Study, between Roanoke and the North Carolina State Line Commonwealth of Virginia, Construction and Operation, Cities of Roanoke and Martinsville, Counties of Bedford, Botetourt, Franklin, Henry, and Roanoke, VA, Wait Period Ends: 01/29/2007, Contact: Edward Sundra 804–775–3338

EIS No. 20060534, Final EIS, NOA, 00, Gulf of Mexico Red Snapper Total Allowable Catch and Reduce Bycatch in the Gulf of Mexico Directed and Shrimp Trawl Fisheries, To Evaluate Alternatives, Gulf of Mexico, Wait Period Ends: 01/29/2007, Contact: Roy E. Crabtree 727–824–5301

EIS No. 20060535, Draft EIS, FHW, ID, U.S.-95 Garwood to Sagle (from MP–438.4 to MP 469.75) Transportation Improvements to Present and Future Traffic Demand, Funding, NPDES Permit and U.S. Army COE Section 404 Permit, Kootenai and Bonner Counties, ID, Comment Period Ends: 02/15/2007, Contact: Paul Ziman 208–334–1843

EIS No. 20060536, Final EIS, FTA, TX, North Corridor Fixed Guideway Project, Propose Transit Improvements from University of Houston (UH)-Downtown Station to Northline Mall, Harris County, TX, Wait Period Ends: 01/29/2007, Contact: John Sweek 817–978–0550

EIS No. 20060537, Final EIS, COE, CA, American River Watershed, Lower American River Common Features Mayhew Levee Project, Reconstruction, Sacramento County, CA , Wait Period Ends: 01/29/2007, Contact: Elizabeth Holland 916–557–6712

EIS No. 20060538, Final EIS, FRC, SC, Casotte Landing Liquefied Natural Gas (LNG) Import and Interstate Natural Gas Transmission Facilities, Construction and Operation, U.S. Army COE Section 404 Permit, (FERC/EIS–0193D), near the City of Pascagoula, Jackson County, MS, Wait Period Ends: 01/29/2007, Contact: Andy Black 1–866–208–3372

Amended Notices

EIS No. 20060489, Final EIS, COE, 00, Lock and Dam 3 Mississippi River Navigation Safety and Embankments, To Reduce Related Navigation Safety and Embankment Problems, Upper Mississippi River, Goodhue County, MN and Pierce County, WI, Wait Period Ends: 01/12/2007, Contact: Daniel Wilcox 651–290–5276 Revision of FR Notice Published 12/01/2006: Correction to Wait Period from 01/02/2007 to 01/12/2007

Dated: December 26, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E6–22411 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0977; FRL–8264–5]

Board of Scientific Counselors, Executive Committee Meeting—January 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting will be held on Tuesday, January 23, 2007, from 8:30 a.m. to 5:30 p.m. All times noted are eastern time. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting.

ADDRESSES: The meeting will be held at the Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, Virginia 22202. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0977, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2006–0977.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2006–0977.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Executive Committee Meeting—January 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC. 20460, Attention Docket ID No. EPA–HQ–ORD–2006–0977.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2006–0977. **Note:** this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0977. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The 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, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Executive Committee—January 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via email at: *kowalski.lorelei@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the meeting include, but are not limited to: Rating Tool Workgroup revised draft proposal; ORD responses to recent BOSC reports; update on the Computational Toxicology Subcommittee; update on program review subcommittees for Safe Pesticides/Safe Products, Technology for Sustainability, Human Health Risk Assessment, and Homeland Security; update on the Human Health Mid-Cycle Subcommittee review; update on the standing Laboratory/Center Subcommittees; ORD briefing on ORD Communications; ORD briefing on an Ecological Benefits Assessment Plan; update on EPA's Science Advisory Board activities; and future issues and plans. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov*. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 22, 2007.

Connie Bosma,

Acting Director, Office of Science Policy.

[FR Doc. E6–22409 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–1010; FRL–8264–4]

Board of Scientific Counselors, Technology for Sustainability Subcommittee Meetings—Jan/Feb 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of two meetings (via conference call) of the Board of Scientific Counselors (BOSC) Technology for Sustainability Subcommittee.

DATES: Two public conference calls will be held: (1) Tuesday, January 23, 2007 from 9 a.m. to 11 a.m., and (2) Wednesday, February 21, 2007 from 11:30 a.m. to 1:30 p.m. All times noted are eastern time. The meetings may adjourn early if all business is finished. Requests for the draft agenda's and call-in number and access code, or for making oral presentations at the conference calls will be accepted up to 1 business day before each conference call.

ADDRESSES: The meetings will be by teleconference only—meeting rooms will not be used. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–1010, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov*, Attention Docket ID No. EPA–HQ–ORD–2006–1010.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2006–1010.
- *Mail:* Send comments by mail to: Board of Scientific Counselors, Technology for Sustainability Subcommittee Meetings—Winter/Spring 2007 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2006–1010.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW.,Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2006–1010. **Note:** this is not a mailing address. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–1010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The 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, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available

either electronically in *http://www.regulations.gov* or in hard copy at the Board of Scientific Counselors, Technology for Sustainability Subcommittee Meetings—Winter/Spring 2007 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Clois Slocum, USEPA, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; via phone/voice mail at: (513) 569–7281; via fax at: (513) 569–7549; or via email at: *slocum.clois@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Members of the public who wish to obtain the draft BOSC agenda's and call-in number and access code, or who would like to make a presentation during the conference calls may contact Clois Slocum, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the conference calls include, but are not limited to: (1) *First conference call:* Charge questions, objective of the program review, overview of the Office of Research and Development, writing assignments, and future meetings; (2) *second conference call:* overviews of ORD's Technology for Sustainability program, and preparation for a face-to-face meeting in March 2007. The conference calls are open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Clois Slocum (513)569–7281 or *slocum.clois@epa.gov*. To request accommodation of a disability, please contact Clois Slocum, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 21, 2006.

Jeff Morris,

Acting Director, Office of Science Policy.

[FR Doc. E6–22410 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0694; FRL–8108–2]

n-Alkyl Dimethyl Benzyl Ammonium Chloride and Didecyl Dimethyl Ammonium Chloride Reregistration Eligibility Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decisions (REDs) for the pesticides n-Alkyl Dimethyl Benzyl Ammonium Chloride (ADBAC) and Didecyl Dimethyl Ammonium Chloride (DDAC) and opens a public comment period on these documents. The Agency's risk assessments and other related documents also are available in the ADBAC and DDAC Dockets. ADBAC is an antimicrobial used in agricultural, food handling, commercial, institutional, industrial, residential and public access, medical settings and may be applied as a wood preservative. DDAC is an antimicrobial used in indoor and outdoor hard surfaces, eating utensils, laundry, carpets, agricultural tools and vehicles, egg shells, shoes, milking equipment and udders, humidifiers, medical instruments, human remains, ultrasonic tanks, reverse osmosis units, water storage tanks and may be applied as a wood preservative. EPA has reviewed ADBAC and DDAC through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before February 27, 2007.

ADDRESSES: Submit your comments, identified by docket identification ID number, by one of the following methods: for ADBAC docket identification ID number EPA–HQ–OPP–2006–0339; for DDAC docket identification (ID) number EPA–HQ–OPP–2006–0338.

- 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 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 the following docket identification numbers (ID): For ADBAC docket ID number EPA–HQ– OPP–2006–0339; and for DDAC docket ID number EPA–HQ–OPP–2006–0338. 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 or e-mail. The Federal 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 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 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: For ADBAC, contact Jacqueline Campbell-McFarlane, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6416; fax number: (703) 308–8481; e-mail address: *campbell-mcfarlane.jacqueline@epa.gov.*

For DDAC, contact Tracy Lantz, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6415; fax number: (703) 308–8481; e-mail address: *lantz.tracy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed 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. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed Reregistration Eligibility Decisions (REDs) for the pesticides, ADBAC and DDAC under section 4(g)(2)(A) of FIFRA. ADBAC is an antimicrobial used in agricultural, food handling, commercial/ institutional/ industrial, residential and public access, medical settings and may be applied as a wood preservative. DDAC is an antimicrobial used in indoor and outdoor hard surfaces, eating utensils, laundry, carpets, agricultural tools and vehicles, egg shells, shoes, milking equipment and udders, humidifiers, medical instruments, human remains, ultrasonic tanks, reverse osmosis units, water storage tanks and may be applied as a wood preservative.

EPA has determined that the data base to support reregistration is substantially complete and that products containing ADBAC and DDAC are eligible for reregistration, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing ADBAC and DDAC.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the ADBAC and DDAC tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, ADBAC and DDAC were reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for ADBAC and DDAC.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the ADBAC and DDAC REDs for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for ADBAC and DDAC. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket

and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the ADBAC and DDAC REDs will be implemented as it is now presented.

B. 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. This review was completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests, Alkyl Dimethyl Benzyl Ammonium Chloride (ADBAC), Didecyl Dimethyl Ammonium Chloride (DDAC).

Dated: December 18, 2006.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E6–22303 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8265–1; Docket ID No. EPA–HQ–ORD–2006–0975]

A Review of the Impact of Climate Variability and Change on Aeroallergens and Their Associated Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, "A Review of the Impact of Climate Variability and Change on Aeroallergens and Their Associated Effects." The draft document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development. The draft report surveys the current state of knowledge of the potential impacts of climate change and climate variability on aeroallergens in the United States—including pollens, molds, and indoor allergens—and their associated allergenic illnesses.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins December 29, 2006, and ends January 29, 2007. Technical comments should be in writing and must be received by EPA by January 29, 2007.

ADDRESSES: The draft, "A Review of the Impact of Climate Variability and Change on Aeroallergens and Their Associated Effects," is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at—A limited number of paper copies are available from the Technical Information Staff, NCEA–W; telephone: 202–564–3261; facsimile: 202–565–0050. If you are requesting a paper copy, please provide your name, your mailing address, and the draft document title, "A Review of the Impact of Climate Variability and Change on Aeroallergens and Their Associated Effects."

Comments may be submitted electronically via www.regulations.gov, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

For technical information, contact Janet L. Gamble, NCEA; telephone: 202–564–3387; facsimile: 202–564–2018; or e-mail: *gamble.janet@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/ Document

This draft report presents a survey of the current state of knowledge of the potential impacts of climate change and variability on aeroallergens—pollens, mold, and indoor allergens—in the United States and the allergenic illnesses associated with them. Allergies are prevalent in the U.S. and impose substantial economic and quality of life burdens. While limited data suggest that aeroallergen levels have remained relatively stable, the prevalence of allergenic illnesses in the U.S. has increased over the past 30 years, a trend that appears to be mirrored in other countries. Overall, experimental and observational data indicate that pollen production is likely to increase in many parts of the U.S. Phenologic advance is likely to occur for numerous species of plants, especially trees, and increases in allergen content, and thus, potency, of some aeroallergens are possible.

II. How to Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2006–0975 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov*.
- Fax: 202–566–1753.
- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original, with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0975. Please ensure that your comments are submitted within the specified

comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The 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, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: December 20, 2006.

George Alapas,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E6–22427 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0351; FRL–8108–9]

Pesticides; Draft Guidance for Pesticide Registrants on Use of Antimicrobial Pesticide Products in Heating, Ventilation, Air Conditioning, and Refrigeration Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; Reopening of Comment Period.

SUMMARY: The Agency is reopening the comment period and seeking additional public comment on a draft Pesticide Registration Notice (PR Notice) entitled "Use of Antimicrobial Pesticide Products in Heating, Ventilation, Air Conditioning, and Refrigeration Systems." PR Notices 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 PR Notice would, once final, provide guidance to the registrants concerning EPA-registered sanitizer, disinfectant and other antimicrobial products whose labels bear general directions for use on or incorporation within hard, non-porous or porous surfaces, but which are not specifically registered for treatment of Heating, Ventilation, Air Conditioning and Refrigeration Systems (HVAC&R).

DATES: Comments must be received on or before February 27, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0351, 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–2006–0351. 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 or e-mail. The Federal 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 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: Tracy Lantz, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 308–6415; fax number: (703) 308–8481; e-mail address: *lantz.tracy@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 required to register pesticides and those who maintain Heating, Ventilation, Air Conditioning and Refrigeration Systems. 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 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–2006–0351. 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 PR Notice Provide?

The EPA is concerned that sanitizer, disinfectant and other antimicrobial products are being used to treat surfaces of HVAC&R systems, including but not limited to use as a part of an air duct cleaning program. When initially registered, these products were approved for use on hard surfaces such as countertops, but air ducts were not intended to be included in the broad hard surface category. EPA is concerned that data demonstrating efficacy when used in air ducts have not been submitted for review by the Agency. Moreover, use of these products in HVAC&R systems such as air ducts pose potential human exposure and health risks to applicators and building occupants which have not been assessed by the Agency.

This draft PR Notice provides guidance which, once final, the Agency would provide to registrants concerning labeling language that EPA believes would address its current concerns for sanitizer, disinfectant and other antimicrobial products whose labels bear directions for use on, or incorporation within, hard, non-porous surfaces, but which have not been specifically approved for use in HVAC&R systems. The PR Notice describes an Agency approach that registrants of products subject to this Notice should add a "Do Not Use" statement to the labeling of such products. Supporting documents for this draft PR Notice are contained in the docket.

EPA originally published this document for comment in the **Federal Register** on September 22, 2006 (71 FR 55471). The public comment period ended on November 21, 2006. EPA received a request from The Chlorine Institute to extend the comment period. The Chlorine Institute has requested that the Agency provide additional information which was utilized in support of the draft guidance. They have requested additional time to evaluate this information. EPA agrees to reopen the comment period for an additional 60 days.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice 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 PR Notice 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, Labeling, Pesticides and pests.

Dated: December 20, 2006.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. E6–22304 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8263–9; Docket ID No. EPA–HQ–ORD–2006–1009]

Draft Toxicological Review of 2,2,4-Trimethylpentane: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period and external peer review panel meeting.

SUMMARY: The EPA is announcing a public comment period and an external peer review panel meeting to review the draft document titled, "Toxicological Review of 2,2,4-Trimethylpentane: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (NCEA–S–2202), related to the human health assessment for 2,2,4-trimethylpentane. The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 45-day public comment period begins on December 29, 2006 and ends February 12, 2007. Technical comments should be in writing and must be received by EPA by February 12, 2007. The peer review panel meeting will be conducted on February 28, 2007, by teleconference and will begin at 1 p.m. and end at 4 pm. Members of the public may call into the teleconference meeting and are invited to provide oral statements at the commencement of the teleconference. (For more information refer to the instructions for registration provided in the **ADDRESSES** section of this notice.)

ADDRESSES: The external peer review panel meeting will be held by teleconference. Under an Interagency Agreement with EPA and the Department of Energy, the Oak Ridge Institute of Science and Education (ORISE) is organizing, convening, and conducting the peer review panel meeting. To obtain the teleconference call-in number and access code, register by February 14, 2007, by calling ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, at (865) 576–2922 or (865) 241–3168 (facsimile). Interested parties may also register on-line at: *http://www.orau.gov/trimethylpentane*. Public comments submitted to the EPA by February 12, 2007 will be provided to the external peer review panel prior to the teleconference meeting.

The draft, "Toxicological Review of 2,2,4-Trimethylpentane: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (NCEA-S–2202) is available primarily via the Internet on NCEA's home page under the Recent Additions menu at *http://www.epa.gov/ncea*. A limited number of paper copies are available by contacting the IRIS Hotline at (202) 566–1676, (202) 566–1749 (facsimile), or *hotline.iris@epa.gov*. If you are requesting a paper copy, please provide your name, mailing address, the document title, and the EPA number of the requested publication. Copies are not available from ORISE.

Technical comments may be submitted electronically via www.regulations.gov, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics should be directed to Margaret Lyday, ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, at (865) 576–2922 or (865) 241–3168 (facsimile), *lydaym@orau.gov* (email).

If you have questions about the document, contact John Stanek, Chemical Manager, National Center for Environmental Assessment; telephone: (919) 541–1048; facsimile: (919) 541–0248; email: *stanek.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

IRIS is a database that contains Agency scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

2,2,4-Trimethylpentane, also known as isooctane or isobutyltrimethylmethane, is a hydrocarbon used primarily in deriving high-octane fuels. It comprises about 10% of unleaded gasoline. 2,2,4-Trimethylpentane is released into the environment through the manufacture, use, and disposal of products associated with the gasoline and petroleum industry. The current assessment posted on IRIS (1991) does not include an evaluation of the oral non-cancer or the cancer literature; for the inhalation RfC. a message indicates that the health effects data for 2,2,4-trimethylpentane were considered inadequate for the derivation of an inhalation RfC. A review of the more recent literature identified mechanistic studies, gavage studies, and toxicokinetic studies, the majority of which were designed to specifically address and characterize the involvement of $alpha_{2u}$-globulin accumulation in the renal toxicity observed in the male rat. Little or no evaluation of other endpoints in tissues/organs other than the kidney was reported. Therefore, the major issues discussed in the draft assessment are: (1) the association of TMP-induced renal effects in male rats with $alpha_{2u}$-globulin accumulation, and (2) the lack of studies with sufficient duration and dose-response information for any endpoint from which to derive reference values.

II. How to Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–1009 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov*.
- Fax: (202) 566–1753.
- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U,S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is (202) 566–1752.
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively,

and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–1009. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *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*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: December 20, 2006.

George Alapas,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E6–22431 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8264–6]

Fort Ord Superfund Site; Proposed Notice of Administrative Order on Consent for Cleanup of Portions of the Former Fort Ord

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed Administrative Order on Consent ("Agreement") concerning portions of the Fort Ord Superfund Site ("Site") in Monterey, California has been negotiated by the United States Environmental Protection Agency ("EPA"), the California Department of Toxic Substances Control ("DTSC") and the Fort Ord Reuse Authority ("Respondent") subject to the final review and approval of the EPA, DTSC and the U.S. Department of Justice. The proposed Agreement concerns cleanup of portions of the Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604, 9606 and 9622 ("CERCLA"). Pursuant to a Federal Facilities Agreement ("FFA"), the U.S. Army ("Army") is required to perform the CERCLA response actions for the Site; however, the FFA will be amended to suspend the obligations of the Army to conduct those response actions that will be undertaken by the Respondent pursuant to the Agreement. The Army is preparing a Finding of Suitability for Early Transfer ("FOSET"), which will be submitted to EPA Region 9, and the State of California for their approval after a public comment period. Upon approval of the FOSET, the Army will transfer portions of the Site to the Respondent. The Army and the Respondent will enter into an Environmental Services Cooperative Agreement, which will require the Respondent to perform certain CERCLA response actions on the transferred portions of the Site, using grant monies from the Army. The proposed Agreement would require the Respondent to prepare and perform removal actions, one or more remedial investigations and feasibility studies and one or more remedial designs and remedial actions for certain contaminants present on the transferred portions of the Site, under the oversight of EPA and the State of California. The proposed Agreement includes EPA and DTSC covenants not to sue or to take administrative action against the Respondent, provided that the Respondent complies with all the terms and conditions of the Agreement. The Agreement also commits the Respondent to reimburse direct and indirect future response costs incurred by EPA and DTSC in connection with actions conducted under CERCLA at the transferred portions of the Site.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before January 29, 2007.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at United States EPA Region lX, 75 Hawthorne Street, San Francisco, California 94105, and should reference "Former Fort Ord Superfund Site," and "Docket No. R9–2007–03".

FOR FURTHER INFORMATION CONTACT: Michele Benson, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: *benson.michele@epa.gov*; phone: (415) 972–3918.

Dated: December 20, 2006.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. E6–22430 Filed 12–28–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB; Correction

This notice corrects a notice published on pages 77022–77023 of the issue for December 22, 2006.

Summary:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently

approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

For Further Information Contact: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov.*

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies, and the Annual Report of Merchant Banking Investments Held for an Extended Period.

Agency form number: FR Y–12 and FR Y–12A, respectively.

OMB Control number: 7100–0300.

Effective Date: December 31, 2006.

Frequency: FR Y–12, quarterly and semiannually; FR Y–12A, annually.

Reporters: Bank holding companies, financial holding companies.

Annual reporting hours: FR Y–12, 1,824; FR Y–12A, 105.

Estimated average hours per response: FR Y–12, 16; FR Y–12A, 7.

Number of respondents: FR Y–12, 30; FR Y–12A, 15.

General description of report: This collection of information is mandatory pursuant to Section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)). The FR Y–12 data are not considered confidential. However, bank holding companies may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552(b). The FR Y–12A data would be considered confidential on the basis that disclosure of specific commercial or financial data relating to investments held for extended periods of time could result in substantial harm to the competitive position of the financial holding company pursuant to the FOIA (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR Y–12 collects data from certain domestic bank holding companies on their equity investments in nonfinancial companies on four schedules: Type of Investments, Type of Security, Type of Entity within the Banking Organization, and Nonfinancial Investment Transactions during Reporting Period. The FR Y–12 data serve as an important risk-monitoring device for institutions active in this business line by allowing the Federal Reserve to monitor an institution's activity between review dates. It also serves as an early warning mechanism to identify institutions whose activities in this area are growing rapidly and therefore warrant special supervisory attention.

Current Actions: On August 31, 2006, the Federal Reserve published a notice in the **Federal Register** (71 FR 51828) requesting public comment for sixty days on the extension, without revision, of the Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies and the implementation of the Annual Report of Merchant Banking Investments Held for an Extended Period. The comment period for this notice expired on October 30, 2006, and the Federal Reserve received two comment letters.

A subsidiary of a financial holding company (FHC) commented on the Federal Reserve Board and U.S. Department of Treasury regulations concerning Merchant Banking Holding Periods that went into effect February 12, 2001; however, the comment was outside the scope of the proposal.

A FHC requested two modifications to the FR Y–12 instructions concerning warrants, their acquisition cost, and the potential difficulty in determining their fair value. As a result, the Federal Reserve clarified definition of warrants in the Glossary. This same FHC suggested re-titling FR Y–12 Schedule D, data item 1; however, the Federal Reserve did not accept this suggestion.

Board of Governors of the Federal Reserve System, December 22, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–22315 Filed 12–28–06; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Consumer Handbook on Adjustable Rate Mortgages

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of availability of handbook on Adjustable Rate Mortgages.

SUMMARY: This notice announces the availability of the revised Consumer Handbook on Adjustable Rate Mortgages by the Board of Governors of the Federal Reserve System (the Board) and the Office of Thrift Supervision (the OTS). The Consumer Handbook on Adjustable Rate Mortgages (the CHARM booklet) provides information to consumers about the features and risks of adjustable rate mortgage loans. Under Regulation Z (which implements the Truth in Lending Act), creditors must provide a copy of the CHARM booklet published by the Board and the OTS, or a suitable substitute, to consumers with every application for an adjustable rate mortgage loan. The CHARM booklet published by the Board and the OTS today replaces the CHARM booklet published in 1987 and most recently reprinted May 2005.

DATES: Creditors may immediately begin using the revised CHARM booklet (or a suitable substitute) to fulfill the requirement in Regulation Z. Beginning on October 1, 2007, creditors *must* use the CHARM booklet published today or a suitable substitute to comply with Regulation Z.

FOR FURTHER INFORMATION CONTACT: Kathleen C. Ryan, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

How to Obtain Copies: The CHARM booklet is available on the Internet at *http://www.federalreserve.gov/pubs/arms/arms_english.htm.* Single copies of the brochure are available free of charge by mailing a request to: Publications, Mail Stop 127, Federal Reserve Board, 20th and C Streets, NW., Washington, DC 20551, or by calling 202–452–3245.

SUPPLEMENTARY INFORMATION: The Board and the OTS (the agencies) developed the CHARM booklet in 1987 to educate consumers about the features and risks associated with adjustable rate mortgages. Since 1987, adjustable rate mortgage products have changed, and recently "interest only" and "payment option" features have increasingly been added to adjustable rate mortgage products. Interest only and payment option ARMs—often referred to as "nontraditional mortgage products"—allow borrowers to defer payment of principal and, sometimes, interest. To try to ensure that consumers understand

the risks for such nontraditional ARMs, the agencies have substantially revised the CHARM booklet to include discussions of the features and risks of these newer products. Key changes to the CHARM booklet include new information about interest only ARMs, payment option ARMs, and "hybrid" ARMs that include an initial fixed rate period with a longer adjustable rate period. The shopping worksheet has been expanded to allow consumers to compare the terms of more products. Examples throughout the booklet have been updated to reflect current interest rates and mortgage amounts. The booklet also now briefly explains what is involved in a "stated income" or "low doc" loan. To help consumers navigate through the booklet, the agencies have added a summary of "core messages" at the beginning of the booklet.

Creditors may at their option immediately begin using the revised CHARM booklet or suitable substitute to comply with the requirements in 12 CFR 226.19(b)(1). The agencies understand, however, that some creditors may wish to use their existing stock of CHARM booklets. Therefore, creditors may continue to use their existing stock of CHARM booklets until October 1, 2007; beginning on October 1, 2007, creditors *must* use the revised CHARM booklet or suitable substitute to comply with Regulation Z.

By order of the Board of Governors of the Federal Reserve System, December 22, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–22316 Filed 12–28–06; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The Federal Trade Commission ("FTC" or "Commission") is seeking public comments on its proposal to extend through April 30, 2010 the current OMB clearance for its Free Annual File Disclosures Rule ("Rule"). That clearance expires on April 30, 2007.

DATES: Comments must be filed by February 27, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Free Annual File Disclosures Rule: FTC Matter No. P054816," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Room H–135 (Annex J), 600 Pennsylvania Ave., NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." [1]

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *https://secure.commentworks.com/freereports*. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/freereports* weblink. If this notice appears at *http://www.regulations.gov*, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Sandra Farrington, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., NJ–3158, Washington, DC 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501–3520, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before February 27, 2007.

The Rule, 16 CFR Parts 610 and 698, was promulgated pursuant to the Free and Accurate Credit Transactions Act of 2003 ("FACT Act"), Pub. L. 108–159 (Dec. 4, 2003), and the Fair Credit Reporting Act ("FCRA"), 16 U.S.C. 1681 *et seq*. As mandated by the FACT Act, the Rule requires nationwide and nationwide consumer specialty reporting agencies to provide to consumers, upon request, one free file disclosure within any 12-month period.

Generally, the Rule requires the nationwide consumer reporting agencies, as defined in Section 603(p) of the FCRA, 15 U.S.C. 1681a(p), to create and operate a centralized source that provides consumers with the ability to request their free annual file disclosures

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

from each of the nationwide consumer reporting agencies through a centralized Internet Web site, toll-free telephone number, and postal address. The Rule also requires the nationwide consumer reporting agencies to establish a standardized form for Internet and mail requests for annual file disclosures, and provides a model standardized form that may be used to comply with that requirement.

The Rule also requires nationwide specialty consumer reporting agencies, as defined in Section 603(w) of the FCRA, 15 U.S.C. 1681a(w), to establish a streamlined process for consumers to request annual file disclosures. This streamlined process must include a toll-free telephone number for consumers to make such requests.

Burden Statement

Estimated total annual hours burden: 311,000 hours (rounded to the nearest thousand).

In its 2004 PRA-related **Federal Register** Notices [2] and corresponding submission to OMB, FTC staff estimated that consumer reporting agencies would receive an average of 16.6 million new annual file disclosure requests per year during the three-year period from May 1, 2004 through April 30, 2007.[3] Thus, estimated average annual disclosure burden for those three years was approximately 199,000 hours.[4]

No provisions in the Rule have been amended since staff's prior submission to OMB. However, the Consumer Data Industry Association recently stated that since December 1, 2004, the nationwide consumer reporting agencies have provided over 52 million free annual file disclosures through the centralized Internet Web site, toll-free telephone number, and postal address required to be established by the FACT Act and the Rule.[5] Applying this data, staff estimates that the average annual disclosure burden for the three-year period for which the Commission seeks OMB clearance is approximately 311,000 hours, as detailed below, and that the nationwide consumer reporting agencies and the nationwide specialty consumer reporting agencies will receive 26.69 million requests per year from consumers for free annual file disclosures.[6]

Annual File Disclosures Provided Through the Internet

Both nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies will likely handle the overwhelming majority of consumer requests through internet Web sites.[7] The annual file disclosures requests processed through the internet will not impose any hours burden per request on the nationwide and nationwide specialty consumer reporting agencies, even though there will be some periodically recurring time and investment required to adjust the internet capacity needed to handle the new changing request volume. Consumer reporting agencies likely will make such adjustments by negotiating or renegotiating outsourcing service contracts annually or as conditions change. Negotiating and renegotiating such contracts requires the time of trained personnel. Staff estimates that negotiating such contracts will require a cumulative total of 8,320 hours and $425,152 in setup and/or maintenance costs.[8] Such activity is treated as an annual burden of maintaining and adjusting the changing internet capacity requirements.

Annual File Disclosures Requested over the Telephone

Most of the telephone requests for annual file disclosures will also be handled in an automated fashion, without any additional personnel needed to process the requests. As with the internet, additional time and investment will be needed to increase and administer the automated telephone capacity for the expected increase in request volume. The nationwide and nationwide specialty consumer reporting agencies will likely make such adjustments by negotiating or renegotiating outsourcing service contracts annually or as conditions change. Staff estimates that this will require a total of 6,240 hours at a cost of $301,142 in setup and/or maintenance costs.[9] This also is treated as an annual recurring burden necessary to obtain, maintain, and adjust automated call center capacity.

A small percentage of those consumers who telephone the centralized source or the nationwide speciality consumer reporting agencies will not have telephone equipment compatible with an automated system and may need to be processed by a live operator.[10] Based on their knowledge of the industry, staff estimates that each of these requests will take 5 minutes to process, for a total of 5,334 additional hours of operator time. [(64,008 x 5 minutes)/60 minutes = 5,334 hours]

Annual File Disclosures that Require Processing by Mail

Based on their knowledge of the industry, staff believes that no more than 1% of consumers (1% x 26.69 million, or 266,900) will request an annual file disclosure through U.S. postal service mail. Staff estimates that

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[2] 69 FR 13192 (Mar. 19, 2004); 69 FR 35468 (Jun. 24, 2004).

[3] Staff predicted that nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies would receive 19.9 million new annual file disclosure requests per year. However, the nationwide and nationwide specialty consumer reporting agencies were not required to provide annual file disclosures under the Rule until December 2004, 6 months after the Rule was published. On that basis, staff predicted there would be 9.45 million new requests for annual file disclosures for the first year of the clearance. [19.9 million/2] Thus, staff projected that consumer reporting agencies would receive an average of 16.6 million new requests per year during the requested clearance period. [(9.45 million + 19.9 million + 19.9 million)/3 = 16.6 million]

[4] This total included estimated time to increase call center and internet capacity to handle heightened request volume, alternate use of live operators in limited instances, and processing mail requests.

[5] Letter from Stuart K. Pratt, President & CEO, Consumer Data Industry Association, to Rep. Barney Frank, Committee on Financial Services, U.S. House of Representatives (Dec. 1, 2006).

[6] This figure annualizes the Consumer Data Industry Association's estimate of 52 million new requests for the two-year period from December 1, 2004 to December 1, 2006 and revises it upward over the next three years based on population growth projections issued by the U.S. Census Bureau. See U.S. Census Bureau Interim Projections by Age, Sex, Race, and Hispanic Origin, available at *http://www.census.gov/ipc/www/usinterimproj/.*

[7] According to a HarrisInteractive poll, the percentage of households that have access to the internet is currently over 60% and increasing. *See* The Harris Poll #8, February 5, 2003, available at *http://www.harrisinteractive.com/harris_poll/index.asp?PID=356.* In addition, internet users are probably more likely to request an annual file disclosure. Accordingly, staff estimates that annually, 75% of the 26.69 million new requests (or approximately 20 million) will be made online.

[8] Based on the time necessary for similar activity in the federal government (including at the FTC), staff estimates that such contracting and administration will require approximately 4 full-time equivalent employees ("FTE") for the web service contract. Thus, staff estimates that administering the contract will require 4 FTE, which is 8,320 hours per year (4 FTE x 2080 hrs/yr). The cost is based on the reported Bureau of Labor Statistics (BLS) rate ($48.03) for computer programmers for 2005 (most recently available BLS data) multiplied by 6.286% (approximate wage inflation for 2005 and 2006 based on the BLS Employment Cost Index), resulting in a wage of $51.10 per hour. Thus, the estimated setup and maintenance cost for an internet system is $425,152 per year (8,320 hours x $51.10/hour).

[9] Staff estimates that recurrent contracting for automated telephone capacity will require approximately 3 FTE, a total of 6,240 hours (3 x 2,080 hours). Applying a wage rate of $48.26 based on the 2005 BLS rate for marketing managers ($45.36/hr), the estimate for setup and maintenance cost is $301,142 (6,240 x $48.26) per year.

[10] Based on their knowledge of the industry, staff estimates that consumers will submit 24% (6.4 million) of the average 26.69 million new requests for annual file disclosures by telephone. Of those, an estimated 1% (or 64,056) will not have telephone equipment compatible with an automated system and may need to be serviced by live personnel.

10 minutes per request is required to handle these requests, thereby totaling 44,483 hours of time by clerical personnel. [(266,900 x 10 minutes)/60 minutes = 44,483 hours] In addition, whenever the requesting consumer cannot be identified using an automated method (a Web site or automated telephone service), it will be necessary to redirect that consumer to send identifying material along with the request by mail. Staff estimates that this will occur in about 5% of the new requests (or 1,321,155) that were originally placed over the internet or telephone. Staff estimates that inputting and processing those redirected requests will consume approximately 10 minutes apiece at a cumulative total of 220,193 clerical hours. [(1,321,155 x 10 minutes)/60 minutes = 220,193 hours]

Instructions to Consumers

The Rule also requires that certain instructions be provided to consumers. See Rule sections 610.2(b)(2)(iv)(A,B), 610.3(a)(2)(iii)(A,B). Minimal associated time or cost is involved, however. Internet instructions to consumers are embedded in the centralized source Web site and do not require additional time or cost for the nationwide consumer reporting agencies. Similarly, regarding telephone requests, the automated phone systems provide the requisite instructions when consumers select certain options. Some consumers who request their credit reports by mail may add tionally request printed instructions from the nationwide and nationwide specialty consumer reporting agencies. Staff estimates that there will be a total of 1,588,055 requests each year for free annual file disclosures by mail.[11] Based on their knowledge of the industry, staff estimates that of the predicted 1,588,055 mail requests 10% (or 158,806) will request instructions by mail. If printed instructions are sent to each of these consumers by mail, requiring 10 minutes of clerical time per consumer, this will require 26,468 hours. [(158,806 instructions x 10 minutes)/60 minutes per hour]

Labor costs: $5.18 million.

Labor costs are derived by applying hourly cost figures to the burden hours described above. Accordingly, staff estimates that it will cost $70,195 to provide annual file disclosures for requests that require a telephone service representative. [5,338 hours x $13.15 per hour].[12] The remaining processing of requests for annual file disclosures and instructions will be performed by clerical personnel, which will require 291,144 hours at a cost of $4,387,540. [(44,483 hours for handling initial mail request + 220,193 hours for handling requests redirected to mail + 26,468 hours for handling instructions mailed to consumers) x $15.07 per hour.[13]] As elaborated on above, staff estimates that a total of 14,560 labor hours (8,320 internet contract hours + 6,240 telephone capacity contract hours) will be needed to obtain, maintain, and adjust the new capacity requirements for the automated telephone call center and the internet web services. This will result in approximately $726,294 per year in labor costs. [(8,320 hours x $51.10 per hour for automated phone service) + (6,240 hours x $48.26 per hour for Web services)][14] Thus, staff estimates that all non-contract labor will cost $5.18 million each year.

Capital/other non-labor costs: $8.39 million.

Staff believes it is likely that the consumer reporting agencies will use third-party contractors (instead of their own employees) to increase the capacity of their systems. Because of the way these contracts are typically established, these costs will likely be incurred on a continuing basis, and will be calculated based on the number of requests handled by the systems. Staff estimates that the total annual amount to be paid for services delivered under these contracts is $8.39 million.[15]

Thus, combined, estimated annual labor and non-labor costs are approximately $13.57 million per year.[16]

William Blumenthal,

General Counsel.

[FR Doc. E6–22406 Filed 12–28–06; 8:45 am]

BILLING CODE 6750–01–P

[11] This figure includes both the estimated 1% of 26.69 million requests that will be made by mail each year (266,900), and the estimated 5% of the requests initially made over the Internet or telephone that will be redirected to the mail process (5% of 99% of 26.69 million = 1,321,155).

[12] The 2005 BLS wage rate for telephone operators, $12.36, increased by 6.385% for compounded wage inflation, is $13.15.

[13] The 2005 BLS wage rate for employees in administrative support, clerical (level 4 of 9), $14.17, multiplied by 6.385% for compounded wage inflation, is $15.07.

[14] The 2005 BLS wage rate for top-level computer programmers, $48.03, multiplied by 6.385% for compounded wage inflation, is $51.10. The 2005 BLS wage rate for marketing managers, averaged overall, is $45.36; compounded for wage inflation at 6.385% it becomes $48.26.

[15] This consists of an estimated $7.69 million for automated telephone cost ($1.20 per request x 6.41 million requests) and an estimated $700,000 ($0.035 per request x 20 million requests) for internet web service cost. Per unit cost estimates are based on staff's knowledge of the industry.

[16] The consumer reporting industry is a multi-billion dollar market. As of 2002, it is estimated to have more than $4 billion dollars in sales of file disclosures. One study indicates that the nationwide consumer reporting agencies had approximately $1.2 billion in earnings in 2002. See Michael Turner, Daniel Balis, Joseph Duncan, and Robin Varghese, "Free Consumer Credit Reports: At What Cost? The Economic Impact of a Free Credit Report Law to the National Credit Reporting Infrastructure," Washington, DC: Information Policy Institute, September, 2003. Thus, the total labor and non-labor cost burden estimate of $13.57 million represents a small percentage—approximately 1% of the overall market ($13.57 million divided by $1.2 billion). This comparison is conservative, as it does not include the earnings of the nationwide specialty consumer reporting agencies.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 11th meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., app.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

DATES: January 23, 2007, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: Hubert H. Humphrey Building (200 Independence Avenue, SW., Washington, DC 20201), Conference Room 800.

FOR FURTHER INFORMATION CONTACT: Visit *http://www.hhs.gov/healthit/ahic.html.*

SUPPLEMENTARY INFORMATION: The meeting will include presentations by the Consumer Empowerment, Biosurveillance, Confidentiality, Privacy and Security, and Quality Workgroups on their Recommendations and also a demonstration of prototypes of the Nationwide Health Information Network (NHIN).

A Web site of the Community meeting will be available on the NIH Web site at: *http://ww.videocast.nih.gov/.*

If you have special needs for the meeting, please contact (202) 690–7151.

Dated: December 19, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–9931 Filed 12–28–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–228]

Update to ATSDR Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Request for public comments on the revised Policy Guideline document used by health assessors to evaluate health hazards associated with exposure to dioxins and dioxin-like compounds in residential soil.

SUMMARY: ATSDR is seeking public comment on the draft revision of its 1998 Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil. The policy is intended to assist health assessors who must evaluate the public health implications of dioxin and dioxin-like compounds (e.g., 2,3,7,8-tetrachlorodibenzo-p-dioxin [TCDD], chlorinated dibenzodioxins [CDDs], chlorinated dibenzofurans [CDFs], and other structurally related groups of chemicals from the family of halogenated aromatic hydrocarbons) in residential soils near or on hazardous waste sites. The 1998 policy established a screening level of 0.05 ppb TEQ (50 ppt), an evaluation level (>0.05 ppb TEQ, <1 ppb), and an action level of 1 ppb TEQ (1,000 ppt) for dioxins in residential soil.

ATSDR revised the 1998 policy because it has been used inconsistently over the past eight years. The ATSDR "action" level has been misinterpreted by health assessors and others as ... (1) A soil concentration that defines a public health hazard, (2) an ATSDR clean-up level which implies the need for site remediation, and (3) an initial screening level that defines a safe level of exposure, below which there is no public health concern. In addition, the "action" level triggered a set of "potential public health actions", including surveillance, research, health studies, community education, and exposure investigations. However, ATSDR believes that these actions could be considered in some circumstances when the 1 ppb level in soil is not exceeded. In response to these concerns ATSDR has updated its Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil. The key elements in the updated ATSDR Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil are as follows:

- Deletion of the 1 ppb action level as the criteria for taking specific public health actions.

The 1-ppb dioxin soil concentration should not be used as a comparison value for defining public health hazards in public health assessments and consultations. The 1-ppb action level can be cited by health assessors as the Superfund Dioxin Cleanup policy criteria (EPA 1989, 1998).

Retention of the 0.05 ppb Screening Level

The minimal risk level (MRL)-based environmental media evaluation guide (EMEG) of 0.05 ppb for dioxin TEQ in soil is retained as the basis for screening soil concentrations. Levels exceeding this screening level should be evaluated as described in the ATSDR Public Health Assessment Guidance Manual (PHAGM) (ATSDR 2005). This clarification will ensure that evaluation of dioxins and dioxin-like compounds in soil will be done in the same manner as all other soil contaminants.

Recommendation To Conduct Exposure Pathways Analyses for Dioxins and Dioxin-Like Compounds

The focus of the guideline is the assessment of direct exposure to soil contamination, particularly soil ingestion. However, health assessors should be aware of the potential impact of indirect exposure pathways on exposed populations in site-specific health assessments. This document does not provide specific guidance on how these indirect pathways should be assessed. However, the PHAGM document does provide assistance in evaluating indirect exposure pathways such as food chain contamination (ATSDR 2005).

Updated TEFs

The 2006 World Health Organization Toxicity Equivalency Factors (TEFs) for dioxins and dioxin-like compounds have been included in the updated document.

Background Information

In 1998, the Agency for Toxic Substances and Disease Registry (ATSDR) adopted a Final Policy Guideline for Dioxin and Dioxin-Like Compounds (De Rosa et al. 1999a). The 1998 policy guideline was accompanied by a Technical Support Document for ATSDR Policy Guideline (De Rosa et al. 1999b). The initiative to develop this policy guideline was based on a request from the U.S. Environmental Protection Agency (EPA) to evaluate the protectiveness of the EPA Superfund Policy for Dioxins in Residential Soils, which established 1 part per billion (ppb) (1,000 parts per trillion [ppt]) total dioxin toxicity equivalents (TEQ) as the starting point for making clean-up decisions. In addition, the 1998 policy guideline was to provide guidance to health assessors in evaluating the public health implications of dioxin and dioxin-like compounds (e.g., 2,3,7,8-tetrachlorodibenzo-p-dioxin [TCDD], chlorinated dibenzodioxins [CDDs], chlorinated dibenzofurans [CDFs], and other structurally related groups of chemicals from the family of halogenated aromatic hydrocarbons) in residential soils near or on hazardous waste sites. As stated in the 1998 document, "these guidelines and procedures apply to human exposure for direct ingestion of soils contaminated with dioxin and dioxin-like compounds in residential areas and may not be appropriate for other exposure scenarios." The 1998 Policy Guideline established a screening level of 0.05 ppb TEQ (50 ppt), an evaluation level (>0.05 ppb TEQ, <1 ppb), and an action level of 1 ppb TEQ (1,000 ppt) for dioxins in residential soil and made recommendations for specific considerations or public health actions.

ATSDR has established environmental screening values for chemicals to be used by health assessors to assess exposures. No other chemical has an action level as was established for dioxins in soil in the 1998 policy guideline. This inconsistency alone has led to confusion regarding the appropriate screening value for soil dioxin levels.

The primary objectives of the updated Policy Guidelines are to provide greater consistency in ATSDR Health Assessments and to bring dioxin assessments in line with how all other chemicals are evaluated by the agency.

Summary of Peer Review for Document

The public comment draft of the revised policy has undergone internal review and clearance within ATSDR. In addition, the revised draft was reviewed by the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR) Board of Scientific Counselors (BSC). Public testimony was received during the meeting of the NCEH/ATSDR BSC. ATSDR also received peer review comments from health assessors in several state health departments.

Information about the "Update to ATSDR Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil", including the draft document, fact sheet, peer review

comments and ATSDR responses, is available on the ATSDR Web site at: *http://www.atsdr.cdc.gov/substances/dioxin/policy/index.html.*

DATES: Comments concerning this document must be received by February 27, 2007.

ADDRESSES: Public comments should be forwarded to Ms. Athena Gemella, ATSDR, Office of Science, 1600 Clifton Road, N.E., Mail stop E–28. Atlanta, GA. 30333, or e-mail at *AGemella@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Athena Gemella, Office of Science, telephone (404) 498–0621.

Dated: December 22, 2006.

Kenneth Rose,

Acting Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E6–22388 Filed 12–28–06; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-07–06AI]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Metropolitan Atlanta Stillbirth Management Survey: Knowledge, Attitudes and Practice Patterns from Obstetricians,—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The U.S. Congress House Report 108–792 (joint conference report for the Fiscal Year 2005 omnibus appropriations bill) provides specific funding to devise a comprehensive strategy for expanding existing birth defects surveillance systems to incorporate surveillance data on all intrauterine fetal deaths of 20 or more week's gestation into the Metropolitan Atlanta Congenital Defects Program (MACDP). Stillbirth is largely an understudied adverse pregnancy outcome even though it accounts for nearly one half of all perinatal mortality. There is currently no nationally accepted definition of what constitutes a stillbirth, and there are no universally recommended, standardized stillbirth evaluation protocols in use for the evaluation of fetal deaths. The proposed survey has been designed to evaluate and assess the knowledge, attitudes and practice management patterns of obstetricians in the metropolitan Atlanta area regarding stillbirths in general, as well as in their medical practice. This information will be used to identify prevailing deficiencies leading to incomplete and inaccurate reporting of data relative to stillbirths, and to develop targeted awareness and educational strategies for participating MACDP facilities. Ongoing, accurate and reliable population-based registries of stillbirths are essential for conducting epidemiologic studies on the causes of and risk factors for this pregnancy outcome. This survey will be mailed to randomly selected obstetricians whose practices serve residents of the 5 counties comprising metropolitan Atlanta. This survey will be conducted once and will take approximately 2–3 months to collect the data. NCBDDD is requesting OMB clearance for 1 (one) year. There is no cost to the survey respondents except for the time necessary to complete the survey. The total annual burden hours are 122

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Participant status	Number of respondents	Number of reponses per respondent	Average burden per response (in hours)
Obstetricians	Non-Participant	120	1	1/60
	Participant	480	1	15/60

Dated: December 22, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–22381 Filed 12–28–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–284]

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: Medicaid Statistical Information System.

Use: State data are reported by the Federally mandated electronic process, known as Medicaid Statistical Information System (MSIS). These data are the basis of actuarial forecasts for Medicaid service utilization and costs; of analysis and cost savings estimates required for legislative initiatives relating to Medicaid; and for responding to requests for information from CMS components, the Department, Congress and other customers. Form Number: CMS–R–284 (OMB#: 0938–0345).

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53.

Total Annual Responses: 212.

Total Annual Hours: 3,392.

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*, 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: Katherine Astrich, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: December 21, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–22233 Filed 12–28–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Tentative Schedule of Meetings for 2007

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 2007. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Theresa L. Green, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Internet site located at *http://www.fda.gov/oc/advisory/default.htm*. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2007. You may also obtain up-to-date information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area).

TABLE 1.

Committee Name	Tentative Date(s) of Meeting(s)	Advisory Committee 10–Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Pediatric Advisory Committee	April day(s) to be announced.	8732310001
Science Board to the Food and Drug Administration	June day(s) to be announced.	3014512603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	April 18, October 19.	3014512388
Blood Products Advisory Committee	April 26–27, August 16–17, December 13–14.	3014519516
Cellular Tissue and Gene Therapies Advisory Committee	March 29–30, July 26–27, November 15–16.	3014512389
Transmissible Spongiform	Encephalopathies Advisory Committee to be announced.	3014512392
Vaccines and Related Biological Advisory Committee	February 27–28, May 16–17, September 19–20, November 14–15.	3014512391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Anesthetic and Life Support Drugs Advisory Committee	March 29.	3014512529

TABLE 1.—Continued

Committee Name	Tentative Date(s) of Meeting(s)	Advisory Committee 10–Digit Information Line Code
Anti Infective Drugs Advisory Committee	April 11–12.	3014512530
Antiviral Drugs Advisory Committee	April, August day(s) to be announced.	3014512531
Arthritis Advisory Committee	April 12.	3014512532
Cardiovascular and Renal Health Advisory Committee	April 17–18, August 21–22, October 16–17, December 11–12.	3014512533
Dermatologic and Ophthalmic Drugs Advisory Committee	To be announced.	3014512534
Drug Safety and Risk Management Advisory Committee	To be announced.	3014512535
Endocrinologic and Metabolic Drugs Advisory Committee	June 13–14, September 5–6, November 13–14.	3014512536
Gastrointestinal Drugs Advisory Committee	To be announced.	3014512538
Nonprescription Drugs Advisory Committee	March, April day (s) to be announced.	3014512541
Oncologic Drugs Advisory Committee	March 28–29, June 1, September 11–12, December 4–5.	3014512542
Peripheral and Central Nervous System Drugs	June 18–20, September 13–14.	3014512543
Pharmaceutical for Science, Advisory Committee for	April, May day(s) to be announced.	3014512539
Psychopharmacologic Drugs Advisory Committee	March, April, September, October day(s) to be announced.	3014512544
Pulmonary Allergy Drugs Advisory Committee	May day(s) to be announced.	3014512545
Reproductive Health Drugs, Advisory Committee for	January 23–24.	3014512537
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	July 18.	3014512398
Medical Devices Advisory Committee (Comprised of 18 Panels) Anesthesiology and Respiratory Therapy Devices Panel	October 9–10.	3014512624
Circulatory System Devices Panel	March 1–2, May 22–23, July 17–18, September 18–19, November 13–14.	3014512625
Clinical Chemistry and Clinical Toxicology Devices Panel	June 12–13, September 13–14, December 4–5.	3014512514
Dental Products Panel	February 14, June 6, August 29, November 7.	3014512518
Ear, Nose, and Throat Devices Panel	April 24–25, June 14–15 August 14–15, October 18–19, December 11–12.	3014512522
Gastroenterology-Urology Devices Panel	May 11, July 20, October 19.	3014512523
General and Plastic Surgery Devices Panel	May 8–9, September 20–21, December 6–7.	3014512519
General Hospital and Personal Use Devices Panel	April 3–4, September 26–27.	3014512520
Hematology and Pathology Devices Panel	April 27, October 19.	3014512515
Immunology Devices Panel	July 12, October 17.	3014512516
Medical Devices Dispute Resolution Panel	Meeting Scheduled as Needed.	3014510232
Microbiology Devices Panel	June 26–27, October 23–24.	3014512517
Molecular and Clinical Genetics Panel	April 12, October 11.	3014510231
Neurological Devices Panel	January 26, June 7–8, August 16–17, November 1–2.	3014512513
Obstetrics and Gynecology Devices Panel	May 17–18, August 2–3, October 25–26, December 13–14.	3014512524

TABLE 1.—Continued

Committee Name	Tentative Date(s) of Meeting(s)	Advisory Committee 10–Digit Information Line Code
Ophthalmic Devices Panel	May 24–25, July 12–13, October 2–3, November 29–30.	3014512396
Orthopaedic and Rehabilitation Devices Panel	February 22–23, March 27–28, May 22–23, July 17–18 September 18–19. November 13–14	3014512521
Radiological Devices Panel	May 15, August 21, November 13.	3014512526
National Mammography Quality Assurance Advisory Committee	May 21–22.	3014512397
Technical Electronic Product Radiation Safety Standards Committee	September 19.	3014512399
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	May 1–2, September 25–26.	3014510564
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	September 7.	3014512548
National Center for Toxicological Research (NCTR)	September day(s) to be announced.	3014512559

Dated: December 22, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–22389 Filed 12–28–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Genetic Studies in a Cohort of U.S. Radiologic Technologists

SUMMARY: 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 National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Genetic Studies in a Cohort of U.S. Radiologic Technologists (formerly known as "Generic Clearance to Collect Medical Outcome and Risk Factor Data from a Cohort of U.S. Radiologic Technologists").

Type of Information Collection Request: Renewal with change of a previously approved collection (OMB No. 0925–0405, expiration 02/28/2007).

Need and Use of Information Collection: The primary aim of this collection is to substantially increase knowledge about the possible modifying role of genetic variation on the long-term health effects associated with protracted low-to moderate-dose radiation exposures. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's approval to collect biospecimens and risk factor data in this ongoing cohort study of U.S. radiologic technologists to assess genetic and molecular risk factors for cancer, and to evaluate possible modifying effects of genetic variation on radiation-cancer relationships. Researchers at the National Cancer Institute and The University of Minnesota have followed a nationwide cohort of 146,000 radiologic technologists since 1982, of whom 110,000 completed at least one of three prior questionnaire surveys and 18,400 are deceased. This cohort is unique because estimates of cumulative radiation dose to specific organs (e.g. breast) are available and the cohort is largely female, offering a rare opportunity to study effects of low-dose radiation exposure on breast and thyroid cancers, the two most sensitive organ sites for radiation carcinogenesis in women. Overall study objectives are: (1) To quantify radiation dose-response for cancers of the breast, thyroid, and other radiogenic sites, and selected benign conditions related to cancer (e.g. thyroid nodules); (2) to assess cancer risk associated with genotypic, phenotypic, or other biologically measurable factors (e.g. serum levels of C-reactive protein, insulin growth factors or binding proteins); and (3) to determine if genetic variation modifies the radiation-related cancer risk. A third follow-up of this cohort was completed during the past three years. During 2003–2005, the "Third Survey" questionnaire was mailed or administered by telephone to 101,694 living cohort members who had completed at least one prior survey; 73,838 technologists (73% response) completed the survey. The questionnaire elicited information on: Medical outcomes to assess radiation-related risks; detailed employment data to refine the occupational radiation dose estimates; and behavioral and residential histories for estimating lifetime ultraviolet (UV) radiation exposure. Analyses of these data are currently underway and findings will address an important gap in the scientific understanding of radiation dose-rate effects, i.e., whether cumulative exposures of the same magnitude have the same health effects when received in a single or a few doses over a very short period of time (as in the atomic bomb or therapeutic exposures) or in many small doses over a protracted period of time (as in medical or nuclear occupational settings).

There are few, if any, other study populations in which both quantified breast radiation doses and blood

samples are available for individuals with protracted low-dose radiation exposures. The current petition is for renewal with change of the previous clearance to administer a Genetic Studies Questionnaire and collect biospecimens from 10,000 cohort members who completed at least one prior survey. These individuals would serve as a comparison group for case-cohort studies of gene main effects and gene-radiation interactions. To improve statistical power to detect such associations, we plan to select the comparison sample based on dose; this is to ensure inclusion of sufficient numbers of high-dose individuals. The Genetic Studies Questionnaire will collect information on: Family history of cancer; reproductive history in women (e.g. pregnancy outcomes, menopause); personal medical radiation exposures (e.g. diagnostic x-rays, therapeutic irradiation); and personal history of chemotherapy. The survey will be in optical-read format for computerized data capture. A blood collection kit will be mailed to technologists who complete the Genetic Studies Questionnaire; they will be asked to take the kit to a phlebotomist to have a single tube of blood drawn and returned to the study laboratory by pre-paid Federal Express overnight delivery. Ongoing efforts to medically validate self-reported cancers and other medical outcomes will continue.

The annual reporting burden is as follows:

Frequency of Response: On occasion.

Affected Public: U.S. radiologic technologists who willingly participated in earlier investigations to quantify the carcinogenic risks of protracted low-to moderate-dose occupational radiation exposures.

Estimated Number of Respondents: 4,233.

Estimated Number of Responses per Respondent: 1.

Average Burden Hours per Response: 1.3.

Annual Burden Hours Requested: 5,630. Total cost to respondents is estimated at $157,471. There are no capital costs, operating costs and/or maintenance costs to report.

RESPONDENT AND BURDEN ESTIMATE

[OMB No. 0925–0405]

Type of respondent	Number of respondents (3 yr)	Frequency of response	Total respondents (3 yr)	Average hours per response	Total hours (3 yr)	Annual hour burden
Genetic Studies/Risk Factor Survey and Blood Collection						
Sub-Cohort	10,000	1	10,000	1.66666	16,666	5,555
Medical Validation						
Hospitals/Physicians	2,700	1	2,700	0.08333	225	75
Total	12,700		12,700		16,891	5,630

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functioning of the National Cancer Institute, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, Executive Plaza South, Room 7040, Bethesda, MD 20892–7238, or call non-toll-free at 301–594–7203. You may also e-mail your request to *doodym@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: December 20, 2006.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E6–22348 Filed 12–28–06; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2006–0076]

Privacy Act of 1974; System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to add a new system of records to its inventory of record systems for Department of Homeland Security General Information Technology Access Account Records System.

DATES: Written comments must be submitted on or before January 29, 2007.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2006–0076 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–572–8727 (not a toll-free number).
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Please identify by Docket Number DHS–2006–0076 to request further information by one of the following methods:

- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

• *Facsimile:* 202–572–8727 (not a toll-free number).

• *E-Mail: privacy@dhs.gov.*

SUPPLEMENTARY INFORMATION: As part of its efforts to streamline and consolidate its record system, the Department of Homeland Security (DHS) is establishing a new agency-wide systems of records under the Privacy Act of 1974 (5 U.S.C. 552a) for the Department of Homeland Security General Information Technology Access Account Records System (GITAARS). This system of records is part of DHS's ongoing record integration and management efforts. This system will consist of information collected in order to provide authorized individuals with access to DHS information technology resources. This information includes user name, business affiliation, account information and passwords.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses for which such information may be disseminated and the purpose for which the system is maintained. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

In accordance with 5 U.S.C. 552a(r), a report on this system has been sent to Congress and to the Office of Management and Budget.

DHS–2006–0076

SYSTEM NAME:

General Information Technology Access Account Records System, DHS/ALL 004.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Records are maintained by the Department of Homeland Security at the DHS Data Center in Washington, DC, and at a limited number of remote locations where DHS components or program maintain secure facilities and conducts its mission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. All persons who are authorized to access DHS Information Technology resources, including employees, contractors, grantees, private enterprises and any lawfully designated representative of the above and including representatives of Federal, state, territorial, tribal, local, international, or foreign government agencies or entities, in furtherance of the DHS mission;

B. Individuals who serve on DHS boards and committees;

C. Individuals who have business with DHS and who have provided personal information in order to facilitate access to DHS Information Technology resources; and

D. Individuals who are facility points of contact for government business and the individual(s) they list as emergency contacts.

CATEGORIES OF RECORDS IN THE SYSTEM:

DHS/ALL 004 contains names, business affiliations, facility positions held, business telephone numbers, cellular phone numbers, pager numbers, numbers where individuals can be reached while on travel or otherwise away from the office, citizenship, home addresses, electronic mail addresses, names and phone numbers of other contacts, the positions or titles of those contacts, their business affiliations and other contact information provided to the Department that is derived from other sources to facilitate authorized access to DHS Information Technology resources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S):

This system will collect a discreet set of personal information in order to provide authorized individuals access to DHS information technology resources. The information collected by the system will include full name, user name, account information, citizenship, business affiliation, contact information, and passwords.

The system enables DHS to maintain: (a) Account information for gaining access to information technology; (b) lists of individuals who are appropriate organizational points of contact for the Department; and (c) lists of individuals who are emergency points of contact. The system will also enable DHS to provide individuals access to certain programs and meeting attendance and where appropriate allow for sharing of information between individuals in the same operational program to facilitate collaboration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3), limited by privacy impact assessments, data sharing, or other agreements, as follows:

A. To DHS contractors, consultants or others, when necessary to perform a function or service related to this system of records for which they have been engaged. Such recipients are required to comply with the Privacy Act of 1974, as amended (5 U.S.C. 552a).

B. To sponsors, employers, contractors, facility operators, grantees, experts, and consultants in connection with establishing an access account for an individual and when necessary to accomplish a DHS mission function related to this system of records.

C. To other individuals in the same operational program supported by an information technology system, where appropriate notice to the individual has been made that his or her contact information will be shared with other members of the same operational program in order to facilitate collaboration.

D. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written or attested to request of the individual to whom the record pertains.

E. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

F. To the Department of Justice (DOJ), or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS; (b) any employee of DHS in his/her official capacity; (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Records in this system are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment.

RETRIEVABILITY:

Information may be retrieved by an identification number assigned by computer, by facility, by business affiliation, e-mails address, or by the name of the individual.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the DHS Information Technology Security Program Handbook. Further, GITAARS security protocols will meet multiple NIST Security Standards from Authentication to Certification and Accreditation. Records in the GITAARS will be maintained in a secure, password protected electronic system that will utilize security hardware and software to include: multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component and program. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include: restricting access to authorized personnel who have a "need to know;" using locks; and password protection identification features. Classified information is appropriately stored in accordance with applicable requirements. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 24, section 6, "User Identification, Profiles, Authorizations, and Password Files." Inactive records will be destroyed or deleted 6 years after the user account is terminated or password is altered, or when no longer needed for investigative or security purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters components of the Department of Homeland Security, the System Manager is the Director of Departmental Disclosure, U.S. Department of Homeland Security, Washington, DC 20528.

For operational components that comprise the U.S. Department of Homeland Security, the System Managers are as follows:

- United States Coast Guard, FOIA Officer/PA System Manager, Commandant, CG–611, U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.
- United States Secret Service, FOIA/PA System Manager, Suite 3000, 950 H Street, NW., Washington, DC 20223.
- Under Secretary for Federal Emergency Management Directorate, FOIA/PA System Manager, 500 C Street, SW., Room 840, Washington, DC 20472.
- Director, Citizenship and Immigration Services, U.S. Citizenship and Immigration Services, ATTN: Records Services Branch (FOIA/PA), 111 Massachusetts Ave, NW., 2nd Floor, Washington, DC 20529.
- Commissioner, Customs and Border Protection, FOIA/PA System Manager, Disclosure Law Branch, Office of Regulations & Rulings, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., (Mint Annex) Washington, DC 20229.
- Bureau of Immigration and Customs Enforcement, FOIA/PA System Manager, Office of Investigation, Chester Arthur Building (CAB), 425 I Street, NW., Room 4038, Washington, DC 20538.
- Assistant Secretary, Transportation Security Administration, FOIA/PA System Manager, Office of Security, West Building, 4th Floor, Room 432–N, TSA–20, 601 South 12th Street, Arlington, VA 22202–4220.
- Federal Protective Service, FOIA/PA System Manager, 1800 F Street, NW., Suite 2341, Washington, DC 20405.
- Federal Law Enforcement Training Center, Disclosure Officer, 1131 Chapel Crossing Road, Building 94, Glynco, GA 31524.
- Under Secretary for Science & Technology, FOIA/PA System Manager, Washington, DC 20528.
- Under Secretary for Preparedness, Nebraska Avenue Complex, Building 81, 1st floor, Washington, DC 20528.
- Director, Operations Coordination, Nebraska Avenue Complex, Building 3, Washington, DC 20529.
- Officer of Intelligence and Analysis, Nebraska Avenue Complex, Building 19, Washington, DC 20529.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the appropriate System Manager(s) identified above.

RECORD ACCESS PROCEDURES:

A request for access to records in this system may be made by writing to the System Manager, identified above, in conformance with 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS.

CONTESTING RECORD PROCEDURES:

Same as "Records Access Procedures" above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from affected individuals/organizations/facilities, public source data, other government agencies and/or information already in other DHS records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: December 18, 2006.

Hugo Teufel III,

Chief Privacy Officer.

[FR Doc. E6–22008 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD01–06–133]

Area Maritime Security Committee, Southeastern New England; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership in the Area Maritime Security Committee, Southeastern New England. The Committee assists the Captain of the Port, Southeastern New England, in developing, reviewing, and updating the Area Maritime Security Plan for their area of responsibility.

DATES: Requests for membership should reach the Captain of the Port, Southeastern New England, on 19 January 2006.

ADDRESSES: Submit applications for membership to the Captain of the Port, Southeastern New England, U.S. Coast Guard Sector Southeastern New England, Contingency Planning and Force Readiness Department, 20 Risho Ave Unit D, East Providence, RI 02914–1208.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Popko, 401–435–2380.

SUPPLEMENTARY INFORMATION:

The Committee

The Area Maritime Security Committee, Southeastern New England (AMSC), is established under, and governed by, 33 CFR part 103, subpart C. The functions of the Committee include, but are not limited to, the following:

(1) Identifying critical port infrastructure and operations.

(2) Identifying risks (i.e., threats, vulnerabilities, and consequences).

(3) Determining strategies and implementation methods for mitigation.

(4) Developing and describing the process for continuously evaluating overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied.

(5) Advising and assisting the Captain of the Port in developing, reviewing, and updating the Area Maritime Security Plan under 33 CFR part 103, subpart E.

Positions Available on the Committee

There are 2 vacancies on the Committee. Members may be selected from—

(1) The Federal, Territorial, or Tribal government;

(2) The State government and political subdivisions of the State;

(3) Local public safety, crisis management, and emergency response agencies;

(4) Law enforcement and security organizations;

(5) Maritime industry, including labor;

(6) Other port stakeholders having a special competence in maritime security; and

(7) Port stakeholders affected by security practices and policies.

In support of the Coast Guard's policy on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Qualification of Members

Members must have at least 5 years of experience related to maritime or port security operations. Applicants may be required to pass an appropriate security background check before appointment to the Committee.

The term of office for each vacancy is 5 years. However, a member may serve one additional term of office. Members are not salaried or otherwise compensated for their service on the Committee.

Format of Applications

Applications for membership may be in any format. However, because members must demonstrate an interest in the security of the area covered by the Committee, we particularly encourage the submission of information highlighting experience in maritime or security matters.

Authority

Section 102 of the Maritime Transportation Security Act of 2002 (Public Law 107–295) (the Act) authorizes the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Committees for any port area of the United States. See 33 U.S.C. 1226; 46 U.S.C. 70112(a)(2); 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1. The Act exempts Area Maritime Security Committees from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470, 5 U.S.C. App. 2.

Dated: December 7, 2006.

Roy A. Nash,

Captain, U.S. Coast Guard, Commander, Sector Southeastern New England.

[FR Doc. E6–22424 Filed 12–28–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–26560]

National Preparedness for Response Exercise Program

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for public comment.

SUMMARY: The Coast Guard, the Pipeline and Hazardous Materials Safety Administration, the Environmental Protection Agency and the Minerals Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public, developed the National Preparedness for Response Exercise Program (PREP) Guidelines to reflect the consensus agreement of the entire oil spill response community. This notice announces the PREP triennial exercise cycle for 2007 through 2009, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before February 27, 2007.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2006–26560 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP or the triennial exercise schedule, contact Lieutenant Damon Sanders, Office of Contingency Exercises and Training (CG–3RPE), U.S. Coast Guard, telephone (202) 372–2151, or e-mail *Damon.C.Sanders@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2006–26560), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during

the comment period. We may change this triennial exercise schedule as well as other elements of the PREP in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the last five digits of the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Background and Purpose

In 1994, the United States Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (EPA), and the Minerals Management Service (MMS) of the Department of the Interior, coordinated the development of the PREP Guidelines to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the planholder's organization. External exercises extend beyond the planholder's organization to involve other members of the response community. External exercises are separated into two categories: Area exercises, and Government-initiated, unannounced exercises. External exercises are designed to evaluate the entire pollution response mechanism in a given geographic area to ensure adequate response preparedness.

A National Schedule Coordination Committee (NSCC) was established for scheduling Area exercises. The NSCC is comprised of personnel representing the four Federal regulating agencies—the USCG, EPA, MMS, and PHMSA's Office of Pipeline Safety (OPS). Since 1994, the NSCC has published a triennial schedule of area exercises. Area exercises involve the entire response community including Federal, State, local, tribal, and non-government organizations, and industry participants; therefore, these area exercises require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail.

Source for PREP Documents

The Preparedness for Response Exercise Program (PREP) Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/federalregister.html*. To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety at 202–366–4560. Instructions for ordering the 2002 PREP Guidelines booklet are available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/federalregister.html*. The stock number of the manual is USCG–X0241. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

PREP Schedule

Table 1 below lists the dates and **Federal Register** cites of past PREP exercise notices.

TABLE 1.—PAST PREP EXERCISE NOTICES

Date published	Federal Register Cite	Notice
January 3, 2006	71 FR 124	PREP triennial exercise schedule for 2006, 2007, and 2008.
September 21, 2004	69 FR 56445	PREP triennial exercise schedule for 2005, 2006, and 2007.
February 5, 2004	69 FR 5562	Revision to PREP triennial exercise schedule for 2004, 2005, and 2006.
October 16, 2003	68 FR 59627	PREP triennial exercise schedule for 2004, 2005, and 2006.
October 30, 2002	67 FR 66189	PREP triennial exercise schedule for 2003, 2004, and 2005.
January 22, 2002	67 FR 2944	PREP triennial exercise schedule for 2002, 2003, and 2004.
February 9, 2001	66 FR 9744	PREP triennial exercise schedule for 2001, 2002, and 2003.
March 7, 2000	65 FR 12049	PREP triennial exercise schedule for 2000, 2001, and 2002.
June 15, 1999	64 FR 32090	PREP triennial exercise schedule for 1999, 2000, and 2001.
January 8, 1998	63 FR 1141	PREP triennial exercise schedule for 1998, 1999, and 2000.
March 26, 1997	62 FR 14494	PREP triennial exercise schedule for 1997, 1998, and 1999.
January 26, 1996	61 FR 2568	Correction to PREP triennial exercise schedule for 1996, 1997, and 1998.
November 13, 1995	60 FR 57050	PREP triennial exercise schedule for 1996, 1997, and 1998.
October 26, 1994	59 FR 53858	Revision to PREP triennial exercise schedule for 1995, 1996, and 1997.
March 25, 1994	59 FR 14254	PREP triennial exercise schedule for 1995, 1996, and 1997.

This notice announces the next triennial schedule of area exercises. The PREP schedule for calendar years 2007, 2008, and 2009 for Government-led and Industry-led Area exercises is available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/federalregister.html.* If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA on-scene coordinator where the exercise is scheduled.

If you have concerns or recommended improvements to the Government-led PREP exercises, please submit those using the procedures described under the **ADDRESSES** section of this notice.

Dated: December 22, 2006.

C.E. Bone,

Assistant Commandant for Prevention.

[FR Doc. E6–22442 Filed 12–28–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

[Docket No. NCS–2006–0008]

National Security Telecommunications Advisory Committee

AGENCY: National Communications System, DHS.

ACTION: Notice of advisory committee meetings.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) schedule of 2007 meetings.

DATES: By teleconference on Tuesday, January 16, 2007 from 11 a.m. to 12 p.m. Also by teleconference on Thursdays; March 29, June 14, and September 27, 2007, from 2 p.m. until 3 p.m. In person on Thursday, April 26, 2007, from 9 a.m. until 3:30 p.m.

ADDRESSES: For access to the January 16, 2007, conference bridge and meeting materials, contact Mr. William Fuller at (703) 235–5521, or by e-mail at *William.C.Fuller@dhs.gov* by 5 p.m. on Friday, January 12, 2007. If you desire to submit comments pertaining to the January 16, 2007, meeting, they must be submitted by January 9, 2007. If you desire to submit comments for subsequent 2007 meetings, they may be submitted following the publication of specific meeting details in the **Federal Register.** Comments for the January 16, 2007, meeting must be identified by docket number NCS–2006–0008 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *NSTAC1@dhs.gov.* Include docket number in the subject line of the message.
- Mail: Office of the Manager, National Communications System (N5), Department of Homeland Security, Washington, DC 20529.
- Fax: 866–466–5370

Instructions: All submissions received must include the words "Department of Homeland Security" and NCS–2006–0008, the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NSTAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Kiesha Gebreyes, Chief, Industry Operations Branch at (703) 235–5525, e-mail: *Kiesha.Gebreyes@dhs.gov* or write the Deputy Manager, National Communications System, Department of Homeland Security, CS&T/NCS/N5.

SUPPLEMENTARY INFORMATION: The NSTAC advises the President on issues and problems related to implementing national security and emergency preparedness telecommunications policy. Notice of these meetings is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App.).

At the January 16, 2007, meeting, the NSTAC members will receive comments from their DHS stakeholders related to National Security/Emergency Preparedness communications issues. The committee will also discuss and vote on the NSTAC's Emergency Communications and Interoperability Task Force Report, and discuss the work of the International Task Force.

The 2007 NSTAC work plan focuses on National Security/Emergency Preparedness communications issues related to emergency communications and interoperability, influenza pandemic planning, telecommunications and electric power interdependency, the National Coordinating Center, the legislative and regulatory landscape, and international concerns. For meetings subsequent to January 16, 2007; meeting agendas, meeting details, and information regarding arrangements for persons with disabilities will be published no later than 15 calendar days before the meeting.

Persons with disabilities who require special assistance for the January 16, 2007, meeting should indicate this when arranging access to the teleconference and are encouraged to identify anticipated special needs as early as possible.

Dated: December 20, 2006.

Peter M. Fonash,

Deputy Manager National Communications System.

[FR Doc. E6–22330 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Guarantee of Payment; Form I–510, OMB Control Number 1653–0024.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 23, 2006, 71 FR 62117, allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 27, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS). USICE, Office of Asset Management, Records Branch 425 I St., NW., room 1122, Washington, DC 20536. Comments may also be submitted to ICE via facsimile to 202–514–1867 or via e-mail at *ICERecordsbranch@dhs.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1653–0024. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Guarantee of Payment.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–510. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at approximately 5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8 annual burden hours.

If additional information is required contact: USICE, Records Management Branch, 425 I St., NW., Room 1122, Washington, DC 20536, (202) 353–2717.

Dated: December 26, 2006.

Ricardo Lemus,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E6–22393 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–52]

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:* December 29, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 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: December 21, 2006.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 06–9879 Filed 12–28–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF INTERIOR

Office of the Secretary

Delaware & Leigh National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Department of Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, January 12, 2006–1:30 p.m. to 4 p.m.

Address: Emrick Technology Center, 2750 Hugh Moore Park Road, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100– , November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 2750 Hugh Moore Park Road, Easton PA 18042, (610) 923–3548.

Dated: December 22, 2006.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 06–9925 Filed 12–28–06; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Proposed Safe Harbor Agreement for Five Species of Birds in Kauai, Maui, HI, and Honolulu Counties, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Receipt of application; notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (we, the Service) has received applications for enhancement of survival permits pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), from four Resource Conservation and Development councils (RC&Ds, Applicants) in the State of Hawaii: Garden Island RC&D, Kauai County; Tri-Isle RC&D, Maui County; Big Island RC&D, Hawaii County; and Oahu RC&D, Honolulu County. The permit applications include a proposed programmatic Safe Harbor Agreement (SHA) between the Applicants and the Service. The proposed SHA provides for

voluntary habitat restoration, maintenance, enhancement, or creation activities to enhance the habitat and recovery of Hawaiian goose (*Branta sandvicensis*), Hawaiian duck (*Anas wyvilliana*), Hawaiian moorhen (*Gallinula chloropus sandvicensis*), Hawaiian coot (*Fulica alai*), and Hawaiian stilt (*Himantopus mexicanus knudseni*) (collectively "Covered Species") on non-Federal lands in the State of Hawaii. The proposed duration of both the SHA and permits is 50 years.

The Service believes that the proposed SHA and permit applications may be eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this is contained in a draft Environmental Action Statement, which also is available for public review.

The Service and the State of Hawaii's Department of Fish and Wildlife (DOFAW) hold concurrent processes for the review of both Federal and State permit applications and draft Safe Harbor Agreements. As part of the DOFAW process, public meetings will take place to allow for discussion and comment. Dates and locations for which DOFAW has scheduled public meetings are: December 5, 2006, Lanai High School, Lanai City; December 7, 2006, Kalanimoku Building, Room 132, Honolulu; December 12, 2006, Lihue Neighborhood Community Center, Lihue; December 13, 2006: Mitchell Pauole Community Center, Kaunakakai; December 19, 2006, Velma McWayne Santos Community Center, Wailuku; December 21, 2006, Hilo Division of Forestry and Wildlife Office, Hilo. All meetings are scheduled to begin at 7 p.m.

DATES: Written comments must be received by 5 p.m. on January 29, 2007.

ADDRESSES: Please address comments to Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room #3–122, Honolulu, Hawaii, facsimile number (808) 792–9580.

FOR FURTHER INFORMATION CONTACT: Jeff Newman, Fish and Wildlife Biologist, (see **ADDRESSES**), telephone (808) 792–9400.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the permit applications, the draft Environmental Action Statement, or copies of the full text of the proposed SHA, including a map of the proposed permit areas, references, and description of the proposed permit areas, should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES**), by appointment between the hours of 8 a.m. and 5 p.m.

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing these permits, including the identification of any aspects of the human environment not already analyzed in our draft Environmental Action Statement. Further, we specifically solicit information regarding the adequacy of the proposed SHA as measured against our permit issuance criteria found in 50 CFR 17.22(c).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their identity from the administrative record. We will honor such requests to the extent allowed by law. Respondents wishing us to withhold their identity (*e.g.*, individual name, home address and home phone number) must state this prominently at the beginning of their comments. We will make all submissions from organizations, agencies or businesses, and from individuals identifying themselves as representatives of officials of such entities, available for public inspection in their entirety.

Background

A SHA encourages private 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 numbers of listed species. Application requirements and issuance criteria for enhancement of survival permits and SHAs are found in 50 CFR 17.22(c). The primary objective of this proposed SHA is to encourage voluntary habitat restoration, maintenance or enhancement activities to benefit the Covered Species on private lands. Individual landowners who enter into the provisions of a Cooperative Agreement with Applicants are relieved from any additional ESA section 9 liability beyond that which exists at the time the Cooperative Agreement is signed and a Certificate of Inclusion is issued. As long as enrolled landowners allow the agreed-upon conservation measures to be completed on their property and agree to maintain their baseline responsibilities, they may make any other lawful use of the property during the term of the Cooperative Agreement, even if such use results in the take of individuals of the Covered Species or harm to the Covered Species' habitat above the baseline.

As proposed in the SHA, landowners on non-Federal land in the State of Hawaii, as identified by the Draft Hawaiian Goose Recovery Plan and Draft Hawaiian Waterbird Recovery Plan, may be enrolled by the Applicants under the proposed SHA. Individual landowners, as Cooperators, would receive Certificate of Inclusions when they sign Cooperative Agreements. Each Cooperative Agreement would include: (1) A map of the property with a delineation of the portion of the property to be enrolled; (2) the property's baseline described as a population estimate (Hawaiian goose) or habitat acres or miles (Hawaiian duck, Hawaiian moorhen, Hawaiian coot, Hawaiian stilt); (3) documentation of the biological surveys conducted to determine the baseline; (4) a description of the specific conservation measures to be completed; and (5) the responsibilities of the Cooperator and the Applicants.

The Applicants would provide draft copies of the Cooperative Agreements to the Service and DOFAW for an opportunity to review and concur with the recommended management activities and conservation measures. The Service and DOFAW would have a period of 30 days in which to make comments on the Cooperative Agreements. Upon address of comments from the Service and DOFAW, the Applicants would proceed to finalize the Cooperative Agreements. The Applicants, as the Permittees, would be responsible for annual monitoring and reporting related to implementation of the SHA and Cooperative Agreements and fulfillment of provisions by the Cooperators. As specified in the proposed SHA, the Applicants would issue yearly reports to the Service related to implementation of the program. As specified in the RC&D and USDA Natural Resources Conservation Service (NRCS) Memorandum of Understanding (Exhibit 1 of SHA), NRCS would assist the RC&Ds with the completion of Cooperative Agreements, monitoring, and annual reports.

Each Cooperative Agreement would cover conservation activities to create, maintain, restore, or enhance wetlands, uplands, or riparian habitat for one or more of the Covered Species and assist in achievement of the recovery goals of the species. These actions, where appropriate, could include (but are not limited to): (1) Restoration of habitat form and function; (2) installation of fences to exclude or control access by

livestock and other domestic animals; (3) assessment and control of feral ungulates and introduced predators; (4) control of invasive plants and reestablishment of native plants that are beneficial to the Covered Species; (5) establishment of riparian buffers as well as facilitation of the implementation of other objectives recommended by the recovery plans for the Covered Species. The overall goal of Cooperative Agreements entered into under the proposed SHA is to produce conservation measures that are mutually beneficial to the Cooperators and the long-term existence of the Covered Species.

Based upon the probable species' response time for the Covered Species to reach a net conservation benefit, the Service estimates it will take 5 years of implementing the planned conservation measures to fully reach a net conservation benefit; some level of benefit would likely occur within a shorter time period. Cooperative Agreements under the proposed SHA would have at least 10 years' duration.

After maintenance of the restored/created/enhanced habitat for the Covered Species 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 taking of the Covered Species. However, the restrictions on returning a property to its original baseline condition include: (1) The Cooperator must demonstrate that baseline conditions were maintained during the term of the Cooperative Agreement 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 60 days prior to the activity and given the opportunity to capture, rescue, and/or relocate any of the Covered Species; and (3) return to baseline conditions must be completed within the term of the Certificate of Inclusion issued to the Applicant. Cooperative Agreements could be extended if the Applicant's permit is renewed and that renewal allows for such an extension.

The Service believes that approval of the proposed SHA may qualify for a categorical exclusion under 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 which would be considered significant. This is more fully explained in our draft Environmental Action Statement. The Service will consider public comments in making its final determination on whether to prepare such additional NEPA documentation.

Decision

The Service provides this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

We will evaluate the permit application, the proposed SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If the requirements are met, we will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the Applicants for take of the Covered Species incidental to otherwise lawful activities of the project. We 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.

Patrick Leonard,

Field Supervisor, Pacific Islands Fish and Wildlife Office, Honolulu, Hawaii.

[FR Doc. E6–22385 Filed 12–28–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Environmental Impact Statement and Comprehensive Conservation Plan for Crab Orchard National Wildlife Refuge in Illinois

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce our decision and the availability of the Record of Decision (ROD) for the Final Environmental Impact Statement (EIS) and Comprehensive Conservation Plan (CCP) for Crab Orchard National Wildlife Refuge in accordance with National Environmental Policy Act (NEPA) requirements.

ADDRESSES: The ROD and Final EIS/CCP may be viewed at Crab Orchard National Wildlife Refuge Headquarters in Marion, Illinois. You may obtain a copy of the ROD on the planning Web site at *http://www.fws.gov/midwest/planning/craborchard* or by writing to: U.S. Fish and Wildlife Service, Division of Conservation Planning, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Dan Frisk, (618) 997–3344.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, announce our decision and the availability of the Record of Decision (ROD) for the Final Environmental Impact Statement (EIS) and Comprehensive Conservation Plan (CCP) for Crab Orchard National Wildlife Refuge in accordance with NEPA requirements (40 CFR 1506.6(b)). We completed a thorough analysis of the environmental, social, and economic considerations, which we included in the Final EIS/CCP. The Final EIS/CCP was released to the public and a notice of availability was published in the **Federal Register** (71 FR 52138–52139, September 1, 2006). The ROD was signed by the Regional Director, U.S. Fish and Wildlife Service, Midwest Region, on October 27, 2006, and documents the selection of Alternative E, the Preferred Alternative in the Final EIS/CCP.

The CCP for Crab Orchard National Wildlife Refuge (Refuge) will guide the management and administration of the Refuge for the next 15 years. Alternative E, as described in the Final EIS, is the foundation for the CCP.

Five alternatives and their consequences were developed for the Draft EIS and CCP, which was released and a notice was published in the **Federal Register** (70 FR 60364–60365, October 17, 2005).

Alternative A—Current Management (No Action). The current level of effort on fish and wildlife and habitat management would continue. The current authorized recreation uses and patterns would continue. Current industrial leasing policies would remain in place. The amount of agricultural land would remain fairly constant.

Alternative B—Reduced Habitat Fragmentation: Wildlife-dependent Recreation Emphasis with Land Exchange. The Refuge would emphasize the reduction of habitat fragmentation by making small changes in the current habitat cover to gain larger, unfragmented blocks of both forest and grassland habitats. The alternative would offer increased recreational

opportunities by exchanging land in the developed northwestern portion of the Refuge for undeveloped land at another location. The industrial use policy would be updated. The amount of land in row crops would decrease slightly, and the Refuge would convert fescue pastures to other cool- and warm-season grasses over a period of 15 years.

Alternative C—Open Land Management: Consolidate and Improve Recreation. The Refuge would take advantage of the lands that are already open and consolidate existing large blocks of open land for grassland dependent species, especially birds. The Refuge would satisfy the Refuge's recreation purpose as much as possible within Service budget priorities through consolidating and upgrading facilities. If an industrial tenant left the Refuge, the Refuge would not seek a new tenant for the vacant facility. The amount of land in row crops would increase slightly.

Alternative D—Forest Land Management: Consolidate and Improve Recreation. The Refuge would manage two large forest blocks to benefit area-sensitive forest birds and maintain some early successional habitat. The Refuge would satisfy the Refuge's recreation purpose as much as possible within Service budget priorities through consolidating and upgrading facilities. If an industrial tenant left the Refuge, the Refuge would not seek a new tenant for the vacant facility. The amount of land in row crops and hay fields would decrease slightly.

Alternative E—Reduced Habitat Fragmentation: Consolidate and Improve Recreation (Preferred Alternative). The Refuge would emphasize the reduction of habitat fragmentation by making small changes in the current habitat cover to gain larger, unfragmented blocks of both forest and grassland habitats. The Refuge would satisfy the Refuge's recreation purpose as much as possible within Service budget priorities through consolidating and upgrading facilities. If an industrial tenant left the Refuge and their facilities were suitable for occupancy, the Refuge would make them available for new tenants. The amount of land in row crops would decrease slightly.

Elements common to all alternatives included: enough food for 6.4 million goose-use-days for wintering Canada Geese would be provided; federal and state listed species would be protected; resident fish and wildlife populations would be maintained or enhanced; communication between the Refuge and the community would be improved; cultural resources would be protected; and the Refuge's Fire Management Plan would guide the fire program. In addition the following policies would apply under all alternatives: classifying lands for various uses would be dropped; the length of stay at campgrounds would be limited to 14 consecutive nights; group camps would be required to provide environmental education; recreational fees would be made consistent with the Federal Lands Recreation Enhancement Act of 2005; small competitive fishing events would be limited to three events per year per organization; and mowing of pastures and fields would take place after August 1 to protect nesting birds.

The Service's Basis for Decision: All action alternatives (B through E) are considered environmentally preferable to Alternative A (No Action). Alternative E is the alternative considered to have the least adverse effect on the physical and biological environments. The rationale for choosing Alternative E as the best alternative for the CCP is based on the impact of this alternative on the purposes of the Refuge and the issues and needs that surfaced during the planning process. Other factors considered in the decision were public and resource benefits gained for the cost incurred and the extensive public comment. Alternative E is likely to lead to improvements under the agricultural, wildlife conservation, and recreation purposes of the Refuge. Alternative E is also expected to lead to wider and fairer access to public recreational opportunities. Alternative A was not selected because it would inadequately address the needs and issues that were documented during planning. Alternative B was not selected because the land exchange, which was the heart of the alternative, could not be accomplished within the authorities of the Department of the Interior. Alternatives C and D served to contrast an emphasis on grassland birds with an emphasis on forest birds, and we learned that only marginal benefits would accrue to either group of birds over the reduced habitat fragmentation approach of Alternative B or E.

Public Comments on Final EIS: During the 30-day waiting period, we received 67 written comments. With one exception, the comments did not raise any issues not addressed in the Final EIS, and the comments did not result in changes to the analysis of environmental consequences or affect our response to similar comments in the Final EIS. One comment pointed out an inconsistency in the document, which was introduced in the final editing, related to the acres of new moist soil impoundments in the preferred alternative. The Refuge's intention is, as indicated by the response on page 181 of the Final EIS, to develop 150–200 additional acres of moist soil impoundments. The stand-alone CCP will reflect that intention. A new topic raised during the waiting period was an advocacy for rock climbing on the Refuge. The Access Fund requested that we complete a Compatibility Determination for rock climbing and amend the Final EIS/CCP. Other citizens and groups also expressed an interest in allowing access for climbing. The Record of Decision details Service guidance for determining appropriate and compatible uses and the finding by the Refuge Manager that rock climbing at Crab Orchard National Wildlife Refuge is not appropriate. As a result of this finding and according to Service procedure, rock climbing on the Refuge has been denied by the Refuge Manager without determining compatibility, and the Final EIS has not been amended. All written comments received during the waiting period are available for review at the Refuge headquarters in Marion, Illinois.

Measures to Minimize Environmental Harm: Because all practicable means to avoid or minimize environmental harm have been incorporated into the preferred alternative, no mitigation measures have been identified. Means to minimize environmental harm are complemented by a Biological Assessment that was prepared to address any impacts to federally-listed threatened or endangered species. This assessment calls for a tiered approach, whereby impacts and mitigation will be handled on a project-specific basis when project scope and design is articulated. The Biological Assessment concluded that implementation of Alternative E is not likely to adversely affect the Bald Eagle and not likely to jeopardize the continued existence of the Indiana bat. In addition, compatibility determinations were prepared for all uses identified in Alternative E, and these determinations contain stipulations to avoid, minimize, or mitigate any environmental impacts from these uses and associated facilities.

Dated: November 20, 2006.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. E6–22384 Filed 12–28–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Conduct Restoration Planning for the Bradley Beach Mystery Spill of February 2004, Monmouth and Ocean Counties, NJ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The Secretary of the Interior has designated the U.S. Fish and Wildlife Service (Service) to act on behalf of the U.S. Department of the Interior (DOI) as natural resource trustee (Trustee) with respect to the February 2004 oil spill in the Bradley Beach, NJ, area (the incident). The Service has determined that the impacts of the incident warrant conducting a natural resource damage assessment that will include restoration planning. The incident has been referred to by a number of names, including the Bradley Beach Mystery Spill, the Monmouth County Mystery Spill, the Monmouth and Ocean Counties Mystery Spill, the Brick Township Mystery Spill, and the Brick Township Tarball Mystery Spill.

The DOI is hereby providing notice of efforts to plan restoration actions for injuries resulting from the incident. The purpose of this restoration planning is to evaluate potential injuries to natural resources and lost services and use that information to determine the need for and scale of restoration actions.

ADDRESSES: Clay Stern, Environmental Contaminants Branch, New Jersey Field Office, U.S. Fish and Wildlife Service, 927 N. Main St., Pleasantville, NJ 08232.

FOR FURTHER INFORMATION CONTACT: Clay Stern, at 609–646–9310, extension 27 (telephone), or *clay_stern@fws.gov* (e-mail), or address under **ADDRESSES**.

SUPPLEMENTARY INFORMATION: On or about February 3, 2004, tar-balls and tar-patties that were chemically and physically consistent with a number 6 fuel oil began washing ashore from the Atlantic Ocean onto the South Mantoloking Beach in Brick Township, Ocean County, NJ. Within 24 hours, the New Jersey Department of Environmental Protection—Bureau of Emergency Response had determined that Oil had impacted beaches from Monmouth Beach to Sea Girt in Monmouth County (approximately 15 miles), with the heaviest oiling centered around Bradley Beach, Monmouth County; minor oil impacts had occurred at South Mantoloking Beach in Ocean County; and oiled birds had been observed from Sea Bright in Monmouth County south to Island Beach State Park in Ocean County (approximately 40 miles). The U.S. Coast Guard determined that an "incident" as defined by the Oil Pollution Act (OPA) of 1990 (33 U.S.C. 2701 *et seq.*) had occurred and that the incident did not fall within the exclusionary conditions set forth in 33 U.S.C 2702(c). Since a responsible party has not been identified, the incident was federalized and assigned Federal Project Number P04006. The total quantity of the oil discharged was estimated at no more than 1,000 gallons.

Immediately following notification of the incident, the Service initiated pre-assessment data collection activities, pursuant to OPA, to make an initial determination as to whether natural resources or services were injured or were likely to be injured by the discharge. More than 160 migratory birds, or parts thereof, were recovered during the initial spill response; spill response and bird recovery activities were coordinated. Although most of the birds were recovered within the first week after notification of the incident, the Service continued to recover oiled birds throughout February 2004.

Findings from the pre-assessment efforts demonstrated that exposure to the incident-related oil caused the deaths of 73 birds, representing at least 16 species. Those birds are Federal trust resources protected under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 701 *et seq.*). The injured resources and their supporting habitats are under the trusteeship of the DOI.

Under OPA, State and Federal agencies and Indian tribes are designated to act as natural resource trustees, responsible for assessing natural resource losses and restoring those losses to baseline conditions, *i.e.*, the condition that would have existed had the incident not occurred. The Trustee for the Bradley Beach incident is the DOI, U.S. Fish and Wildlife Service. The Trustee is designated pursuant to 33 U.S.C. 2706(b), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605.

In its role as the Natural Resource Trustee, the Service has made the following determinations required by 15 CFR 990.41(a):

The Service, as Natural Resource Trustee, has jurisdiction to pursue restoration pursuant to OPA (33 U.S.C. 2702 and 2706(c)); 40 CFR Part 300, and the OPA Natural Resource Damage Assessments Regulations, 15 CFR part 990.

The discharge of oil in the Bradley Beach area and its environs on or about February 3, 2004, was an incident as defined in 15 CFR 990.30.

Natural resources under the trusteeship of the DOI have been injured as a result of the incident. The oil discharged contains components that may be harmful to aquatic organisms, birds, wildlife and vegetation.

In addition, the U.S. Coast Guard has notified the Trustee that:

The discharge was not permitted under Federal, State, or local law.

The discharge was not from a public vessel.

The discharge was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act of 1973 (43 U.S.C. 1651 *et seq.*).

Because the conditions of 15 CFR 990.41(a) were met, as described above, the Service made the further determination under 15 CFR 990.41(b) to proceed with pre-assessment.

For the reasons discussed below, the Service, as Trustee, has made the determination required by 15 CFR 990.42(a) and is providing notice pursuant to 15 CFR 990.44 that it intends to conduct restoration planning in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of this incident.

Although response actions were pursued, the nature of the discharge and the sensitivity of the environment precluded prevention of injuries to some natural resources, such as migratory birds and their supporting habitats. The Service believes that injured natural resources could return to baseline through natural or enhanced recovery, but interim losses have occurred and will continue to occur until a return to baseline is achieved.

There are a number of injury assessment methods available to the Trustee to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services. These include, but are not limited to, literature reviews, field studies, laboratory studies, and modeling studies. These methods may be used alone or in combination. In order to scale restoration actions, the Service intends to prepare an injury assessment that integrates the degree and spatial and temporal extent of injury to estimate the total quantity of injury.

Feasible direct and compensatory restoration actions exist to address injuries from this incident. Restoration actions that could be considered include, but are not limited to, restoration, enhancement, and/or acquisition of nesting or wintering habitat of the injured species.

Pursuant to 15 CFR 990.44(c), the Trustee will seek public involvement in restoration planning for this incident through public review of and comments on the draft restoration plan.

Author: The primary author of this notice is Clay Stern.

Authority: The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and implementing Natural Resource Damage Assessments Regulations found at 15 CFR part 990.

Dated: October 24, 2006.

Richard O. Bennett,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service, DOI Authorized Official, U.S. Department of the Interior.

[FR Doc. E6–22290 Filed 12–28–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–140–1430–ES; COC–63586, COC–40272]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, 25 acres of public land in Eagle County, Colorado. The Eagle River Water and Sanitation District proposes to use the land for a biosolids treatment and storage facility.

DATES: Comments should be received by February 12, 2007.

ADDRESSES: Comments should be sent to the BLM, Grand Junction Field Office, 2815 H Road, Grand Junction, Colorado, ATTN: Alan Kraus. Detailed information concerning this action, including appropriate environmental documentation, is available for review at the above address or at the BLM Glenwood Springs Field Office, 50629 Highway 6 and 24, Glenwood Springs, Colorado 81602.

FOR FURTHER INFORMATION CONTACT: Alan Kraus at the above address or by telephone at (970) 244–3078.

SUPPLEMENTARY INFORMATION: In response to an application from the Eagle River Water and Sanitation District (ERWSD), Colorado, the following public lands have been examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.* and 43 CFR Subpart 2743). The lands are currently used by the ERSWD under the terms of Bureau of Land Management Right-of-Way COC–40272 and would continue to be used to treat and store municipal wastewater treatment plant sludges. Additional adjacent land would also be used for this purpose.

Sixth Principal Meridian, Colorado

T 4 S., R 83 W.,
sec. 11; E½NE¼SE¼NW¼, and N½SW¼NE¼.

The area described contains 25 acres, more or less, in Eagle County.

The lands are not needed for Federal purposes. Conveyance is consistent with current Bureau land-use planning and would be in the public interest. The patent, if issued, will be subject to the following reservations, terms, and conditions:

(1) Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

(2) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (hazardous substance as defined in 40 CFR Part 302.)

(3) A right-of-way thereon for ditches and canals constructed by authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

(4) Those rights for electric transmission line purposes granted by right-of-way COC–31358.

(5) Those rights for telephone line purposes granted by right-of-way COC–50820.

(6) Any other valid and existing rights of record.

(7) Eagle River Water and Sanitation District, its successors or assigns, shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States) from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from: Sixth Principal Meridian, Colorado, Sec.11: E½NE¼SE¼NW¼, N½SW¼NE¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States. In the event of payment, loss, or expense under this agreement, the patentee shall be subrogated to the extent of the amount of such payment to all rights, powers, privileges, and remedies of the United States against any person regarding such payment, loss, or expense.

(8) Such other provisions as may be required by law.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent or upon publication in the **Federal Register** of an opening order, whichever occurs first.

Classification Comments: Interested parties may submit comments involving the suitability of the land to treat and store municipal wastewater treatment plant sludge. Comments on the classification are restricted to whether the land is physically suited for the proposed use, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or whether the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposed use.

All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words "CONFIDENTIALITY REQUEST" in uppercase letters in order for BLM to comply with your request. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential. Any objections will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this

realty action will become the final determination of the Department of the Interior.

Comments must be received by February 12, 2007. In the absence of any adverse comments, the classification will become effective February 27, 2007.

(Authority: 43 CFR part 2741.5)

Steve Bennett,

Associate Field Manager, Glenwood Springs Field Office.

[FR Doc. E6–22331 Filed 12–28–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–07–1610–DP]

Notice of Extension of the Public Comment Period for the Bay Draft Resource Management Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Extension of the Public Comment Period for the Bay Draft Resource Management Plan/ Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) announces an extension of the public comment period on the Bay Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS). The original notice, issued September 29, 2006, provided for a comment period to end on January 5, 2007. The BLM is extending the comment period until February 5, 2007.

DATES: Written comments on issues relating to the future land use, planning, and management of the Bay planning area must be submitted or postmarked no later than February 5, 2007.

ADDRESSES: Comments on the document should be addressed to Bureau of Land Management, Anchorage Field Office, ATTN: Bay RMP, 6881 Abbott Loop Road, Anchorage, Alaska 99507. Comments can also be submitted to the e-mail box developed for this project at *akbayrmp@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Ruth McCoard, (800) 478–1263, or by mail at the Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507.

SUPPLEMENTARY INFORMATION: The original Notice of Availability was published September 29, 2006, and provided for comments on the Bay Draft RMP/EIS to be received through January 5, 2007. Due to unforeseen circumstances, one of the key villages within the Bay planning area asked the BLM to reschedule an open house meeting/subsistence hearing to January 2007. To honor this request and other separate requests for a comment extension, the BLM has decided to extend the comment period by 31 days. Therefore, comments on the Bay Draft RMP/EIS will now be accepted through February 5, 2007.

Dated: December 14, 2006.

Julia Dougan,

Acting State Director.

[FR Doc. E6–22326 Filed 12–28–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Federal Register Notice of Submission of Network to Freedom Application Package to Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, National Underground Railroad Network to Freedom Program.

ACTION: Notice of submission to OMB and request for comments.

SUMMARY: Under the provisions of the paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites comments on a submitted request to the Office of Management and Budget (OMB) to approve an extension of a currently approved information collection clearance (OMB #1024–0232).

DATES: Public Comments on the information collection will be accepted on or before January 29, 2007.

The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore to ensure maximum consideration, OMB should receive comments by 30 days from the date of publication in the **Federal Register.**

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #0124–0232), Office of Information and Regulatory Affairs, OMB, by fax at 202–395–6566 or by electronic mail at *oira_docket@omb.eop.gov* please mail or hand carry a copy of your comments to Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska, 68102. If you wish to send a copy of your comments by electronic mail, you may send them to *diane_miller@nps.gov*.

FOR FURTHER INFORMATION OR A COPY OF THE PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT: Diane Miller, 402–661–1588 (*diane_miller@nps.gov*) or James Hill, 402–661–1590 (*james_hill@nps.gov*) at National Park Service, Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102.

SUPPLEMENTARY INFORMATION: Public Law 105–203 authorizes the NPS to develop and administer the National Underground Railroad Network to Freedom (Network), a nationwide collection of governmental and nongovernmental sites, facilities, and programs associated with the historic Underground Railroad movement. The NPS has developed the application process through which associated elements can be included in the Network The information collected will: (a) Verify associations to the Underground Railroad, (b) Measure minimum levels of standards for inclusion in the Network, and (c) Identify general needs for technical assistance.

The purpose of the information collection is to evaluate sites, facilities, and programs that are applying for inclusion in the National Underground Railroad Network to Freedom. The information is used by the NPS to determine if candidates seeking inclusion in the Network meet the minimum criteria.

Title: NPS National Underground Railroad Network to Freedom Application.

Bureau Form Number: n/a.

OMB Number: 1024–0232.

Expiration Date: 12/31/2006.

Type of request: Extension of a currently approved information collection.

Description of need: The NPS has identified guidelines and criteria for associated elements to qualify for the Network. The application form documents sizes, programs, and facilities and demonstrates that they meet the criteria established for inclusion. The documentation will be incorporated into a database that will be available to the general public for information purposes. The proposed information to be collected regarding these sites, facilities, and programs is not available from existing records, sources, or observations.

Automated data collection: Respondents must verify associations and characteristics through descriptive texts that are the results of historical research. Evaluations are based on

subjective analysis of the information provided, which often includes copies of rare documents and photographs. Much of the information is submitted in electronic format, but at the present time, it is not practicable to gather all of the required information electronically.

Descriptive of respondents: The affected publics are State, tribal, and local governments, Federal agencies, businesses, non-profit organizations, and individuals throughout the United States. Nominations to the Network are voluntary.

Estimated average annual number of respondents: 70.

Estimated average annual number of responses: 70.

Estimated average burden hours per response: 15.

Estimated frequency of response: once per respondent.

Estimated annual reporting burden: 1050 hours.

There were no public comments received as a result of publishing in the**Federal Register** a 60-day notice [published October 12, 2006 (71 FR 60180)] of intention to renew clearance of this information collection. Comments from seven respondents were collected from a small sample of present and potential applicants to the program. Three comments regarded making downloading the form from our Web site earlier. With applicants, we address this problem by sending the form electronically. upon request. One comment regarded the complexity of requirements and instructions; we address this issue by electronically sending a sample or samples of successful applications to potential applicants when they inform use of their intent to apply.

The comments from the public outreach did not affect our estimate of the public burden. The public now has a second opportunity to comment.

Comments are invited on (1) The need for the information including whether the information has practical utility; (2) the accuracy of this reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected on respondents, including the use of automated collection techniques of other forms of information technology.

All comments will become a matter of public record.

Doris Lowery,

NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. 06–9946 Filed 12–27–06; 11:52 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to OMB of Request for Extension of Information Collection Number 1024–0026; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice of submission to OMB and request for comments.

SUMMARY: Under the Provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR part 1320 Reporting and Recordkeeping Requirements, the National Park Service (NPS) is submitting to the Office of Management and Budget (OMB) a request for extension of three (3) information collection forms and relevant NPS regulations currently approved under OMB control number 1024–0026 that are associated with permits pertaining to special public uses of NPS-managed lands.

DATES: Public comments on this request must be received by January 29, 2007 to be assured of consideration.

ADDRESSES: Send comments to the Desk Officer for the Interior Department, OMB Office of Information and Regulatory Affairs, via facsimile to 202–395–6566, or by e-mail to *OIRA_DOCKET@omb.eop.gov*. Please send a copy of your comments to Leonard Stowe, National Park Service, 1849 C Street, NW. (2605), Washington, DC 20240 or by e-mail to *Leonard_Stowe@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Uses Program Manager, National Park Service at 202–513–7092 or by e-mail at *Lee_Dickinson@nps.gov*. Copies of the permit application forms may be obtained from the Internet at: *http://www.nps.gov/policy/DOrders/Permitforms.pdf*.

SUPPLEMENTARY INFORMATION: Under NPS regulations, the information gathered is used to determined the presence or absence of derogation of the resource and allow the park manager to make a valued judgment as to whether or not to allow the requested permit. The uses considered under these permit applications generally include but are not limited to special events, filming and photography, and grazing in parks where such activity is authorized by law.

(1) *Title:* Special Park Use Applications (Portions of 36 CFR 1–7, 3, 20, 34).

(2) *NPS Form Numbers:* 10–930, 10–931, 10–932.

(3) *OMB Control Number:* 1024–0026.

(4) *Current Expiration Date:* December 31, 2006.

(5) *Type of Request:* Extension of currently approved collection.

(6) *Description of Applicants:* Individuals, not-for-profit institutions, for-profit business.

(7) *Estimated Annual Number of Applicants:* 18,600.

(8) *Estimated Annual Number of Submissions:* 18,600.

(9) *Estimated Total Annual Burden:* 11,150 hours.

(10) Non-hour cost of $50 per submission for filing fee.

Public comments were received a during a 60-day public comment period (71 FR 61069) that closed December 18, 2006. One commenter requested a copy of the entire Information Collection Request associated with the FR notice. The second commenter requested that information on the types of activities permitted through special park use permits be available to the public. No changes were made to the information collection renewal request as a result of these comments. The public has a second opportunity to submit comments at this time, as to:

(1) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected; and

(4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

All comments will become a matter of public record.

Davis Lowery

Acting NPS Information Collection Clearance Officer.

[FR Doc. 06–9947 Filed 12–27–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves

Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were collected from Bronx County, Kings County, New York County, Queens County, and Westchester County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma (now part of the Cherokee Nation, Oklahoma); and Stockbridge Munsee Community, Wisconsin.

In 1898, human remains representing a minimum of seven individuals were collected by Raymond M. Harrington from Croton Neck, Croton-on-Hudson, Westchester County, NY. In 1899, the human remains were acquired by the museum as a gift from William R. Warren. No known individuals were identified. The 20 associated funerary objects are 2 oyster shells, 14 paintstone fragments, 3 chert pebbles, and 1 clay smoking pipe, which dates to the late 17th or early 18th century and is apparently of British manufacture.

The individuals have been identified as Native American based on the presence of items of Native American manufacture. Flexed burials and the relative scarcity of funerary objects are consistent with Late Woodland period burial practices. Geographic location is consistent with the traditional and postcontact territory of the "Kitchawonck," a Munsee Delaware Indian group.

In 1899, human remains representing a minimum of four individuals were collected by M. Raymond Harrington from the south shore of Le Roy Bay, Pelham Bay Park, Bronx County, NY, during an expedition sponsored by the American Museum of Natural History. No known individuals were identified. The 14 associated funerary objects are 4 shell pieces, 5 stone chips, 2 pottery sherds, 1 stone scraper, 1 mica ornament, and 1 piece of elk bone.

The individuals have been identified as Native American based on the presence of a large Native American habitation site and the presence of items of Native American manufacture. The human remains recovered from the Le Roy Bay site are considered to date to the Late Woodland period (after A.D. 1100). Geographic location is consistent with the traditional and post-contact territory of the Munsee Delaware Indian groups.

In 1899, human remains representing a minimum of one individual were collected by M. Raymond Harrington from a shell-filled pit on the Ryder property, Avenue U vicinity, Marine Park, Kings County, NY, during an American Museum of Natural History expedition. The American Museum of Natural History acquired the human remains and associated funerary objects later that same year as part of this expedition. No known individual was identified. The approximately 192 associated funerary objects are 1 pipe bowl, 10 shells, 2 bone tools, 10 pottery fragments, 12 stone chips, 1 piece of crab claw, 6 turtle shell fragments, and a minimum of 150 animal bones.

The individual has been identified as Native American based on the mode of burial and the presence of items of Native American manufacture. Based on the literature and the burial context, the human remains are considered to date to the Late Woodland period (after A.D. 1100). Geographic location is consistent with the traditional and postcontact territory of the Munsee Delaware Indian groups.

Possibly in 1900, human remains representing a minimum of one individual were collected by M. Raymond Harrington, from a camp burial site at Avenue U and Ryder's Pond, Marine Park, Kings County, NY. The museum acquired the human remains in 1900 as a gift from Mr. Putnam, who supported Mr. Harrington's expeditions. No known individual was identified. The 111 associated funerary objects are 1 pipe stem; 2 sinkers; 32 animal, bird, fish, and turtle bones; 5 stone tools; 1 bone tool; and 70 hickory shells and charcoal fragments.

The individual has been identified as Native American based on presence of a Native American occupation site and the presence of items of Native American manufacture. Based on the literature and the burial context, the human remains are considered to date to the Late Woodland period (after A.D. 1100). Geographic location is consistent with the traditional and postcontact territory of the Munsee Delaware Indian groups.

In 1907, human remains representing a minimum of one individual were collected by Reginald P. Bolton and W.L. Calver from a shell pit in Corbet's Garden, 160 feet west of the west side of Cooper Street, 220 feet south of Hawthorne Street, Inwood, New York County, NY. The American Museum of Natural History purchased the human remains and associated funerary objects from Mr. Bolton in 1910. No known individual was identified. The 194 associated funerary objects are 77 shell fragments, 32 pottery fragments, and 85 sturgeon scale fragments.

The individual has been identified as Native American based on the mode of burial and the presence of items of Native American manufacture. Based on the literature and the burial context, the human remains are considered to date to the Late Woodland period (after A.D. 1100). Geographic location is consistent with the traditional and postcontact territory of the Munsee Delaware Indian groups.

In 1907 and 1908, human remains representing a minimum of 14 individuals were collected by Reginald P. Bolton and W.L. Carver from Seaman Avenue, Inwood, New York County, NY. The human remains were purchased by the museum in 1910. No known individuals were identified. The 35 associated funerary objects are 32 oyster shells, 1 stone, 1 pottery fragment, and 1 stone point.

The individuals have been identified as Native American based on the presence of a native shell refuse heap and the presence of items of Native American manufacture. The site from which the human remains were collected has been identified as a Late Woodland to early contact period site. Based on the literature, the burial context of the human remains, and the lack of associated items from the Historic period, the human remains are considered to date to the Late Woodland period (after A.D. 1100). Geographic location is consistent with the traditional and postcontact territory of the Munsee Delaware Indian groups.

In 1939, human remains representing a minimum of two individuals were collected by Ralph Solecki from a shell pit at the head of Hawtree Creek, an arm of Jamaica Bay, Aquaduct, Queens County, NY. The American Museum of Natural History received the human remains from Mr. Solecki as a gift in 1947. No known individuals were identified. The two associated funerary objects are one oyster shell and one pottery fragment.

The individuals have been identified as Native American based on the mode of burial and the presence of an item of

Native American manufacture. Based on the literature and the burial context of the human remains, the human remains are considered to date to the Late Woodland period (after A.D. 1100). Geographic location is consistent with the traditional and postcontact territory of the Munsee Delaware Indian groups.

In the late 1950s, human remains representing a minimum of 29 individuals were collected by Mr. E.J. Kaeser from an ossuary at the Archery Range site, Pelham Bay Park, Bronx County, NY. The American Museum of Natural History received the human remains from Mr. Kaeser as a gift in 1967. No known individuals were identified. No associated funerary objects are present.

The individuals have been identified as Native American based on the mode of burial and the presence of items of Native American manufacture that are listed in the field notes but which are not part of the museum's collection. Based on the literature and the burial context of the human remains in an ossuary mixed with shell midden located on a knoll overlooking Pelham Bay, the human remains are considered to date to the Late Woodland period (after A.D. 1100). Geographic location is consistent with the traditional and postcontact territory of the Munsee Delaware Indian groups.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of 59 individuals of Native American ancestry. Officials of the American Museum of Natural History have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the approximately 568 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge-Munsee Community, Wisconsin. A cultural affiliation determination with the Delaware Tribe of Indians, Oklahoma was made prior to the tribe's change in status.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192,telephone (212) 769–5837, before January 29, 2007. Repatriation of the human remains and associated funerary objects to the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge-Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge-Munsee Community, Wisconsin that this notice has been published.

Dated: November 24, 2006.

Sherry Hutt, Manager

National NAGPRA Program

[FR Doc. E6–22343 Filed 12–28–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR and Confederated Tribes of the Umatilla Reservation, Oregon

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Confederated Tribes of the Umatilla Reservation, Oregon, and in the control of the U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

Between 1948 and 1986, the Old Town Umatilla Townsite (35 UM 1/35 UM 35) underwent various and extensive excavations by multiple entities. Since 1976, the human remains and funerary objects have undergone multiple re-interments and repatriations to the Confederated Tribes of the Umatilla Reservation, Oregon. In 2005, a bag was located in collections labeled as being removed from the Old Town Umatilla Townsite cemetery area, Umatilla County, OR. The 19 unassociated funerary objects are 1 harpoon point, 1 utilized flake, 1 bone awl, 5 projectile points, 1 projectile point fragment, 1 knife, 1 knife fragment, 1 metal rod, 1 pounding stone, 2 uniface choppers, 1 flake, 1 fishbone, 1 charcoal, and 1 shell.

The human remains with which the cultural items were originally associated were previously published in a Notice of Inventory Completion in the **Federal Register** on April 25, 2003, (FR Doc 03–10029, pages 20406–20407), and were physically repatriated to the Confederated Tribes of the Umatilla Reservation, Oregon on June 13, 2003. Since the human remains are no longer in the control of the Army Corps of Engineers, Portland District, the cultural items in this notice meet the definition of unassociated funerary objects under NAGPRA. On February 21, 2006 the tribe submitted a claim to the Army Corps of Engineers, Portland District for the newly discovered unassociated funerary items.

The Old Town Umatilla site was first occupied in 470 B.C. and is considered to be a prehistoric and historic Umatilla village. The site served as a major winter village of the Umatilla Indians during late prehistoric times, and includes a cemetery that dates from approximately 500 B.C. to A.D. 1700. The site lies within the traditional lands of the present-day Confederated Tribes of the Umatilla Reservation, Oregon.

Officials of the Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 19 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Army Corps of Engineers, Portland District also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Mr. Robert Willis, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946,

Portland, OR 97208–2946, telephone (503) 808–4760 before January 29, 2007. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may proceed after that date if no additional claimants come forward.

Army Corps of Engineers, Portland District is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: November 21, 2006

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–22345 Filed 12–28–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Horner Collection, Oregon State University, Corvallis, OR, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 12 cultural objects are 5 baskets, 1 mortar, 2 arrows, 1 bag containing projectile points, 2 obsidian spear points, and 1 obsidian blade.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

Horner Collection, Oregon State University professional staff consulted with representatives of the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Karuk Tribe of California; Pit River Tribe, California; Redding Rancheria, California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe); Smith River Rancheria, California; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and Yurok Tribe of the Yurok Reservation, California.

In 1953, one mortar was loaned to the Horner Collection by S.L. Burnaugh, who later gifted the mortar to the Horner Collection in 1972. Museum records state that the mortar was found in Calveris, California (probably Calaveras) by an unknown person at an unknown time. The Calaveras area is within the Northern Valley Yokut or Foot Hill Miwok territories, which is part of the traditional territory of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California.

The mortar is a shallow oval with one end deeper than the other and two grooves in one side of the rim. The mortar has been identified by tribal representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California as being a ceremonial mortar used for the preparation of a jimson weed (Datura stramonium) beverage that young men drink during the traditional coming of age ceremony. According to consultation evidence, this type of ceremonial mortar was usually buried with its owner. The museum has no documentation that the mortar was ever buried with an individual, however, based on consultation evidence, officials of the Horner Collection, Oregon State University reasonably believe the mortar is an unassociated funerary object.

According to museum records, three baskets are from Tulare County, CA, and were loaned by Mrs. James Edmond Barrett to the Horner Collection in 1934. In 1972, Mrs. Barrett gifted the baskets to the Horner Collection. The Horner Collection, Oregon State University has no documentation that the three baskets were ever buried with any individual. However, museum records state Mrs. Barrett and her husband are known to have collected cultural items that were taken from burials and mounds.

In 1981, one basket was found in collections with no accession number and without provenience information.

In 1984, Francis E. Alvord gifted one basket to the Horner Collection. Mrs. Alvord identified the basket as Shoshone and said it had belonged to her parents. It is not known how her parents acquired the basket. Anthropomorphic figures on the basket have been identified as Yokut designs, specifically the Wah-nees (first man) design, by tribal representatives of the Santa Rosa Rancheria Indian Community of the Santa Rosa Rancheria, California.

All five baskets have been identified by tribal representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California as offering baskets that would have been buried with special offerings for an individual's safe passage to the spirit world. The Horner Collection, Oregon State University has no documentation that the baskets were ever buried with any individual. However, based on consultation, collector history, and museum records, officials of the Horner Collection, Oregon State University reasonably believe that the five baskets are unassociated funerary objects.

In 1987, one arrow was found in museum collections. In 1993, another arrow was found in the museum collection. Both arrows have no accession numbers and are without provenience information. Both arrows have reed main shafts and one has the hardwood foreshaft construction that is typical of the Tachi Yokut culture group according to the Handbook of North American Indians Vol. 8 (page 452). Furthermore, both arrows have been identified by tribal consultants of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California as being typical of arrows made historically and prehistorically by the Tachi Yokut. Consultation evidence states that men would often leave arrows at gravesites as offerings in the belief that they would bring good luck for hunting in the spirit world. The Horner Collection, Oregon State University has no documentation that the arrows were ever buried with any individual. However, based on the information from consultation, officials of the Horner Collection, Oregon State University reasonably believes that the two arrows are unassociated funerary objects.

In 1993, one obsidian blade was found in museum collection with no accession number and is without provenience information. The obsidian blade has been identified by tribal representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California as being typical of the blades given to a young man for his coming of age ceremony, as such, this type of blade was a personal item that would have been buried with its owner. The Horner Collection, Oregon State University has no documentation that

the obsidian blade was ever buried with any individual. However, based on the information from consultation, officials of the Horner Collection, Oregon State University reasonably believes that the cultural item is an unassociated funerary object.

In 1993, two obsidian spear points were found in museum collections with no accession numbers and are without provenience information. In 1999, one bag containing approximately 300 small projectile points made of obsidian and chert was found in museum collections with no accession number and no provenience information.

The two obsidian spear points and bag of projectile points are typical items that have been found at ancient burials and were commonly left as offerings in the belief that the projectile points could be used for hunting in the spirit world. The Horner Collection, Oregon State University has no documentation that the cultural items were ever buried with any individual. However, based on the museum records and information from consultation, officials of the Horner Collection, Oregon State University reasonably believes that the three cultural items are unassociated funerary objects.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 12 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before January 29, 2007. Repatriation of the unassociated funerary objects to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying the Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada; Karuk Tribe of California; Pit River Tribe, California; Redding Rancheria, California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Smith River Rancheria, California; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; and Yurok Tribe of the Yurok Reservation, California that this notice has been published.

Dated: November 22, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–22346 Filed 12–28–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Water Storage Feasibility Study; Benton, Yakima, and Kittitas Counties, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a combined Planning Report and Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a combined Planning Report and Environmental Impact Statement (PR/EIS) on the Yakima River Basin Water Storage Feasibility Study. The Washington Department of Ecology (Ecology) is a joint lead with Reclamation in the preparation of this Environmental Impact Statement which will also be used to comply with requirements of the Washington State Environmental Policy Act (SEPA).

The purpose of Reclamation's Yakima River Basin Water Storage Feasibility Study is to evaluate alternatives that would create additional water storage for the Yakima River basin and assess their potential to supply the water needed for ecosystem aquatic habitat, basin-wide agriculture, and municipal demands. The need for the study is based on the existing finite water supply and limited storage capability of the Yakima River basin in low water years. This finite supply and limited storage capacity do not meet the water supply demands in all years and result in significant adverse impact to the Yakima River basin's economy, which is agriculture-based, and to the basin's aquatic habitat, specifically, anadromous fisheries. The study seeks to identify means of increasing water storage available, including storage of Columbia River water, for purposes of improving anadromous fish habitat and meeting irrigation and municipal water supply needs.

DATES: Two scoping meetings, preceded by open houses, will be held on January 23, 2007, at the following times:

Open Houses: 1 to 2 p.m.; and 6 to 7 p.m.

Scoping Meetings: 2 to 4 p.m.; and 7 to 9 p.m.

Written comments will be accepted through January 31, 2007, for inclusion in the scoping summary document. Requests for sign language interpretation for the hearing impaired should be submitted to David Kaumheimer as indicated under the For Further Information section by January 8, 2007.

ADDRESSES: Meetings will be held at the Yakima Convention Center, 10 North 8th Street, Yakima, WA 98901–2058. The meeting facilities are physically accessible to people with disabilities.

Comments and requests to be added to the mailing list may be submitted to Bureau of Reclamation, Upper Columbia Area Office, Attention: David Kaumheimer, Environmental Programs Manager, 1917 Marsh Road, Yakima, Washington 98901–2058. Comments may also be submitted electronically to *storagestudy@pn.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Contact David Kaumheimer, Environmental Programs Manager, Telephone: (509) 575–5848, extension 232. TTY users may dial 711 to obtain a toll free TTY relay. Information on this project can also be found at *http://www.usbr.gov/pn/programs/storage_study/index.html.*

SUPPLEMENTARY INFORMATION: Reclamation has undertaken this study as a potential means to augment water supplies in the Yakima River Basin for the benefit of anadromous fish, irrigated agriculture, and municipal water supply under the authority of Public Law 108–7, Section 214 which was passed by Congress on February 20, 2003. Public Law 108–7 states:

> The Secretary of the Interior, acting through the Bureau of Reclamation, shall conduct a feasibility study of options for additional water storage in the Yakima River Basin, Washington, with emphasis on the feasibility of storage of Columbia River water in the potential Black Rock Reservoir and the benefit of additional storage to endangered and threatened fish, irrigated agriculture, and municipal water supply. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Ecology will be a joint lead with Reclamation in the preparation of this Environmental Impact Statement. Ecology has indicated that under SEPA they will evaluate a range of alternatives that include both storage, the subject of the Yakima River Basin Water Storage Feasibility Study, and non-storage components. As a result the jointly prepared EIS will provide NEPA coverage for storage alternatives that Reclamation may consider as part of the Yakima River Basin Water Storage Feasibility Study as well as SEPA coverage for a broader range of alternatives that Ecology may consider.

The alternatives being investigated by Reclamation include additional storage of Yakima River water, as well as water exchanges with the Columbia River. The in-basin alternatives would entail diverting excess water flows from the Yakima River after all water rights and fish target flows are met. Previous Yakima River Basin investigations, such as the Yakima River Basin Water Enhancement Program and the Watershed Management Plan for the Yakima River Basin, are being used to develop in-basin water storage alternatives.

The water exchange alternatives would involve new storage and the pumping of water from the Columbia River. The Black Rock Dam and Reservoir alternative would pump 3,500 or 6,000 cfs from above Priest Rapids to a reservoir east of the city of Yakima which would then be delivered to irrigation districts downstream of the city. Deliveries from Black Rock Reservoir would offset existing diversions from the Yakima River. Those foregone diversions would be used to improve flows for anadromous fish and provide additional supplies in drought years to existing irrigators beyond what would otherwise have been available. Water stored as part of the project would not be used to expand irrigation in the Yakima Basin. An alternative which would pump water from the mouth of the Yakima River would involve a storage reservoir in the Yakima Basin to re-regulate irrigation flow releases for the benefit of instream flows and a water exchange to reduce some Yakima River diversions.

Other combinations of storage and pumping of water from the Columbia River for delivery by exchange to the Yakima River Basin may be identified during the public scoping process.

Reclamation plans to conduct public scoping meetings to solicit input on the alternatives to augment water supplies in the Yakima River and impacts associated with those alternatives. Reclamation will summarize comments received during the scoping meetings and letters received during the scoping period, identified under the Dates section, into a scoping summary document which will be provided to those who submitted comments. The scoping summary will also be available to others upon request.

If you wish to comment, you may mail us your comments as indicated under the Addresses section. 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 home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Kathyrn A. Marshall,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. E6–22386 Filed 12–28–06; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–444–446 (Preliminary) and 731-TA–1107–1109 (Preliminary)]

Coated Free Sheet Paper From China, Indonesia, and Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Indonesia, or Korea of coated free sheet paper,[2] provided for in subheadings 4810.13.19, 4810.13.20, 4810.13.50, 4810.13.70, 4810.14.19, 4810.14.20, 4810.14.50, 4810.14.70, 4810.19.19, and 4810.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized or sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On October 31, 2006, a petition was filed with the Commission and Commerce by New Page Corp., Dayton, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of coated free sheet paper from China, Indonesia, and Korea. Accordingly, effective October 31, 2006, the Commission instituted countervailing duty investigations Nos. 701-TA–444–446 (Preliminary) and antidumping duty investigations Nos. 731-TA–1107–1109 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Daniel R. Pearson dissenting. Commissioner Jennifer A. Hillman did not participate in these investigations.

of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 6, 2006 (71 FR 64983). The conference was held in Washington, DC, on November 21, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 15, 2006. The views of the Commission are contained in USITC Publication 3900 (December 2006), entitled Coated Free Sheet Paper from China, Indonesia, and Korea: Investigation Nos. 701–TA–444–446 (Preliminary) and 731-TA–1107–1109 (Preliminary).

Issued: December 26, 2006.
By order of the Commission.

Marilyn R. Abbott

Secretary to the Commission.

[FR Doc. E6–22419 Filed 12–28–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–552]

In the Matter of Certain Flash Memory Devices, and Components Thereof, and Products Containing Such Devices and Components; Notice of Commission Decision Not to Review the Administrative Law Judge's Final Initial Determination That There is No Violation of Section 337; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") finding no violation of section 337 of the Tariff Act of 1930, as amended, and to terminate the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3104. Copies of non-confidential documents filed in connection with this investigation are or will be available le for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 4, 2005, based on a complaint filed by Toshiba Corporation of Tokyo, Japan ("Toshiba") under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. 70 FR 67192–193 (November 4, 2005). The complainant alleged violations of section 337 in the importation and sale of certain flash memory devices and components thereof, and products containing such devices and components, by reason of infringement of claims 1–4 of U.S. Patent No. 5,150,178 ("the '178 patent"); claims 1, 6 and 7 of U.S. Patent No. 5,270,969 ("the '969 patent"); and claims 1 and 4 of U.S. Patent No. 5,517,449 ("the '449 patent"). The complainant named Hynix Semiconductor of Ischon-si, Republic of Korea, and Hynix Semiconductor America, Inc. of San Jose, California (collectively "Hynix") as respondents.

On November 21, 2005, Toshiba moved for leave to amend the complaint to add claim 5 of the '178 patent. On December 2, 2005, the ALJ issued an ID (Order No. 4) granting the motion to amend the complaint. The Commission determined not to review this ID.

An evidentiary hearing was held from July 5, 2006, through July 13, 2006. On November 65, 2006, the ALJ issued his final ID and recommended determination on remedy and bonding. The ALJL concluded that there was no violation of section 337. Specifically, he found that the asserted claims of the '178, '969, and '449 patents are not infringed and are not valid, and that there is no domestic industry involving the three patents.

On November 17, 2006, complainant Toshiba, the Commission investigative attorney, and respondent Hynix petitioned for review of various portions of the final ID. On November 28, 2006, all parties filed responses to the petitions for review.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined not to review the ALJ's ID, and has terminated the investigation.

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 section 210.42–45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–45).

Issued: December 22, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9916 Filed 12–28–06; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA")

Consistent with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on December 14, 2006, a proposed Partial Consent Decree with Colgate-Palmolive Company in *United States* v. *American Cyanamid, et al.*, Nos. 1:02–CV–109–1 and 1:03–CV–122–3 (M.D. Ga.), was lodged with the United States District Court for the Middle District of Georgia.

In this action, the United States seeks to recover from various defendants, pursuant to Sections 107 and 113(g)(2) of CERCLA, 42 U.S.C. 9607 and 9613(g)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company/Pelham Phosphate Company Site ("Site") in Pelham, Mitchell County, Georgia. Under the proposed Partial Consent Decree, Defendant Colgate-Palmolive Company will pay $2,850,000 to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Cyanamid, et al.*, (M.D. Ga) (Partial Consent Decree with Colgate-Palmolive Company, DOJ Ref. No. 9011–3–07602).

The Partial Consent Decree may be examined at the Office of the United

States Attorney, Middle District of Georgia, Cherry St. Galleria, 4th Floor, 433 Cherry St., Macon, GA 31201 ((478) 752–3511, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303 (contact Bonnie Sawyer, Esq. (404) 562–9539). During the public comment period, the Partial Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* a copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with Colgate-Palmolive Company, DOJ Ref. No. 90–11–3–07602), and enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9920 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 21, 2006 a proposed Consent Decree "Consent Decree" in *United States* v. *Ashland Inc. et. al,* Civil Action No. 06–1378 was lodged with the United States District Court for the District of Kansas.

In this action the United States sought recovery of costs incurred by the Environmental Protection Agency in responding to the release and threat of release of hazardous substances at the Chemical Commodities Inc. Superfund Site in Olathe, Johnson County, Kansas. Under the Consent Decree, the Defendants and Settling Federal Agencies will reimburse the Untied States and each other for the past costs incurred through December 31, of 2000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States.* v. *Ashland, Inc.* D.J. Ref. 90–11–3–1686. The Consent Decree may be examined at the Office of the United States Attorney, District of Kansas, Suite 1200, 301 No. Main Street, Wichita, Kansas. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy for the Consent Decree Library, please enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9919 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–15–Mt

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Cook Development Corporation, Birch Creek Construction, Inc.,* Civil Action No. 06–CV–617–AS, was lodged on December 20, 2006 with the United States District Court for the District of Oregon. Under this consent Decree, the Settling Defendant is required by pay $30,000 in penalty and implementation of a compliance program for violations of the National Emissions Standard for Hazardous Air Pollutants relating to asbestos.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cook Development Corporation, Birch Creek Construction, Inc.,* DOJ Ref. 90–5–2–1–08803.

The proposed consent decree may be examined at the office of the United States Attorney, 1000 SW Third Avenue, Suite 600, Portland, OR 97204–2902 and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. During the comment period, the consent decree may be examined on the following Department of Justice Web site to *http://www.usdoj.gov/enrd/Consent_Decrees.html/.* A copy of the consent decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $3.75 for *United States* v. *Cook Development Corporation, Birch Creek Construction, Inc.,* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 06–9922 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended ("CERCLA")

Pursuant to 28 CFR 50.7, notice is hereby given that on December 14, 2006, a proposed consent decree in *United States and California Department of Toxic Substances Control* v. *Union Pacific Railroad Co.,* Civil Action No. 2:06–CV–2841–FCD–KJM, was lodged with the United States District Court for the Eastern District of California.

This Consent Decree will resolve claims asserted by the United States and the California Department of Toxic Substances Control ("DTSC") in a complaint filed contemporaneously with the proposed consent decree against defendant Union Pacific Railroad Company ("UPRR") for past costs incurred by the U.S.

Environmental Enforcement Agency ("EPA") and DTSC at the McCormick and Baxter Superfund Site in Stockton, California ("the Site"), and for injunctive and declaratory relief, pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 6906, 6907. The complaint alleges that UPRR is liable for response costs and site cleanup associated with the unlawful disposal of hazardous materials at the Site as a current owner of the Site, pursuant to CERCLA Section 107(a)(1), and as a person that arranged for the disposal of hazardous substances at the Site, pursuant to CERCLA 107(a)(3).

The proposed Consent Decree provides that UPRR will design and implement the remedy selected by EPA to address contaminated soils at the Site. In addition, UPRR will reimburse $1 million of EPA's past response costs and $900,000 of DTSC's past response costs at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and California Department of Toxic Substances Control* v. *Union Pacific Railroad Co.*, D.J. Ref. #90–11–3–07886.

The consent decree may be examined at the Office of the United States Attorney for the Eastern District of California, 501 I Street, 10th Floor, Sacramento, CA, and at U.S. EPA Region 4, Office of Regional Counsel, 61 Forsyth Street, Atlanta, GA. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $44.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9923 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Corrected Federal Register Notice

On December 14, 2006, the **Federal Register** notice of the lodging of a Consent Decree under the Clean Air Act and the Resource Conservation and Recovery Act in the matter of *United States* v. *Von Roll America, Inc.*, Civil Action No. 4:06 CV 2893 (N.D. Ohio). The notice contained a typographical error. It stated that as part of the settlement, the defendant would change out the primary box in its new carbon absorption system whenever Continuous Emissions Monitoring Systems data showed "THCs of 5 ppm of greater on a 60 minute rolling average." Instead of "5 ppm," the notice should have said "50 ppm." The complete notice, as corrected, is set out below.

In light of the error, the Department of Justice will receive comments relating to the Consent Decree for an additional fifteen (15) days from the date of this publication beyond the initial thirty (30) days set forth below in the original notice.

Notice of Lodging of Consent Decree Under the Clean Air Act and the Resource Conservation and Recovery Act

Under 28 CFR 50.7, notice is hereby given that on December 1, 2006, a proposed Consent Decree ("Consent Decree") in the matter of *United States* v. *Von Roll America, Inc.*, Civil Action No. 4:06 CV 2893, was lodged with the United States District Court for the Northern District of Ohio, Eastern Division.

In the complaint in this matter, the United States sought injunctive relief and penalties against Von Roll America, Inc. ("Von roll") for claims arising under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, in connection with the operation of Von Roll's hazardous waste treatment, storage, and disposal facility located in East Liverpool, Ohio. Under the Consent Decree, Von Roll with: Control waste vapors containing volatile organic compounds, including benzene, by installing and operating a carbon adsorption system that will consist of no less than two trains of a primary and a secondary carbon box operated by series; install and operate a total hydrocarbon ("THC") continuous emissions monitor system ("CEMS") between the primary and secondary carbon box in each dual series to monitor for carbon breakthrough (an indication that the carbon box is no longer effective); and change out the primary box whenever CEMS data shows THCs of 50 ppm or greater on a 60 minute rolling average. Von Roll will pay a civil penalty of $750,000 and, as a Supplemental Environmental Project, will undertake a household hazardous waste collecting project valued at $34,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States Von Roll America, Inc.*, D.J. Def. No. 90–5–2–1–08743.

The Consent Decree may be examined at the Office of the United States Attorney, 2 South Main St., Rm. 208, Akron, Ohio 44308, and a U.S. EPA Region 5, 77 W. Jackson St., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $21.25 (25 cents per page reproduction costs) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 06–9921 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on December 8, 2006, a pursuant to Section 6(a) of the national Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual instruments foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, California Instruments, San Diego, CA; and Data Translation, Inc., Marlboro, MA have been added as parties to this venture. Also, Racial Instruments has changed its name to EADS–NA Defense Test and Services, Inc., Irving, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on March 30, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 17, 2006 (71 FR 19751).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9930 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

ANTITRUST DIVISION

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on December 5, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASELSAN Elektronik Sanayi ve Ticaret, A.S., Ankara, TURKEY; Finmeccanica, Roma, ITALY; SGI, Mountain View, CA; MilSOFT Yazilim Teknolojileri A.S., Ankara, TURKEY; U.S. Department of Defense, Defense Information Systems Agency, Falls Church, VA; and Telephonics Corporation, Farmingdale, NY have been added as parties to this venture.

Also, Oracle Corporation, Redwood Shores, CA; Anteon Corporation, Fairfax, VA; Systems Integration & Development, Inc., Rockville, MD; and OrderOne Networks, Orangeville, Ontario, CANADA have withdrawn as parties to this venture. In addition, Marconi Communications Federal, Inc. has changed its name to Ericsson Federal, Inc., Columbia, MD.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on September 6, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 2, 2006 (71 FR 58006).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9929 Filed 12–28–06; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL SCIENCE FOUNDATION

National Science Board Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Board announces the following meeting:

Date and Time: Wednesday, January 10, 2007, 11 a.m.–12:30 p.m. EST (teleconference meeting)

Place: National Science Foundation, Room 545, Stafford II Building, 4121 Wilson Blvd., Arlington, VA 22230 will be available to the public to listen to this teleconference meeting. Visitors must first sign in at the National Science Foundation reception desk at 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Elizabeth Strickland, Commission Executive Secretary, National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4527. E-mail: *estrickl@nsf.gov.*

Purpose of Meeting: To discuss preliminary draft recommendations of the Commission.

Agenda: Discussion of preliminary draft recommendations of the Commission.

Reason for Late Notice: Time and date of meeting were not established until December 22, 2006.

Russell Moy,

Attorney-Advisor.

[FR Doc. E6–22333 Filed 12–28–06; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–498]

STP Nuclear Operating Company, South Texas Project, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License No. NPF–76, issued to STP Nuclear Operating Company (STPNOC/the licensee), for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

The proposed amendment, for a one-time exigent change, would revise Technical Specification (TS) 3.3.2 requirements for loss of power (LOP) instrumentation (Functional Unit 8). TS 3.3.2, Table 3.3–3 ACTION 20 applies to the LOP instrumentation. Since the LOP instrumentation channels do not have an installed bypass capability, STPNOC proposes to add a note to ACTION 20 to establish a one-time provision for corrective maintenance on the Unit 1 Train A channel.

Exigent Approval of the proposed TS change is justified because the failure that caused the inoperable channel could not reasonably have been anticipated. In addition, STPNOC has requested a one-time change because it has included the LOP instrumentation in its broad-scope risk-managed TS application, which will be the permanent TS resolution. STPNOC has promptly prepared and submitted this proposed amendment to the Unit 1 TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) *Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?*

Response: No.

The proposed change to add a note to ACTION 20 for a one-time change to allow corrective maintenance on the Unit 1 Train A loss of power instrumentation does not change the plant design basis, system configuration or operation, and does not add or affect any accident initiator.

Therefore, STPNOC concludes that there is no significant increase in the probability or consequences of an accident previously evaluated.

(2) *Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?*

Response: No.

The proposed change does not change the plant design basis, system configuration or operation, and does not add or affect any accident initiator.

Therefore, STPNOC concludes the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) *Does the proposed change involve a significant reduction in a margin of safety?*

Response: No.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, and will not relax the bases for any limiting conditions of operation. Therefore, STPNOC concludes the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expe cts that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated December 20, 2006, which is available for public inspection at the Commission'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's (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.*

Dated at Rockville, Maryland, this 22nd day of December 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. E6–22390 Filed 12–28–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 1–3, 2007, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 15, 2006 (71 FR 66561).

Thursday, February 1, 2007, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–11:15 A.M.: Final Review of the Power Uprate Application for the Browns Ferry Nuclear Plant, Unit 1 (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Tennessee Valley Authority (TVA) regarding the 5% power uprate application for Browns Ferry Nuclear Plant, Unit 1 and the associated NRC staff's final Safety Evaluation.

[Note: A portion of this session will be closed to protect information that is proprietary to General Electric, TVA, and their contractors pursuant to 5 U.S.C. 552b(c)(4).]

12:45 P.M.–3:30 P.M.: Final Review of the License Renewal Application for the Oyster Creek Generating Station (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and AmerGen Energy Company, LLC. regarding the license renewal application for the Oyster Creek Generating Station and the associated NRC staff's final Safety Evaluation Report.

3:45 P.M.–5:15 P.M.: Development of TRACE Thermal-Hydraulic Code (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the progress made by the staff in developing the TRACE thermal-hydraulic system analysis code and related matters.

5:30 P.M.–7 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, February 2, 2007, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10 A.M.: Proposed Revision to 10 CFR 50.46 LOCA Criteria for Fuel Cladding Materials (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revision to 10 CFR 50.46 loss-of-coolant accident (LOCA) criteria for fuel cladding materials.

10:15 A.M.–11:15 A.M.: Draft Final Revision 1 to Regulatory Guide 1.189 (DG–1170), "Fire Protection for Nuclear Power Plants," and SRP Section 9.5.1, "Fire Protection Program" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final revision 1 to Regulatory Guide 1.189 (DG–1170) and Standard Review Plan (SRP) Section 9.5.1, as well as resolution of public comments.

11:15 A.M.–11:30 A.M.: Subcommittee Report (Open)—Report by and discussions with the Chairman of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) regarding the Economic Simplified Boiling Water Reactor (ESBWR) PRA that was discussed during a meeting on December 14, 2006.

1 P.M.–2 P.M.: Wolf Creek Pressurizer Weld Flaws (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the Wolf Creek Pressurizer Weld Flaws, including description, current status, and future actions.

2 P.M.–2:30 P.M.: Proposed Revisions to Regulatory Guides and SRP Sections in Support of New Reactor Licensing (Open)—The Committee will consider proposed revisions to Regulatory Guides and SRP Sections that are being made in support of new reactor licensing.

2:45 P.M.–3:30 P.M.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

3:30 P.M.–3:45 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

4 P.M.–7 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 3, 2007, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 A.M.–12:30 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue discussion of proposed ACRS reports.

12:30 P.M.–1 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 2006 (71 FR 58015). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) of the Government in the Sunshine Act, I have determined that it will be necessary to close a portion of this meeting noted above to discuss information that is proprietary to General Electric, the Tennessee Valley Authority, and their contractors pursuant to 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4 p.m., (ET).

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS meeting schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of video-teleconferencing services is not guaranteed.

Dated: December 22, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–22383 Filed 12–28–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Technical Specification Improvement to Remove the Main Steam and Main Feedwater Valve Isolation Time From Technical Specifications Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model Application related to changes to the Standard Technical Specifications (STS), Section 3.7.2, "Main Steam Isolation Valves (MSIVs)" and Section 3.7.3 "Main Feedwater Isolation Valves (MFIVs), Main Feedwater Regulation Valves (MFRVs), and [associated bypass valves]." The changes remove the specific isolation time for the isolation valves from the associated STS Surveillance Requirements (SRs). The bracketed isolation time in the STS SRs is replaced with the requirement to verify the valve isolation time is within limits. The specific isolation time required to meet the STS surveillances would be located outside of the technical specifications in a document subject to control by the 10 CFR 50.59 process.

The NRC staff has also prepared a model safety evaluation (SE) and no significant hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to adopt the associated changes into plant-specific technical specifications (TS). Licensees of nuclear power reactors to which the models apply may request amendments confirming the applicability of the SE and NSHC determination to their reactors.

DATES: The NRC staff issued a **Federal Register** Notice (71 FR 193, October 5, 2006) that provided a model SE and a model NSHC determination relating to the removal of the specific isolation time for the isolation valves from the associated STS SRs. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications to adopt the changes. The staff has posted a model application on the NRC Web site to assist licensees in using the consolidated line item improvement process (CLIIP) to revise the Standard Technical Specifications (STS), Section 3.7.2, "Main Steam Isolation Valves (MSIVs)" and Section 3.7.3 "Main Feedwater Isolation Valves (MFIVs), Main Feedwater Regulation Valves (MFRVs), and [associated bypass valves]." The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within one year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Peter C. Hearn, Mail Stop: O12H2, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1189.

SUPPLEMENTARY INFORMATION: Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors," was issued on March 20, 2000. The CLIIP includes an opportunity for the public to comment on proposed changes to operating licenses, including the technical specifications (TS), after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed generic change to operating licenses and to either reconsider the change or issue the announcement of availability for the change proposed for adoption by licensees. Those licensees opting to apply for the subject change to operating licenses are responsible for reviewing the NRC staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures. This notice involves removal of the specific isolation time for the isolation valves from the associated STS SRs.

Applicability: This proposed change to the standard technical specifications (STS) was submitted by the Technical Specifications Task Force (TSTF) in TSTF–491, Revision 2, "Removal of Main Steam and Main Feedwater Valve Isolation Times from Technical Specifications."

This proposal to modify technical specification requirements by the adoption of TSTF–491 is applicable to all licensees of Combustion Engineering, Babcock & Wilcox, and Westinghouse Pressurized Water Reactors who have adopted or will adopt in conjunction with the change, technical specification requirements for a Bases Control Program consistent with the TS Bases Control Program described in Section 5.5 of the STS. Licensees that have not adopted requirements for a Bases Control Program by converting to the improved STS or by other means, are requested to include the requirements for a Bases Control Program consistent with the STS in their application for the change. The need for a Bases Control Program stems from the need for adequate regulatory control of some key elements of the proposal that are contained in the Bases upon adoption of TSTF–491. The staff is requesting that the Bases changes be included with the proposed license amendments consistent with the Bases in TSTF–491. To ensure that the overall change, including the Bases, includes appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on the licensee's incorporation of the changes into the Bases document and on requiring the licensee to control the changes in accordance with the Bases Control Program.

To efficiently process the incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed in TSTF–491 use the CLIIP to submit an application that adheres to the following model. Any deviations from the model application should be explained in the licensee's submittal.

The CLIIP does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–491. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–491.

Public Notices: In a **Federal Register** Notice dated October 5, 2006 (71 FR 193), the NRC staff requested comment on the use of the CLIIP to process requests to adopt the TSTF–491 changes. In addition, there have been multiple notices published for plant-specific amendment requests to adopt changes similar to those described in this notice.

The NRC staff's model SE and model application may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the Agencywide

Documents Access and Management System (ADAMS) Public Library component on the NRC Web site, (the Electronic Reading Room).

The NRC staff received no responses following the notice published October 5, 2006 (71 FR 193), soliciting comments on the model SE and NSHC determination related to the TSTF–491 changes. The NRC staff finds that the previously published models remain appropriate references and has chosen not to republish the model SE and model NSHC determination in this notice. As described in the model application prepared by the NRC staff, licensees may reference in their plant-specific applications to adopt the TSTF–491 changes, the model SE, NSHC determination, and environmental assessment previously published in the **Federal Register** (71 FR 193; October 5, 2006).

Dated at Rockville, Maryland, this 20th day of December 2006.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

FOR INCLUSION ON THE TECHNICAL SPECIFICATION WEB PAGE, THE FOLLOWING EXAMPLE OF AN APPLICATION WAS PREPARED BY THE NRC STAFF TO FACILITATE USE OF THE CONSOLIDATED LINE ITEM IMPROVEMENT PROCESS (CLIIP). THE MODEL PROVIDES THE EXPECTED LEVEL OF DETAIL AND CONTENT FOR AN APPLICATION TO ADOPT TSTF–491, REVISION 2, REMOVAL OF THE MAIN STEAM AND MAIN FEEDWATER VALVE ISOLATION TIME FROM TECHNICAL SPECIFICATIONS USING CLIIP. LICENSEES REMAIN RESPONSIBLE FOR ENSURING THAT THEIR ACTUAL APPLICATION FULFILLS THEIR ADMINISTRATIVE REQUIREMENTS AS WELL AS NUCLEAR REGULATORY COMMISSION REGULATIONS.

U. S. Nuclear Regulatory Commission
Document Control Desk Washington, DC 20555

SUBJECT: PLANT NAME
DOCKET NO. 50–

APPLICATION FOR TECHNICAL SPECIFICATION CHANGE TSTF–491, REMOVAL OF THE MAIN STEAM AND MAIN FEEDWATER VALVE ISOLATION TIME FROM TECHNICAL SPECIFICATIONS USING CONSOLIDATED LINE ITEM IMPROVEMENT PROCESS

Gentlemen:

In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify the TS by removing the specific isolation time for the isolation valves from the associated STS Surveillance Requirements (SRs).

Enclosure 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Enclosure 2 provides the existing TS pages marked up to show the proposed change. Enclosure 3 provides revised (clean) TS pages. Enclosure 4 provides the existing TS Bases pages marked up to show the proposed change (*for information only*).

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,
[Name, Title]

Enclosures:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. Marked up Existing TS Bases Changes

cc: NRC Project Manager
NRC Regional Office
NRC Resident Inspector
State Contact

Enclosure 1

Description and Assessment

1.0 DESCRIPTION

The proposed amendment would modify technical specifications by removing the specific isolation time for the isolation valves from the associated STS Surveillance Requirements (SRs).[1]

[1] [In conjunction with the proposed change, technical specifications (TS) requirements for a Bases Control Program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS.]

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) TSTF–491 Revision 2. The availability of this TS improvement was published in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 ASSESSMENT

2.1 Applicability of TSTF–491, and Published Safety Evaluation

[LICENSEE] has reviewed TSTF–491 (Reference 1), and the NRC model safety evaluation (SE) (Reference 2) as part of the CLIIP. [LICENSEE] has concluded that the information in TSTF–491, as well as the SE prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] TS. [NOTE: Only those changes proposed in TSTF–491 are addressed in the model SE. The model SE addresses the entire fleet of Combustion Engineering, Babcock & Wilcox, and Westinghouse Pressurized Water Reactors. The plants adopting TSTF–491 must confirm the applicability of the changes to their plant.]

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in TSTF–491 or the NRC staff's model safety evaluation dated [DATE]. [NOTE: The CLIIP does not prevent licensees from requesting an alternate approach or proposing changes without the requested Bases or Bases control program. However, deviations from the approach recommended in this notice may require additional review by the NRC staff and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–491.]

3.0 REGULATORY ANALYSIS

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, plant-specific verifications were performed as follows:

In addition, [LICENSEE] has proposed TS Bases consistent with TSTF–491 which provide guidance and details on how to implement the new requirements. Finally, [LICENSEE] has a Bases Control Program consistent with Section 5.5 of the Standard Technical Specifications (STS).

4.0 ENVIRONMENTAL EVALUATION

The amendment changes requirements with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. The NRC staff has determined that the amendment adopting TSTF–491, Rev 2, involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that TSTF–491, Rev 2, involves no significant hazards considerations, and there has been no public comment on the finding in **Federal Register** Notice 71 FR 193, October 5, 2006. Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

5.0 REFERENCES

1. TSTF–491, Revision 2, "Removal of Main Steam and Main Feedwater Valve Isolation Times from Technical Specifications."

2. NRC Model Safety Evaluation Report

Enclosure 2

PROPOSED TECHNICAL SPECIFICATION CHANGES (MARK-UP)

Enclosure 3

PROPOSED TECHNICAL SPECIFICATION PAGES

[Clean copies of Licensee specific Technical Specification (TS) pages, corresponding to the TS pages changed by MaTSTF–491, Rev 0, are to be included in Enclosure 3]

Enclosure 4

PROPOSED CHANGES TO TECHNICAL SPECIFICATION BASES PAGES

[FR Doc. E6–22391 Filed 12–28–06; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54995; File No. SR–Amex–2006–77]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Rules 918 and 918—Ante Regarding Trading Rotations, Halts and Suspensions

December 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On December 5, 2006, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rules 918 and 918—ANTE regarding trading rotations, halts and suspensions. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex'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, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex 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 proposes to eliminate reference to "primary market" set forth in Amex Rules 918(a) and 918—ANTE(a) and to amend the reference to "primary market" in Amex Rules 918(b) and 918—ANTE(b).

The Exchange proposes to amend Amex Rules 918(a) and 918—ANTE(a) to delete the requirement that the opening of the trading rotation is dependent on the opening of the underlying security in the primary market. Currently, Amex Rules 918 and 918—ANTE(a) provide that a trading rotation shall be employed at the opening of each business day following the opening of the underlying security in the primary market. "Primary market" is defined in Amex Rules 900(b)(26) and 900—ANTE(b)(26) as (i) the principal exchange market in which the underlying security is traded so long as the underlying is principally traded on a national securities exchange, and (ii) the market reflected by the National Association of Securities Dealers Automated Quotation System (the "NASDAQ") if it is equity securities principally traded over-the-counter, or the market reflected by any widely recognized quotation dissemination system if it is any other type of security.

As a result of the trading of underlying securities on multiple trading venues or markets (largely due to the introduction of Electronic Communication Networks or "ECNs"), it has become increasingly difficult to determine, for purposes of Amex Rules 918(a) and 918—ANTE(a), which marketplace is the "primary market." As an example, the Options Clearing Corporation ("OCC") in connection with its methodology for obtaining underlying security prices at expiration changed to composite pricing.[4] As a result of the number of securities exchanges and ECNs trading a particular underlying security, the Exchange submits that the analysis for determining the primary market has become overly burdensome and uncertain, subjecting Exchange staff to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex made clarifying changes to the purpose section and made technical changes to the proposed rule text.

[4] A "composite" security price is defined as the last reported sale price from any primary listing market (*i.e.*, Amex, NYSE and Nasdaq), participating regional exchanges or other markets. *See* OCC Memo to Members #18930 (May 29, 2003) and Securities Exchange Act Release No. 49045 (January 8, 2004), 69 FR 2377 (January 15, 2004).

instances of "second guessing" due to the varying degrees of interpretation. Accordingly, for market certainty, the Exchange submits that trading in an option should start once the underlying security has opened for trading regardless of the particular market.

Amex Rules 918(b) and 918—ANTE(b) provide that trading on any Exchange option contract may be halted or suspended whenever the Exchange deems such action appropriate. Included in these rules is a list of factors that the Exchange may use to determine if a trading halt or suspension is warranted. Pursuant to Amex Rules 918(b)(1) and 918—ANTE(b)(1), the Exchange may consider to halt or suspend trading in an option contract if the underlying security has been halted or suspended in the primary market. Similarly, the Exchange may also consider, pursuant to Amex Rules 918(b)(2) and 918—ANTE(b)(2), halting or suspending trading in an option contract if the opening of such underlying stock in the primary market has been delayed due to unusual circumstances.

As set forth above, the Exchange submits that the use of the term "primary market" is ambiguous and subject to varying degrees of interpretation. However, unlike openings, trading halts and suspensions should not directly correspond to a halt or suspension in the underlying in any market because such standard is too low for halting or suspending trading in an option. Accordingly, the Exchange proposes to implement trading halts and suspensions in any options contract if, with respect to Amex Rules 918(b)(1) and 918—ANTE(b)(1), the underlying security is subject to a trading halt or suspension across several markets or in the primary listed market. Similarly, a trading halt or suspension may also be implemented, with respect to Amex Rules 918(b)(2) and 918—ANTE(b)(2), if the opening of such underlying stock across several markets or in the primary listed market has been delayed due to unusual circumstances.

The Exchange proposes to eliminate reference to "primary market" set forth in Amex Rule 918(a) and Rule 918—ANTE(a) and to amend the reference to "primary market" in Amex Rule 918(b) and Rule 918—ANTE(b). In addition, the Exchange also proposes to make clarifying changes to these rules so that trading rotations, halts and suspensions apply to any options on a stock, exchange traded fund and trust issued receipt. In Amendment No. 1, the Exchange noted that adding references to "exchange traded fund and trust issued receipt" to the proposed rule text is intended to codify an existing practice on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] 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, and 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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Amex consents, the Commission will:

(A) By order approve such 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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex 2006–77 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–Amex 2006–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex 2006–77 and should be submitted on or before January 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22398 Filed 12–28–06; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54983; File No. SR–Amex–2006–87]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Criteria for Securities That Underline Options Traded on the Exchange

December 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on November 22, 2006.[3] The Exchange filed Amendment No. 2 to the proposed rule change on December 14, 2006.[4] This order provides notice of the proposed rule change as modified by Amendment Nos. 1 and 2 and approved the proposed rule change 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 amend Amex Rules 3, 915, 916, and 957 to enable the listing and trading on the Exchange of options on Exchange-Traded Fund Shares that hold a specified non-U.S. currency or currencies. The text of the proposed rule change is available at the Amex, the Commission's Public Reference Room, and on the Amex's Web site at *http://www.amex.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the proposed rule change as originally filed in its entirety.

[4] In Amendment No. 2, which supplemented the filing as amended by Amendment No. 1, the Exchange corrected typographical errors and made non-substantive, technical changes to the proposed rule text contained in Exhibits 4 and 5 of Amendment No. 1 to the proposed rule change, and also made a minor clarifying change to Section I of the 19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Amex Rules 3, 915, 916, and 957 to enable the listing and trading on the Exchange of options on Exchange-Traded Fund Shares that hold a specified non-U.S. currency or currencies. Amex Rule 915, Commentary .06, currently provides that securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares" or "ETFs") that are principally traded on a national securities exchange or through the facilities of a registered national securities association, and are defined as an NMS Stock. Commentary .06 further states that these shares or securities must also represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities. The Exchange proposes to amend Commentary .06 to Rule 915 to expand the type of options to include options on ETFs that represent an interest in a trust or other similar entity that holds specified non-U.S. currency or currencies deposited with the trust or similar entity. The Exchange is also proposing to require that for Funds that hold a specified non-U.S. currency or currencies deposited with the trust, the Exchange will have entered into a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency or currencies, which are utilized by the national securities exchange where the underlying Funds are listed and traded.[5]

The proposed amendment to Amex Rule 915 would permit the Exchange to list options on, for example, the Euro Currency Trust ("Trust").[6] The Trust issues Euro Shares ("Shares") that represent units of fractional undivided beneficial interest in, and ownership of, the Trust. PADCO Advisors II, Inc., d/b/a Rydex Investments, is the sponsor of the Trust ("Sponsor")[7] and may be deemed the "issuer" of the Shares pursuant to Section 2(a)(4) of the Securities Act of 1933, as amended. The Bank of New York is the trustee of the Trust ("Trustee"), JPMorgan Chase Bank, N.A., London Branch, is the depository for the Trust, and Rydex Distributors, Inc. is the distributor for the Trust. The Trust intends to issue additional Shares on a continuous basis through the Trustee.

As stated in the Trust's registration statement, the investment objective of the Trust is for the Shares to reflect the price of the euro.[8] The Shares may be purchased from the Trust only in one or more blocks of 50,000 Shares, as described in the prospectus under "Creation and Redemption of Shares." A block of 50,000 shares is called a Basket. The Trust issues Shares in Baskets on a continuous basis to certain authorized participants ("Authorized Participants"). Each Basket, when created, is offered and sold to an Authorized Participant at a price in euro equal to the net asset value ("NAV") for 50,000 Shares on the day that the order to create the Basket is accepted by the Trustee. On December 12, 2005, the Shares were sold to the public by Authorized Participants at varying prices in dollars by reference to, among other things, the market price of euro and the trading price of the Shares on the New York Stock Exchange LLC ("NYSE") at the time of each sale. The Shares trade on the NYSE under the symbol "FXE." The Shares may also trade in other markets.

The Exchange believes that permitting options on foreign currency-based Exchange-Traded Fund Shares to trade on the Exchange is consistent with the

[5] *See* proposed Amex Rule 915, Commentary .06(b)(iv).

[6] *See* Securities Exchange Act Release No. 53059 (January 5, 2006), 71 FR 2072 (January 12, 2006) (SR–Amex–2005–128).

[7] The Sponsor maintains a public Web site on behalf of the Trust, *http://www.currencyshares.com*, which contains information about the Trust and the Shares.

[8] *See* Registration No. 333–125581. The Exchange notes that the Trust is not a registered investment company under the Investment Company Act of 1940 (the "1940 Act") and is not required to register under the 1940 Act.

Commission's approval order of a rule change filed by the NYSE to list and trade shares of the Trust.[9] This proposed rule change to the Exchange's listing criteria for Exchange-Traded Fund Shares is intended to provide appropriate listing standards for options on shares of these and similar types of foreign currency-based Exchange-Traded Fund Shares that may be listed in the future.

For options trading, Exchange-Traded Fund Shares will continue to need to satisfy the listing standards in Commentary .06 to Amex Rule 915. Specifically, the Exchange-Traded Fund Shares must be traded on a national securities exchange or through the facilities of a registered national securities association and must be an "NMS Stock" as defined under Rule 600 of Regulation NMS.[10] The Exchange-Traded Fund Shares must also either: (1) Meet the criteria and guidelines under Amex Rule 915 (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day in cash or in-kind from the investment company, issuing trust, or other entity at a price related to the net asset value, and the investment company, issuing trust, or other entity shall provide that Exchange-Traded Fund Shares may be created even though some or all of the securities required to be deposited have not been received by the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option as described in the fund or unit trust prospectus.

Under the applicable continued listing criteria in Commentary .07 to Amex Rule 916, the Exchange-Traded Fund Shares may be subject to delisting as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (2) the value of the euro is no longer calculated or available;[11] or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Exchange-Traded Fund Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Exchange-Traded Fund Shares, if trading in the shares is halted or suspended on their primary market, or if the Exchange-Traded Fund Shares are delisted in accordance with the terms of Amex Rule 916.

The Exchange represents that the expansion of the types of investments that may be held by an Exchange-Traded Fund Share under Amex rules will not have any effect on the rules pertaining to position and exercise limits[12] or margin.[13]

The Exchange is proposing to amend Amex Rule 957 to ensure that Specialists and Registered Traders handling Exchange-Traded Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, the revision to Amex Rule 957 will prohibit a specialist or registered trader from engaging in trading in non-U.S. currency, non-U.S. currency options, futures, options on futures or non-U.S. currency and other derivatives based on such currency from trading in an account which has not been reported to the Exchange.

Finally, the Exchange is proposing to amend Amex Rule 3 to require members and member organizations to establish, maintain, and enforce written policies and procedures to prevent the misuse of material nonpublic information in connection with trading in securities issued by, among others, currency trust shares or similar entities, or in any related securities or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency while in possession of material nonpublic information concerning that currency trust share or similar entity. The Exchange further proposes to require such procedures to prevent the trading of any of the foregoing securities while in possession of knowledge concerning imminent transactions of the same securities. Finally, the Exchange proposes to require procedures to prevent the disclosure of material nonpublic information involving the foregoing to another person.

The Exchange represents that it has an adequate surveillance program in place for options on Exchange-Traded Fund Shares based on the value of a non-U.S. currency or currencies. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG. Specifically, the Amex can obtain such information from the Philadelphia Stock Exchange ("Phlx") in connection with euro options trading on the Phlx and from the Chicago Mercantile Exchange ("CME") and the London International Financial Futures Exchange ("LIFFE") in connection with euro futures trading on those exchanges.[14]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[15] of the Act, in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change by the Exchange.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[9] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65).

[10] In light of the implementation of certain aspects of Regulation NMS, the Exchange hereby seeks to amend Commentary .06 to Amex Rule 915 to reflect that Exchange-Traded Fund Shares must be NMS Stocks as defined under Rule 600 of Regulation NMS instead of "national market" securities.

[11] The Exchange states that euro pricing information based on the euro spot price is available to investors on a 24-hour basis from numerous financial information service providers, and there are a variety of other public Web sites proving information on foreign currency and euro, including Bloomberg, CBS MarketWatch, and Yahoo! Finance.

[12] *See* Amex Rules 904 and 905.

[13] *See* Amex Rule 462.

[14] The Amex and PHLX are members of the ISG. CME and LIFFE are affiliate members of the ISG.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

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*. Please include File Number SR–Amex–2006–87 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–Amex–2006–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2006–87 and should be submitted on or before January 19, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Amex has asked the Commission to approve its proposal on an accelerated basis to accommodate its timetable for listing options on Exchange-Traded Fund Shares, as described above. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[18] Further, the Commission finds that the Exchange's proposal is substantially similar to one it recently approved for the International Securities Exchange LLC ("ISE").[19]

Currently, Amex's rules permit it to list options on Exchange-Traded Fund Shares that represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities.[20] The Exchange's proposal would allow it to list and trade options on Exchange-Traded Fund Shares whose investment assets consist of a specified non-U.S. currency or currencies deposited with a trust or similar entity. For example, the proposed rule change would allow the Exchange to list options on the Euro Currency Trust.

The underlying Exchange-Traded Fund Shares would continue to need to satisfy the listing standards in Amex Rule 915. To accommodate the listing and trading of options on Exchange-Traded Fund Shares investing primarily in non-U.S. currency, the Exchange proposes to amend Amex Rule 3 to require a member or member organization to establish, maintain, and enforce written policies and procedures designed to prevent the misuse of any material nonpublic information it might have or receive in a related security, option, or derivative security or in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, the Exchange proposes to amend Amex Rule 957 to require that Specialists and Registered Traders handling Exchange-Traded Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. Each Specialist and Registered Trader also would be obligated to conduct all trading in the Exchange-Traded Fund Shares in account(s) which have been reported to the Exchange. The Commission believes that these requirements are designed to minimize the potential for manipulating the underlying currency held by the Exchange-Traded Fund Shares.

As proposed, the Exchange-Traded Fund Shares must be traded on a national securities exchange or through the facilities of a registered national securities association and must be an "NMS stock" as defined under Rule 600 of Regulation NMS.[21] The Exchange-Traded Fund Shares must also either: (1) Meet the criteria and guidelines under Amex Rule 915, Commentary .01; or (2) be available for creation or redemption each business day from and through the investment company, issuing trust, or other entity in cash or in-kind at a price related to net asset value, and the investment company, issuing trust, or other entity shall provide that shares may be created even though some or all of the investments required to be deposited have not been received by the unit investment trust or the management investment company, provided that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option, as described in the fund or unit trust prospectus. Furthermore, the Commission notes that the Exchange has represented that the expansion of the types of investments that may be held by Exchange-Traded Fund Shares under Amex rules will not have any effect on the rules pertaining to position and exercise limits or margin.

Finally, under the proposed change to Amex Rule 916, Commentary .07, Exchange-Traded Fund Shares would not be deemed to meet the requirements for continued approval, and the Exchange would not open for trading any additional series of option contracts of the class covering such Exchange-Traded Fund Shares, if the Exchange-Traded Fund Shares are delisted in

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR-ISE–2005–60). The Amex stated that it based its proposed rule change on the ISE filing.

[20] *See* Amex Rule 915, Commentary .06.

[21] 17 CFR 242.600(b)(47).

accordance with Commentary .01(5) of Amex Rule 916 or trading in the shares are halted or suspended in their primary market. Additionally, as proposed, the Exchange will consider the suspension of opening transactions in any series of options covering Exchange-Traded Fund Shares if the value of the non-U.S. currency on which the Exchange-Traded Fund Shares are based is no longer calculated or available. The Commission believes that the proposed change to Amex Rule 916 with respect to withdrawal of approval is consistent with the protection of investors and the public interest.

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options on Exchange-Traded Fund Shares, including those funds that are based on the value of a non-U.S. currency. In addition, the Exchange has represented that it is able to obtain currency-related trading information via the ISG from other exchanges who are members or affiliates of the ISG, as discussed above, in connection with options and futures trading on those exchanges.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this proposed rule change is based on, and is substantially similar to, a proposal by the ISE that the Commission recently approved.[22] Accordingly, this proposal raises no new or novel regulatory issues that have not been previously considered by the Commission. In addition, the Commission notes that it did not receive any comments on the ISE's proposal. The Commission believes that expanding Amex Rule 915 to encompass options on Exchange-Traded Fund Shares that represent interests in a trust that holds non-U.S. currency deposited with the trust will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading these products promptly. Additionally, the proposal contains measures that are designed to minimize the potential for manipulation of the underlying currency held by the Exchange-Traded Fund Shares. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[23] to approve the amended proposal on an accelerated basis.

[22] *See* Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR–ISE–2005–60).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR-Amex-2006–87), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

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[23] 15 U.S.C. 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55000; File No. SR–BSE–2006–47]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Eliminate Fees on Certain Exchange Traded Funds and to Establish Fees on Certain Options on Indexes

December 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2006, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the BSE. On December 20, 2006, BSE filed Amendment No. 1 to the proposed rule change.[3] The BSE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange, among other things: (1) Clarified that the proposed rule change establishes fees applicable only to members for transactions in options on indices effected by members; (2) made additional amendments to correct certain errors and omissions; and (3) corrected certain errors in the purpose section of the proposed rule change. Changes made in Amendment No. 1 have been incorporated into this notice.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE is proposing to amend the Fee Schedule of the Boston Options Exchange ("BOX") to remove the surcharge fee for certain Exchange Traded Funds ("ETFs") and to establish fees applicable only to members for transactions in options on indices effected by members. The BOX Fee Schedule is available at the Exchange, the Commission's Public Reference Room, and *http://www.bostonoptions.com.*

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 BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE 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

BSE is proposing to amend the BOX Fee Schedule to remove the surcharge fee for transactions in options on the ETF Nasdaq 100 ("QQQQs"), the Standard & Poor's ("S&P") Depository Receipts ("SPY"), the iShares Nasdaq Biotechnology Index Fund ("IBB"), iShares Russell 2000 Index Fund ("IWM"), iShares Russell 2000 Growth Index Fund ("IWO"), the S&P Energy Select Sector SPDR Fund ("XLE") and the S&P Financial Select Sector SPDR Fund ("XLF"). The Exchange is proposing to remove the surcharge from its Fee Schedule because it no longer pays a licensing fee on such ETFs.

The Exchange is also proposing to establish a fifteen (15) cent surcharge fee for transactions in options on the Russell 2000® Index ("RUT"),[6] the full

[6] Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's Publication of the Russell Indexes nor its licensing of its trademarks

Continued

value Nasdaq-100® Index ("NDX"),[7] and the reduced value Nasdaq-100® Index (Mini-NDX® Index ("MNX")) [8] effected by members for broker-dealer proprietary accounts.[9] The Exchange represents that these fees will only be charged to BOX members and shall apply to Linkage Orders [10] under a pilot program that is set to expire on July 31, 2007. The Exchange believes that the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced. BOX began trading options on RUT, NDX, and MNX on November 13, 2006 but did not begin charging fees for transactions in the above-referenced products until November 14, 2006, the date SR–BSE–2006–47 was filed with the Commission.

The Exchange has entered into licensing agreements to use various indexes and trademarks in connection with the listing and trading of index options on the Russell® 2000 Index, Nasdaq-100® Index and the Mini-NDX® Index. As with certain other licensed options, the Exchange is adopting a surcharge fee for trading in these options to defray the licensing costs. The Exchange believes that charging BOX Options Participants [11] that trade these instruments is the most equitable means of recovering the licensing costs.

2. Statutory Basis

The Exchanges believes that the proposal is consistent with the requirement of Section 6(b) of the Act,[12] in general, and Section 6(b)(4) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does not 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 not solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge applicable only to a member, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b–4(f)(2) [15] thereunder. At any time within 60 days of the filing of such amended 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.[16]

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*. Please include File No. SR–BSE–2006–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2006–47. 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

for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties or merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein. Options on RUT are currently listed for trading on the American Stock Exchange ("AMEX"), BOX, the Chicago Board Options Exchange, Inc. ("CBOE"), and the International Securities Exchange, LLC ("ISE"). *See* Securities Exchange Act Release No. 53968 (June 9, 2006), 71 FR 34971 (June 16, 2006) (approving Amex listing); Securities Exchange Act Release No. 54397 (August 31, 2006), 71 FR 53142 (September 8, 2006) (approving BOX listing); Securities Exchange Act Release No. 51749 (May 26, 2005), 70 FR 34510 (June 14, 2005) (approving CBOE listing); Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (approving ISE listing).

[7] Nasdaq®, Nasdaq-100® and Nasdaq-100 Index® are registered trademarks of The Nasdaq Stock Market, Inc. (which with its affiliates are the "Corporations") and are licensed for use by the Boston Options Exchange Group in connection with the trading of options products based on the Nasdaq-100 Index®. The product(s) have not been passed on by the Corporations as to their legality or suitability. The product(s) are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the product(s). The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq-100 Index® or any data included therein. The Corporations make no warranty, express or implied, as to results to be obtained by licensee, owners of the product(s), or any other person or entity from the use of the Nasdaq-100 Index® or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantability or fitness for a particular purpose or use with respect to the Nasdaq-100 Index® or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect or consequential damages, even if notified of the possibility of such damages.

[8] Options on NDX and MNX are currently listed for trading on Amex, BOX, CBOE, and ISE. *See* Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (imposing licensing fees for transactions in options on the NDX and MNX, among other things); Securities Exchange Act Release No. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (correcting Amex's failure to file a proposed rule change with respect to its listing of NDX and MNX); Securities Exchange Act Release No. 54397 (August 31, 2006), 71 FR 53142 (September 8, 2006) (approving BOX NDX and MNX listing); Securities Exchange Act Release No. 51351 (March 9, 2005), 70 FR 12917 (March 16, 2005) (approving CBOE NDX and MNX listing); Securities Exchange Release No. 51397 (March 18, 2005), 70 FR 15372 (March 25, 2005) (approving ISE NDX and MNX listing).

[9] The Exchange notes that the fees that are the subject of this proposed rule change do not apply to public customer orders.

[10] *See* BOX Rules Chapter XII, Section 1(defining Linkage Orders).

[11] *See* BOX Rules, Chapter 1, Section 1(a)(40) (defining Options Participants).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii)

[15] 17 CFR 19b–4(f)(2).

[16] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 20, 2006, the date on which the BSE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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–BSE–2006–47 and should be submitted on or before January 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22395 Filed 12–28–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54987; File No. SR–CBOE–2006–107]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding a Permit Program for CBSX

December 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its rules relating to the establishment of a permit program for the Exchange's proposed stock-trading facility CBSX. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.com.*

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX will be a facility of the Exchange and will serve as the Exchange's vehicle for trading non-option securities. The Exchange (via a separate rule filing) is proposing to modify Chapters 50–55 of the CBOE Rules in connection with the establishment of the CBSX. CBSX is a separate legal entity (a Delaware Limited Liability Company) that is owned by the Exchange and several strategic partners. The Exchange is also submitting a rule filing proposing to establish CBSX as a facility of the Exchange. The purpose of this filing is to modify the Exchange's Constitution and Rules to establish a CBSX Permit Program that will allow non-CBOE seat holders access to CBSX. The Exchange believes that expanding access to CBSX beyond CBOE's options user base will enhance liquidity on CBSX and make it a more attractive stock trading venue. The salient features of the Permit Program are summarized below.

- The permits may only be used for trading stock on CBSX. A Permit does not entitle the holder to trade options on CBOE or to physically enter an option trading post on the trading floor.
- Up to 100 permits may be issued.
- The Permit Program could be terminated by the Exchange via a rule filing approved by the Commission. This provision is incorporated in the Constitution so that the Permit Program could be terminated with a rule change filing but without a corresponding membership vote (*i.e.*, in approving this Constitutional change, the membership is approving the notion that a future termination of the Permit Program could occur without another membership vote).
- Permit holders would be deemed statutory members of CBOE. Accordingly, they would have the same petition and voting rights as regular members except for matters relating to Exchange ownership (specifically, matters relating to demutualization, mergers, consolidations, dissolution, liquidation, transfer, or conversion of assets of the Exchange), and except matters relating the Chicago Board of Trade exercise right.
- Permit holders would have no interest in the assets or property of CBOE and would have no right to share in any distribution by the Exchange.
- Permit holders (or an executive officer of a Permit holder) would be eligible to run for an at-large director position and a Nominating Committee position.
- Permit holders would have to be registered broker-dealers.
- Permits would not be transferable.
- All Permits would expire every October and would be eligible for renewal.

In connection with the Permit application process, if there are fewer available CBSX Permits than qualified applicants, the Exchange will determine which of the applicants to approve by lot. Applicants that are affiliated shall be deemed one applicant in cases where there are fewer available CBSX Permits than qualified applicants.

A CBSX Permit holder and its associated persons shall comply with and be subject to CBOE Rules to the same extent that Exchange members and their associated persons are obligated to comply with and are subject to Exchange Rules. Further, a CBSX Permit holder and its associated persons shall be subject to the disciplinary, appeals, and arbitration jurisdiction and rules of the Exchange and entitled to the procedural rights under those rules to the same extent that Exchange members and their associated persons are subject to such jurisdiction and rules and entitled to such procedural rights.

The rule filing also eliminates outdated references in the Constitution to the New York Stock Exchange Options Permit Program which no longer exists.

Lastly, the Exchange notes that on December 14, 2006, the Exchange held a special meeting of the membership for purposes of voting on the Permit Program. The membership voted in favor of adopting the Permit Program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[3] in general, and with Section

[3] 15 U.S.C. 78f(b).

6(b)(5) of the Act,[4] 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 because it will expand the user base for CBSX and enhance liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or receive any written comments on the proposed rule change.

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 such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–107 and should be submitted on or before January 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22392 Filed 12–28–06; 8:45 am]

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[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54992; File No. SR–NYSE–2006–75]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Four iShares® GS® Commodity Indexed Trusts

December 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 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, II, and III below, which items have been substantially prepared by the NYSE. On November 22, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade under NYSE Rules 1300B, *et seq.* ("Commodity Trust Shares") four iShares® GS Commodity Indexed Trusts, or the Trusts, which will issue units of beneficial interest representing fractional undivided beneficial interests in the net assets of the Trusts.

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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade under Rules 1300B *et seq.* ("Commodity Trust Shares") shares of the following ("Shares"): iShares GS Commodity Light Energy Indexed Trust; iShares GS Commodity Industrial Metals Indexed Trust; iShares GS Commodity Livestock Indexed Trust; and iShares GS Commodity Non Energy Indexed Trust (the "Trusts"). The objective of each Trust is for the performance of the Shares to correspond generally to the performance of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

following indexes, respectively, before payment of the Trust's and the Investing Pool's expenses and liabilities: Goldman Sachs Industrial Metals Total Return Index; Goldman Sachs Light Energy Total Return Index; Goldman Sachs Livestock Total Return Index, and Goldman Sachs Non Energy Total Return Index (the "Total Return Indexes").[4]

Each of the Total Return Indexes is comprised of a group of commodities included in the Goldman Sachs Commodity Index ("GSCI®")[5], which is a production-weighted index of the prices of a diversified group of futures contracts on physical commodities. Each Total Return Index reflects the return of the corresponding Goldman Sachs Excess Return Index, described below, together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the corresponding index.

Each Goldman Sachs Excess Return Index is calculated based on the same commodities as those in the respective Total Return Index, and GS Index (defined below), and reflects the returns that are potentially available through a rolling uncollateralized investment in the contracts comprising the applicable GS Index, as described below. A Goldman Sachs Excess Return Index does not reflect the return on U.S. Treasury securities used to collateralize positions in futures contracts comprising that index.

Each Trust will attempt to track its respective Total Return Index by holding interests in an Investing Pool (described below), which, in turn, holds futures contracts (referred to as CERFs) on the corresponding Excess Return Index, together with cash or other short-term securities used to collateralize the futures positions.

The Trusts and Investing Pools. Each Trust is a Delaware statutory trust that will issue units of beneficial interest called Shares, representing fractional undivided beneficial interests in its net assets. Substantially all of the assets of each Trust consists of holdings of the limited liability company interests of a specified commodity pool ("Investing Pool Interests"), which are the only securities in which the Trust may invest. Specifically, the Trusts will hold interests in the following commodity pools, respectively:

iShares GS Commodity Industrial Metals Indexed Investing Pool LLC.

iShares GS Commodity Light Energy Indexed Investing Pool LLC.

iShares GS Commodity Livestock Indexed Investing Pool LLC.

iShares GS Commodity Non Energy Indexed Investing Pool LLC (collectively, "Investing Pools").

Each commodity pool holds long positions in futures contracts on the following indexes, respectively, (collectively, the "Excess Return Indexes") and will post margin in the form of cash or short-term securities to collateralize these futures positions: Goldman Sachs Industrial Metals Excess Return Index ("GS Industrial Metals-ER"); Goldman Sachs Light Energy Excess Return Index (GSLE–ER"); Goldman Sachs Livestock Excess Return Index ("GS-Livestock-ER"); and Goldman Sachs Non Energy Excess Return Index ("GSNE–ER"). These futures contracts, which are called CERFs, are to be listed on the Chicago Mercantile Exchange ("CME"), and will commence trading on the CME by the time trading in the Shares commences on the Exchange.

The Trusts and the Investing Pools are each commodity pools managed by a commodity pool operator registered as such with the Commodity Futures Trading Commission ("CFTC"). According to the Registration Statements, neither the Trusts nor the Investing Pools are investment companies registered under the Investment Company Act of 1940.

According to the Registration Statements, the Shares are intended to constitute a relatively cost-effective means of achieving investment exposure to the performance of the respective Total Return Indexes, which are intended to reflect the performance of a specified group of commodities. Although the Shares will not be the exact equivalent of an investment in the underlying futures contracts and Treasury securities represented by the Total Return Indexes, the Shares are intended to provide investors with an alternative way of participating in the commodities market.

The Sponsor and Trustee. The Sponsor of the Trusts is Barclays Global Investors International, Inc. The Sponsor's primary business function is to act as Sponsor and commodity pool operator of the Trusts and Manager of the Investing Pools, as discussed below.[6] The Advisor to the Investing Pools is Barclays Global Fund Advisors, a California corporation and an indirect subsidiary of Barclays Bank PLC.

Barclays Global Investors International, Inc. will also serve as the Manager of the Investing Pools, in which capacity it will serve as commodity pool operator of the Investing Pools and be responsible for their administration. The Manager will arrange for and pay the costs of organizing the Investing Pools. The Manager has delegated some of its responsibilities for administering the Investing Pools to the Administrator, Investors Bank & Trust Company which, in turn, has employed the Investing Pool Administrator and the Tax Administrator (Pricewaterhouse Coopers) to maintain various records on behalf of the Investing Pools.

The Trustee is Barclays Global Investors, N.A., a national banking association affiliated with the Sponsor. The Trustee is responsible for the day-to-day administration of the Trusts. Day-to-day administration includes (1) processing orders for the creation and redemption of Baskets (each Basket an aggregation of 50,000 Shares), (2) coordinating with the Manager of the Investing Pools the receipt and delivery of consideration transferred to, or by, the Trusts in connection with each issuance and redemption of Baskets, and (3) calculating the net asset value of the Trusts on each Business Day.[7] The Trustee has delegated these responsibilities to the Trust Administrator, Investors Bank & Trust Company, a banking corporation that is not affiliated with the Sponsor or the Trustee.[8]

The Investing Pools. The Investing Pools will hold long positions in CERFs, which are cash-settled futures contracts listed on the CME that have a term of approximately five years after listing and whose settlement at expiration is based on the value of the respective Excess Return Indexes at that time. The Investing Pools will also earn interest on the assets used to collateralize its holdings of CERFs.

[4] The Sponsor, on behalf of the Trusts, filed Form S–1 for each Trust (the "Registration Statements") on August 31, 2006. *See* Registration Nos. 333–135823 through 333–135826.

[5] The Commission has previously approved listing on the Exchange of the iShares GSCI Commodity Indexed Trust. *See* Securities Exchange Act Release No. 54013, June 16, 2006, 71 FR 36372, June 26, 2006 (SR–NYSE–2006–17).

[6] Barclays Global Investors International, Inc. is a commodity pool operator registered with the CFTC.

[7] The Trusts' Registration Statements define "Business Day" as any day (1) on which none of the following occurs: (a) the NYSE is closed for regular trading, (b) the CME is closed for regular trading or (c) the Federal Reserve transfer system is closed for cash wire transfers, or (2) the Trustee determines that it is able to conduct business.

[8] Except as otherwise specifically noted, the information provided in this Rule 19b-4 filing relating to the Trusts and the Shares, commodities markets, and related information is based entirely on information included in the Registration Statements.

Trading on the CME Globex electronic trading platform of CERFs based on the GSCI–ER Index commenced effective March 12, 2006 for trade date March 13, 2006. Trading in CERFs based on the Excess Return Indexes is expected to begin shortly before the initial sale of the Shares to the public.

The GS Total Return Indexes.

The Goldman Sachs Light Energy Total Return Index is intended to reflect the performance of the same group of commodities included in the GSCI but with a reduced weighting for energy commodities. The GSLE–ER is designed to reflect the positive or negative return over time resulting from an uncollateralized long position in the futures contracts in the Goldman Sachs Light Energy Index ("GSLE"). The GSLE, in turn, is comprised of the same group of futures contracts on physical commodities included in the GSCI. The GSCI is a production-weighted index of the prices of a diversified group of futures contracts with each commodity having a weighting determined by reference to world production statistics. The GSLE, however, has a reduced weighting for energy commodities as compared to the GSCI. Specifically, only one quarter of the GSCI contract production weights for the energy components (currently including crude oil, unleaded gasoline, heating oil, gas oil and natural gas) of the GSCI are used in calculating the GSLE and as a result, relative weights of non-energy components (currently industrial metals, precious metals, agriculture and livestock components) of the GSCI are proportionately increased.

The Goldman Sachs Industrial Metals Total Return Index is intended to reflect the performance of a group of commodities comprising the industrial metals component of the GSCI (currently including copper, aluminum, zinc, nickel and lead). The GS Industrial Metals-ER is designed to reflect the positive or negative return over time resulting from an uncollateralized long position in the futures contracts in the GS Industrial Metals. The GS Industrial Metals, in turn, is comprised of futures contracts on physical commodities comprising the industrial metals component (currently including copper, aluminum, zinc, nickel and lead) of the GSCI, with each commodity having a weighting determined by reference to world production statistics.

The Goldman Sachs Livestock Total Return Index, is intended to reflect the performance of a group of commodities comprising the livestock component of the GSCI (currently including live cattle, live hogs and feeder cattle). The GS Livestock-ER is designed to reflect the positive or negative return over time resulting from an uncollateralized long position in the futures contracts in the GS Livestock. The GS Livestock, in turn, is comprised of futures contracts on physical commodities comprising the livestock component (currently including live cattle, live hogs and feeder cattle) of the GSCI, with each commodity having a weighting determined by reference to world production statistics.

The Goldman Sachs Non Energy Total Return Index is intended to reflect the performance of a group of commodities comprising the non-energy components of the GSCI. The GSNE–ER is designed to reflect the positive or negative return over time resulting from an uncollateralized long position in the futures contracts in the GSNE. The GSNE, in turn, is comprised of futures contracts on physical commodities comprising the non-energy components of the GSCI (currently including 18 physical commodities in the industrial metals, precious metals, agriculture and livestock sectors), with each commodity having a weighting determined by reference to world production statistics.

The GSCI is administered, calculated and published by Goldman, Sachs & Co. (the "Index Sponsor"), a subsidiary of The Goldman Sachs Group Inc. The Excess Return Indexes reflect the return of an uncollateralized investment in the contracts comprising the GSLE, GS Industrial Metals, GS Livestock, and GSNE (collectively, the "GS Indexes"), and in addition incorporate the economic effect of "rolling" the contracts included in the GS Indexes as they near expiration. "Rolling" a futures contract means closing out a position in an expiring futures contract and establishing an equivalent position in the contract on the same commodity with the next expiration date. If Goldman, Sachs & Co. ("Goldman Sachs") ceases to maintain the Total Return Indexes, the Trusts, through the Investing Pools, may seek investment results that correspond generally to the performance of a fully-collateralized investment in a successor, or, in the opinion of the Manager, reasonably similar indexes to the Total Return Indexes.

Each Trust, through its respective Investing Pool, will be a passive investor in CERFs and the cash or Short-Term Securities [9] posted as margin to collateralize the Investing Pool's CERF positions. Neither such Trust nor the respective Investing Pool will engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the value of CERFs or securities posted as margin. Each Investing Pool, and some other types of market participants, will be required to deposit margin with a value equal to 100% of the value of each CERF position at the time it is established. Those market participants not subject to the 100% margin requirement are required to deposit margin generally with a value of 3% to 5% of the established position. Interest paid on the collateral deposited as margin, net of expenses, will be reinvested by the Investing Pool or, at the Trustee's discretion, may be distributed from time to time to the Shareholders. The Investing Pool's profit or loss on its CERF positions should correlate with increases and decreases in the value of the applicable Excess Return Index, although this correlation will not be exact. The interest on the collateral deposited by the Investing Pool as margin, together with the returns corresponding to the performance of the applicable Excess Return Index, is expected to result in a total return for the Investing Pool that corresponds generally, but is not identical, to the applicable Index. Differences between the returns of the Investing Pool and the applicable Index may be based on, among other factors, any differences between the return on the assets used by the Investing Pool to collateralize its CERF positions and the U.S. Treasury rate used to calculate the return component of the Index, timing differences, differences between the weighting of the Investing Pool's proportion of assets invested in CERFs versus the Index, and the payment of expenses and liabilities by the Investing Pool. Each Trust's net asset value will reflect the performance of the applicable Investing Pool, such Trust's sole investment.

The Investing Pools will be managed by the Advisor, which will invest all of the Investing Pools' assets in long positions in respective CERFs and post margin in the form of cash or Short-Term Securities to collateralize the CERF positions. Any cash that the Investing Pool accepts as consideration from the Trusts for Investing Pool Interests will be used to purchase additional CERFs, in an amount that the Advisor determines will enable the Investing Pools to achieve investment results that correspond with the applicable Index, and to collateralize the CERFs. According to the Registration Statements, the Advisor

[9] "Short-Term Securities" means U.S. Treasury Securities or other short-term securities and similar securities, in each case that are eligible as margin deposits under the rules of the CME.

will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in value of any of the commodities represented by the GS Indexes or the positions or other assets held by the Investing Pool.

Futures Contracts on the Excess Return Indexes.

The assets of the Investing Pools will consist of CERFs and cash or Short-Term Securities posted as margin to collateralize the Investing Pools' CERF positions. Futures contracts and options on futures contracts on the GSCI, which does not reflect the excess return embedded in the GSCI-ER, have been traded on the CME since 1992. CERFs are listed and traded separately from the GSCI futures contracts and options on futures contracts. CERFs on the Excess Return Indexes will trade on the CME by the time trading in Shares begins on the Exchange.

CERFs trading is subject to the rules of the CME. According to the Registration Statements, CERFs trade on GLOBEX, the CME's electronic trading system, and do not trade through open outcry on the floor of the CME.[10] Transactions in CERFs are cleared through the CME clearing house by the trader's futures commission merchant acting as its agent. Under these clearing arrangements, the CME clearing house becomes the buyer to each member futures commission merchant representing a seller of the contract and the seller to each member futures commission merchant representing a buyer of the contract. As a result of these clearing arrangements, each trader holding a position in CERFs is subject to the credit risk of the CME clearing house and the futures commission merchant carrying its position in CERFs.

Each CERF is a contract that provides for cash settlement, at expiration, based upon the final settlement value of the applicable Excess Return Index at the expiration of the contract, multiplied by a fixed dollar multiplier. On a daily basis, most market participants with positions in CERFs are obligated to pay, or entitled to receive, cash (known as "variation margin") in an amount equal to the change in the daily settlement level of the CERF from the preceding trading day's settlement level (or, initially, the contract price at which the position was entered into). Specifically, if the daily settlement price of the contract increases over the previous day's price, the seller of the contract must pay the difference to the buyer, and if the daily settlement price is less than the previous day's price, the buyer of the contract must pay the difference to the seller.

Futures contracts also typically require deposits of initial margin as well as payments of daily variation margin as the value of the contracts fluctuate. For most market participants, the initial margin requirement for CERFs is generally expected to be 3% to 5%. Certain market participants (known as "100% margin participants"), however, will be required to deposit with their futures commission merchant initial margin in an amount equal to 100% of the value of the CERF on the date the position is established. The futures commission merchant, in turn, will be required to deliver to the CME clearing house initial margin in a specified amount and pledge to the clearing house, pursuant to a separate custody arrangement, an amount equal to the remainder of the 100% margin amount posted by 100% margin participants, either from amounts posted by those 100% margin participants or from its own assets. The separate custody arrangement will be either an account with the FCM or a third party custody account.

As a result of these arrangements, a 100% margin participant buying a CERF will be subject to substantially greater initial margin requirements than other market participants, but will not be required to pay any additional amounts to its futures commission merchant as variation margin if the value of the CERFs declines. Instead, the futures commission merchant will be obligated to make variation margin payments to the clearinghouse in respect of CERFs held by 100% margin participants, which it will withdraw from the separate custody account (and, in turn, from the 100% margin posted by those participants).

If the daily settlement price increases, the futures commission merchant will receive variation margin from the clearinghouse for the account of the 100% margin participant, which it will hold in the separate custody account for the benefit of 100% margin participants. The buyer will not, however, be entitled to receive this variation margin from its futures commission merchant (until the liquidation or final settlement of its CERF position). The buyer will be entitled to receive interest or other income on the assets it has deposited as margin or that are credited to the custody account on its behalf from time to time.

Upon liquidation or settlement of a CERF, a 100% margin participant will receive from its futures commission merchant its initial margin deposit, adjusted for variation margin paid or received by the futures commission merchant with respect to the contract during the time it was held by the participant (or the proceeds from liquidation of any investments made with such funds for the benefit of the participant under the terms of its custody arrangement with the carrying futures commission merchant).

The 100% margin participants will include any market participant that is (1) an investment company registered under the Investment Company Act or (2) an investment fund, commodity pool, or other similar type of pooled trading vehicle (other than a pension plan or fund) that is offered to the public pursuant to an effective registration statement filed under the Securities Act of 1933, regardless of whether it is also registered under the Investment Company Act, and that has its principal place of business in the United States.

The Investing Pools will be a 100% margin participants. The Investing Pools will satisfy the 100% margin requirement by depositing with the Clearing FCM cash or Short-Term Securities with a value equal to 100% of the value of each long position in CERFs.

According to the Registration Statements, CERFs also differ from traditional futures contracts in another significant respect. In contrast to other types of futures contracts, which are typically listed with monthly, bimonthly or quarterly expirations, CERFs will be listed only with approximately five-year expirations. A buyer or seller of CERFs will be able to trade CERFs on the market maintained by the CME and will consequently be able to liquidate its position at any time, subject to the existence of a liquid market. If a party to a CERF wishes to hold its position to expiration, however, it will be necessary to maintain the position for up to five years. According to the Registration Statements, as a CERF nears expiration, it is anticipated, but there can be no assurance, that the CME will list an additional CERF with an approximately five-year expiration.

The GSCI and GS Indexes.

The GSCI itself is an index on a production-weighted basket of principal physical commodities that satisfy specified criteria. The GSCI reflects the level of commodity prices at a given time and is designed to be a measure of the performance over time of the markets for these commodities. The commodities represented in the GSCI are those physical commodities on

[10] Trading hours for CERFs on GLOBEX will be as follows: Sunday, 6 p.m. to 2:40 p.m. (next day) (New York Time); Monday to Thursday, 6 p.m. to 2:40 p.m. (next day) and 3 p.m. to 5 p.m. (New York Time).

which active and liquid contracts are traded on trading facilities in major industrialized countries. The commodities included in the GSCI are weighted, on a production basis, to reflect the relative significance (in the view of the Index Sponsor, in consultation with its Policy Committee described below) of those commodities to the world economy. The fluctuations in the level of the GSCI are intended generally to correlate with changes in the prices of those physical commodities in global markets.

The Index Sponsor makes the official calculations of the value of each GS Index. At present, this calculation is performed continuously and is reported on Reuters Pages GSCO (for GS Industrial Metals); GSCE (for GSLE); GSCL (for GS Livestock); and GSCN (for GSNE), and is updated on Reuters at least every fifteen seconds during NYSE trading hours for the Trust and during business hours on each Business Day on which the offices of Goldman, Sachs in New York City are open for business. The calculation for each applicable Index is also updated on Reuters at least every fifteen seconds. The settlement price for each Excess Return Index is also reported on Reuters Pages GSCO (for GS Industrial Metals); GSCE (for GSLE); GSCL (for GS Livestock); and GSCN (for GSNE), at the end of each GSCI Business Day, and on Bloomberg pages GSCINER<index> (for GS Industrial Metals); GSLEER<index> (for GSLE); GSLVER<index> (for GS Livestock); and GSNEER<index> (for GSNE). If Reuters ceases to publish the value of the GSCI or the settlement price of the GSCI–ER, Goldman, Sachs has undertaken to use commercially reasonable efforts to ensure that a comparable reporting service publishes the applicable GS Index so long as any Shares are outstanding.

The Policy Committee.

The Index Sponsor has established a Policy Committee to assist it with the operation of the GSCI. The principal purpose of the Policy Committee is to advise the Index Sponsor with respect to, among other things, the calculation of the GSCI, the effectiveness of the GSCI as a measure of commodity futures market performance and the need for changes in the composition or the methodology of the GSCI. The Policy Committee acts solely in an advisory and consultative capacity. All decisions with respect to the composition, calculation and operation of the GSCI are made by the Index Sponsor.[11]

The Policy Committee generally meets in October of each year. Prior to the meeting, the Index Sponsor determines the commodities to be included in the GSCI for the following calendar year and the weighting factors for each commodity. The Policy Committee's members receive the proposed composition of the GSCI in advance of the meeting and discuss the composition at the meeting. The Index Sponsor also consults the Policy Committee on any other significant matters with respect to the calculation and operation of the GSCI. The Policy Committee may, if necessary or practicable, meet at other times during the year as issues arise that warrant its consideration.

The Policy Committee currently consists of eight persons, three of whom are employees of the Index Sponsor or its affiliates and five of whom are not affiliated with the Index Sponsor.

Composition of the GSCI.

In order to be included in the GSCI, a contract must satisfy the following eligibility criteria:

(1) The contract must:

(a) Be in respect of a physical commodity and not a financial commodity;

(b) Have a specified expiration or term, or provide in some other manner for delivery or settlement at a specified time, or within a specified period, in the future; and

(c) Be available, at any given point in time, for trading at least five months prior to its expiration or such other date or time period specified for delivery or settlement.

(2) The commodity must be the subject of a contract that:

(a) Is denominated in U.S. dollars;

(b) Is traded on or through an exchange, facility or other platform, referred to as a "trading facility", that has its principal place of business or operations in a country that is a member of the Organization for Economic Cooperation and Development and:

(i) Makes price quotations generally available to its members or participants (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) in a manner and with a frequency that is sufficient to provide reasonably reliable indications of the level of the relevant market at any given point in time;

(ii) Makes reliable trading volume information available to the Index Sponsor with at least the frequency required by the Index Sponsor to make the monthly determinations;

(iii) Accepts bids and offers from multiple participants or price providers; and

(iv) Is accessible by a sufficiently broad range of participants.

(3) The price of the relevant contract that is used as a reference or benchmark by market participants, referred to as the "daily contract reference price", generally must have been available on a continuous basis for at least two years prior to the proposed date of inclusion in the GSCI. In appropriate circumstances, however, the Index Sponsor, in consultation with its Policy Committee, may determine that a shorter time period is sufficient or that historical daily contract reference prices for that contract may be derived from daily contract reference prices for a similar or related contract. The daily contract reference price may be (but is not required to be) the settlement price or other similar price published by the relevant trading facility for purposes of margining transactions or for other purposes.

(4) At and after the time a contract is included in the GSCI, the daily contract reference price for that contract must be published between 10:00 a.m. and 4:00 p.m., New York Time, on each Business Day relating to that contract by the trading facility on or through which it is traded and must generally be available to all members of, or participants in, that trading facility (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) on the same day from the trading facility or through a recognized third-party data vendor. Such publication must include, at all times, daily contract reference prices for at least one expiration or settlement date that is five months or more from the date the determination is made, as well as for all expiration or settlement dates during that five-month period.

(5) Volume data with respect to the contract must be available for at least the three months immediately preceding the date on which the determination is made.

(6) A contract that is not included in the GSCI at the time of determination and that is based on a commodity that

[11] The Index Sponsor, Goldman, Sachs & Co., is a broker dealer. Therefore, appropriate firewalls must exist around the personnel who have access to information concerning changes and adjustments to an index and the trading personnel of the broker-dealer. Prior to commencement of trading of the Shares on the Exchange, the Index Sponsor will represent to the Exchange that it (1) has implemented and maintained procedures reasonably designed to prevent the use and dissemination by personnel of the Index Sponsor, in violation of applicable laws, rules and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Total Return Indexes; and (2) periodically checks the application of such procedures as they relate to such personnel of the Index Sponsor directly responsible for such changes. In addition, the Policy Committee members are subject to written policies with respect to material, non-public information.

is not represented in the GSCI at that time must, in order to be added to the GSCI at that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least $15 billion. The total dollar value traded is the dollar value of the total quantity of the commodity underlying transactions in the relevant contract over the period for which the calculation is made, based on the average of the daily contract reference prices on the last day of each month during the period.

(7) A contract that is already included in the GSCI at the time of determination and that is the only contract on the relevant commodity included in the GSCI must, in order to continue to be included in the GSCI after that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least $5 billion and at least $10 billion during at least one of the three most recent annual periods used in making the determination.

(8) A contract that is not included in the GSCI at the time of determination and that is based on a commodity on which there are one or more contracts already included in the GSCI at that time must, in order to be added to the GSCI at that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least $30 billion.

(9) A contract that is already included in the GSCI at the time of determination and that is based on a commodity on which there are one or more contracts already included in the GSCI at that time must, in order to continue to be included in the GSCI after that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least $10 billion and at least $20 billion during at least one of the three most recent annual periods used in making the determination.

(10) A contract that is:

(a) Already included in the GSCI at the time of determination must, in order to continue to be included after that time, have a reference percentage dollar weight of at least 0.10%. The "reference percentage dollar weight" of a contract represents the current value of the quantity of the underlying commodity that is included in the Index at a given time. This figure is determined by multiplying the contract production weight of a contract, or "CPW", by the average of its daily contract reference prices on the last day of each month during the relevant period. These amounts are summed for all contracts included in the GSCI and each contract's percentage of the total is then determined. The CPW of a contract is its weight in the Index.

(b) Not included in the GSCI at the time of determination must, in order to be added to the GSCI at that time, have a reference percentage dollar weight of at least 0.75%.

(11) In the event that two or more contracts on the same commodity satisfy the eligibility criteria:

(a) Such contracts will be included in the GSCI in the order of their respective total quantity traded during the relevant period (determined as the total quantity of the commodity underlying transactions in the relevant contract), with the contract having the highest total quantity traded being included first, provided that no further contracts will be included if such inclusion would result in the portion of the GSCI attributable to that commodity exceeding a particular level.

(b) If additional contracts could be included with respect to several commodities at the same time, that procedure is first applied with respect to the commodity that has the smallest portion of the GSCI attributable to it at the time of determination. Subject to the other eligibility criteria described above, the contract with the highest total quantity traded on that commodity will be included. Before any additional contracts on the same commodity or on any other commodity are included, the portion of the GSCI attributable to all commodities is recalculated. The selection procedure described above is then repeated with respect to the contracts on the commodity that then has the smallest portion of the GSCI attributable to it.

Beginning in 2007, in order for a contract to be included in the GSCI, (1) the trading facility in which the contract is traded must allow market participants to execute spread transactions, through a single order entry, between the pairs of contract expirations included in the GSCI that at any given point in time will be involved in the rolls to be effected in the next three roll periods and (2) a contract that is not included in the GSCI at the time of determination must, in order to be added to the GSCI at that time, have a reference percentage dollar weight of at least 1.00%.

The contracts currently included in the GSCI are all futures contracts traded on the New York Mercantile Exchange, Inc. ("NYM"), the ICE Futures ("ICE"), the CME, the Chicago Board of Trade ("CBT"), the Coffee, Sugar & Cocoa Exchange, Inc. ("CSC"), the New York Cotton Exchange ("NYC"), the Kansas City Board of Trade ("KBT"), the COMEX Division of the New York Mercantile Exchange, Inc. ("CMX") and the London Metal Exchange ("LME").

The futures contracts currently included in the GS Industrial Metals, their percentage dollar weights, their market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight June 2006 (percent)	Market symbol	Trading facility
Copper	43.44	IC	LME.
Aluminum	33.10	IA	LME.
Zinc	11.39	IZ	LME.
Nickel	9.53	IN	LME.
Lead	2.54	IL	LME.

The GSLE represents the same contracts in the GSCI, as determined by the Index Sponsor. The futures contracts currently included in the GSLE, their percentage dollar weights, their market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight June 2006 (percent)	Market symbol	Trading facility
WTI Crude Oil	17.74	CL	NYM.

Commodity	Weight June 2006 (percent)	Market symbol	Trading facility
Brent Crude Oil	8.42	LCO	IPE.
Unleaded Gas	4.92	NG	NYM.
Heating Oil	4.63	HO	NYM.
Natural Gas	3.58	HU	NYM.
Gas Oil	2.58	LGO	IPE.
Copper	9.03	IC	LME.
Aluminum	6.88	IA	LME.
Wheat	5.20	W	CBT.
Live Cattle	4.90	LC	CME.
Corn	4.80	C	CBT.
Gold	4.16	GC	CMX.
Sugar	3.97	SB	CSC.
Live Hogs	3.36	LH	CME.
Soybeans	3.13	S	CBT.
Zinc	2.37	IZ	LME.
Kansas Wheat	2.30	KW	KBT.
Nickel	1.98	IN	LME.
Cotton	1.84	CT	NYC.
Feeder Cattle	1.44	FC	CME.
Coffee	1.30	KC	CSC.
Lead	0.53	IL	LME.
Silver	0.51	SI	CMX.
Cocoa	0.43	CC	CSC.

The Index Sponsor has announced that, in August 2006, a portion of the unleaded gasoline component of the GSCI was replaced with the reformulated gasoline blendstock for oxygen blending futures contract (market symbol "RB") traded on the NYM, due to the fact that the unleaded gasoline contract will no longer be listed after January 2007. The Index Sponsor has also announced that, in September 2006, no additional portions of the unleaded gasoline component of the GSCI will be rolled into the RB contract, and that the remainder of the unleaded gasoline component will be allocated across other contracts in the petroleum product complex of the GSCI. The Index Sponsor has not yet announced whether, or the extent to which, any further portions of the unleaded gasoline component of the GSCI will be rolled into the RB contract in tne future.

The GS Livestock represents the contracts in the GSCI that are in the livestock sector, as determined by the Index Sponsor. The futures contracts currently included in the GS Livestock, their percentage dollar weights, their market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight June 2006 (percent)	Market symbol	Trading facility
Live Cattle	50.53	LC	CME.
Live Hogs	34.58	LH	CME.
Feeder Cattle	14.88	FC	CME.

The GSNE represents the contracts in the GSCI® other than those in the energy sector, as determined by the Index Sponsor. The futures contracts currently included in the GSNE, their percentage dollar weights, their market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight June 2006	Market symbol	Trading facility
Copper	15.53	IC	LME.
Aluminum	11.84	IA	LME.
Wheat	8.94	W	CBT.
Live Cattle	8.44	LC	CME.
Corn	8.26	C	CBT.
Gold	7.16	GC	CMX.
Sugar	6.83	SB	CSC.
Live Hogs	5.77	LH	CME.
Soybeans	5.39	S	CBT.
Zinc	4.07	IZ	LME.
Kansas Wheat	3.95	KW	KBT.
Nickel	3.41	IN	LME.
Cotton	3.16	CT	NYC.
Feeder Cattle	2.49	FC	CME.
Coffee	2.24	KC	CSC.
Lead	0.91	IL	LME.

Commodity	Weight June 2006	Market symbol	Trading facility
Silver	0.88	SI	CMX.
Cocoa	0.73	CC	CSC.

The futures contracts currently included in the GSCI, their percentage dollar weights (as of January 20, 2006), their market symbols and the exchanges on which they are traded, trading hours (New York Time), Average Daily Trading Volume ("ADTV") for 2005, and units per contract are as follows:

PDW Commoditysymbol	1/20/06 (percent)	Market facility	Trading (contracts)	ADTV (per contract)	Units
Crude Oil	30.05	CL	NYM	237,535	1,000 bbls.
Brent Crude Oil	13.81	LCO	ICE	114,628	1,000 gal.
Natural Gas	10.30	NG	NYM	76,139	10,000 gal.
Heating Oil	8.16	HO	NYM	52,211	42,000 gal.
Gasoline	7.84	HU	NYM	52,406	42,000 gal.
Gas Oil	4.41	LGO	ICE	41,561	100 Mtons.
Live Cattle	2.88	LC	CME	23,173	40,000 lbs.
Wheat	2.47	W	CBT	38,838	5,000 bushels.
Aluminum	2.88	IA	LME	120,586	25 Mtons.
Corn	2.46	C	CBT	101,308	5,000 bushels.
Copper	2.37	IC	LME	76,116	25 Mtons.
Soybeans	1.77	S	CBT	73,957	5,000 bushels.
Lean Hogs	2.00	LH	CME	16,449	40,000 1bs.
Gold	1.73	GC	CMX	63,232	100 oz.
Sugar	1.30	SB	CSC	51,822	112,000 lbs.
Cotton	0.99	CT	NYC	15,335	50,000 lbs.
Red Wheat	0.90	KW	KBT	14,613	5,000 bushels.
Coffee	0.80	KC	CSC	15,888	37,500 lbs.
Standard Lead	0.29	IL	LME	16,128	25 Mtons.
Feeder Cattle	0.78	FC	CME	4,042	40,000 lbs.
Zinc	0.54	IZ	LME	42,070	25 Mtons.
Primary Nickel	0.82	IN	LME	13,812	6 Mtons.
Cocoa	0.23	CC	CSC	10,291	10 Mtons.
Silver	0.20	SI	CMX	22,017	5,000 oz.

The hours of trading (New York Time) of the commodities in the chart above are as follows:

Commodity	Trading facility	Trading hours (NY Time)
Crude Oil	NYM	10:00 am–2:30 pm.
Brent Crude Oil (next day)	ICE	8:00 pm–5:00 pm.
Natural Gas	NYM	10:00 am–2:30 pm.
Heating Oil	NYM	10:05 am–2:30 pm.
Gasoline	NYM	10:05 am–2:30 pm.
Gas Oil (next day)	ICE	8:00 pm–5:00 pm.
Live Cattle	CME	10:05 am–2:00 pm.
Wheat	CBT	10:30 am–2:15 pm.
Aluminum	LME	6:55 am–12:00 pm.
Corn	CBT	10:30 am–2:15 pm.
Copper	LME	7:00 am–12:00 pm.
Soybeans	CBT	10:30 am–2:15 pm.
Lean Hogs	CME	9:10 am–1:00 pm.
Gold	CMX	8:20 am–1:30 pm.
Sugar	CSC	9:00 am–12:00 pm.
Cotton	NYC	10:30 am–2:15 pm.
Red Wheat	KBT	10:30 am–2:15 pm.
Coffee	CSC	9:15 am–12:30 pm.
Standard Lead	LME	7:05 am–11:50 am.
Feeder Cattle	CME	10:05 am–2:00 pm.
Zinc	LME	7:10 am–11:55 am.
Primary Nickel	LME	7:10 am–11:55 am.
Cocoa	CSC	8:00 am–11:50 am.
Silver	CMX	8:25 am–1:25 pm.

The quantity of each of the contracts included in the GSCI is determined on the basis of a five-year average, referred to as the "world production average," of the production quantity of the underlying commodity as published by the United Nations Statistical Yearbook, the Industrial Commodity Statistics Yearbook and other official sources. However, if a commodity is primarily a regional commodity, based on its production, use, pricing, transportation or other factors, the Index Sponsor, in consultation with its Policy Committee, may calculate the weight of that commodity based on regional, rather than world, production data. At present, natural gas is the only commodity the weights of which are calculated on the basis of regional production data, with the relevant region defined as North America.

The five-year moving average is updated annually for each commodity included in the GSCI, based on the most recent five-year period (ending approximately two years prior to the date of calculation and moving backwards) for which complete data for all commodities is available. The CPWs used in calculating the GSCI are derived from world or regional production averages, as applicable, of the relevant commodities, and are calculated based on the total quantity traded for the relevant contract and the world or regional production average, as applicable, of the underlying commodity. However, if the volume of trading in the relevant contract, as a multiple of the production levels of the commodity, is below specified thresholds, the CPW of the contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each contract is sufficiently liquid relative to the production of the commodity.

In addition, the Index Sponsor performs this calculation on a monthly basis and, if the multiple of any contract is below the prescribed threshold, the composition of the GSCI is reevaluated, based on the criteria and weighting procedure described above. This procedure is undertaken to allow the GSCI to shift from contracts that have lost substantial liquidity into more liquid contracts during the course of a given year. As a result, it is possible that the composition or weighting of the GSCI will change on one or more of these monthly evaluation dates. The likely circumstances under which the Index Sponsor would be expected to change the composition of the Index during a given year, however, are (1) a substantial shift of liquidity away from a contract included in the Index as described above, or (2) an emergency, such as a natural disaster or act of war or terrorism, that causes trading in a particular contract to cease permanently or for an extended period of time. In either event, the Index Sponsor will consult with the Policy Committee in connection with the changes to be made and will publish the nature of the changes, through Web sites, news media or other outlets, with as much prior notice to market participants as is reasonably practicable. Moreover, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the GSCI, in consultation with its Policy Committee, at the conclusion of each year, based on the above criteria. Other commodities that satisfy that criteria, if any, will be added to the GSCI. Commodities included in the GSCI that no longer satisfy that criteria, if any, will be deleted.

The Index Sponsor, in consultation with its Policy Committee, also determines whether modifications in the selection criteria or the methodology for determining the composition and weights of and for calculating the GSCI are necessary or appropriate in order to assure that the GSCI represents a measure of commodity market performance. The Index Sponsor has the discretion to make any such modifications, in consultation with its Policy Committee.

Total Dollar Weight of the GS Indexes.

The total dollar weight of each GS Index is the sum of the dollar weight of each of the underlying commodities. The dollar weight of each such commodity on any given day is equal to:

- The daily contract reference price;
- Multiplied by the appropriate CPW; and
- During a roll period, the appropriate "roll weights"(discussed below).

The daily contract reference price used in calculating the dollar weight of each commodity on any given day is the most recent daily contract reference price made available by the relevant trading facility, except that the daily contract reference price for the most recent prior day will be used if the exchange is closed or otherwise fails to publish a daily contract reference price on that day. In addition, if the trading facility fails to make a daily contract reference price available or publishes a daily contract reference price that, in the reasonable judgment of the Index Sponsor, reflects manifest error, the relevant calculation will be delayed until the price is made available or corrected; provided, that, if the price is not made available or corrected by 4 p.m. New York Time, the Index Sponsor may, if it deems that action to be appropriate under the circumstances, determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant GS Index calculation.

Calculation of Total Return Indexes.

The Total Return Indexes to which the performance of the Shares is linked, were established in May, 1991, with the exception of the Goldman Sachs Light Energy Total Return Index, which was established in April, 2004. Each Total Return Index reflects the return of the applicable Excess Return Index, together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the applicable GS Index.

Calculation of the Excess Return Indexes.

The Excess Return Indexes, to which the performance of the applicable CERFs held by the Investing Pool are linked, were established in May, 1991, with the exception of GSLE–ER, which was established in April, 2004. Because futures contracts have scheduled expirations, or delivery months, as one contract nears expiration it becomes necessary to close out the position in that delivery month and establish a position in the next available delivery month. This process is referred to as "rolling" the position forward. Each Excess Return Index is designed to reflect the return from rolling each contract included in the applicable GS Index in this manner into the next available delivery month as it nears expiration. This is accomplished by selling the position in the first delivery month and purchasing a position of equivalent value in the second delivery month. If the price of the second contract is lower than the price of the first contract, the "rolling" process results in a greater quantity of the second contract being acquired for the same value. Conversely, if the price of the second contract is higher than the price of the first contract, the "rolling" process results in a smaller quantity of the second contract being acquired for the same value.

The value of each Excess Return Index on any GSCI® Business Day is equal to the product of (1) the value of the applicable Excess Return Index on the immediately preceding GSCI® Business Day multiplied by (2) one plus the contract daily return on the GSCI® Business Day on which the calculation is made.

The value of each Total Return Index on any GSCI® Business Day is equal to the product of (1) the value of the Index on the immediately preceding GSCI® Business Day multiplied by (2) one plus the sum of the contract daily return [12] and the Treasury bill return on the GSCI® Business Day on which the calculation is made, multiplied by (3) one plus the Treasury bill return for each non-GSCI® Business Day since the immediately preceding GSCI® Business Day. The Treasury bill return is the return on a hypothetical investment at a rate equal to the interest rate on a specified U.S. Treasury bill.

The Index Sponsor began calculating and publishing the GS Industrial Metals Index on Reuters Page GSCO in May 1991. The value of that Index has been normalized such that its hypothetical level on January 3, 1978 was 93.50. The Index Sponsor began calculating and publishing the GSLE on Reuters Page GSCE in April 2004. The value of the GSLE has been normalized such that its hypothetical level on January 5, 1970 was 100.06. The Index Sponsor began calculating and publishing the GS Livestock Index on Reuters Page GSCL in May 1991. The value of that Index has been normalized such that its hypothetical level on January 5, 1970 was 100.77. The Index Sponsor began calculating and publishing the GS Non-Energy Index on Reuters Page GSCN in May 1991. The value of the Index has been normalized such that its hypothetical level on January 5, 1970 was 100.06.

Valuation of CERFs; Computation of Trust's Net Asset Value.

On each Business Day on which the NYSE is open for regular trading, as soon as practicable after the close of regular trading of the Shares on the NYSE (normally, 4:15 p.m., New York Time), the Trustee will determine the net asset value of the Trusts and the NAV as of that time.

The Trustee will value the Trusts' assets based upon the determination by the Manager, which may act through the Investing Pool Administrator, of the net asset value of the Investing Pool. The Manager will determine the net asset value of the Investing Pool as of the same time that the Trustee determines the net asset value of the Trusts.

The Manager will value the Investing Pools' long position in CERFs on the basis of that day's announced CME settlement price for the CERFs. The value of the Investing Pools' CERF position (including any related margin) will equal the product of (a) the number of CERF contracts owned by the particular Investing Pool and (b) the settlement price on the date of calculation. If there is no announced CME settlement price for the CERF on a Business Day, the Manager will use the most recently announced CME settlement price unless the Manager determines that that price is inappropriate as a basis for evaluation.[13] The daily settlement price for the CERF is established by the CME shortly after the close of trading in Chicago on each trading day.

Once the value of the CERFs and interest earned on any assets posted as margin and any other assets of the Investing Pool has been determined, the Manager will subtract all accrued expenses and liabilities of each Investing Pool as of the time of calculation in order to calculate the net asset value of the Investing Pool. The Manager, or the Investing Pool Administrator on its behalf, will then calculate the value of the applicable Trust's Investing Pool Interest and provide this information to the Trustee.

Once the value of the Trusts' Investing Pool Interests have been determined and provided to the Trustee, the Trustee will subtract all accrued expenses and other liabilities of each Trust from the total value of the assets of the Trust, in each case as of the calculation time. The resulting amount is the net asset value of the Trust. The Trustee will determine the NAV by dividing the net asset value of the Trust by the number of Shares outstanding at the time the calculation is made.

The NAV for each Business Day on which the NYSE is open for regular trading will be distributed through major market data vendors and will be published online at *http://www.ishares.com*, or any successor thereto. The Trusts will update the NAV as soon as practicable after each subsequent NAV is calculated.

Creations and Redemptions of Baskets.

Creations of Baskets.

According to the Registration Statements, creation and redemption of interests in the Trusts, and the corresponding creation and redemption of interests in the respective Investing Pools, will generally be effected through transactions in "exchanges of futures for physicals", or "EFPs." EFPs involve contemporaneous transactions in futures contracts and the underlying cash commodity or a closely related commodity. In a typical EFP, the buyer of the futures contract sells the underlying commodity to the seller of the futures contract in exchange for a cash payment reflecting the value of the commodity and the relationship between the price of the commodity and the related futures contract. According to the Registration Statements, in the context of CERFs, CME rules permit the execution of EFPs consisting of simultaneous purchases (sales) of CERFs and sales (purchases) of Shares. This mechanism will generally be used by the Trusts in connection with the creation and redemption of Baskets. Specifically, it is anticipated that an Authorized Participant requesting the creation of additional Baskets typically will transfer CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) to the Trusts in return for Shares.

The Trusts will simultaneously contribute to the Investing Pools the CERFs (and any cash or securities) received from the Authorized Participant in return for an increase in its Investing Pool Interests. If an EFP is executed in connection with the redemption of one or more Baskets, an Authorized Participant will transfer to the applicable Trust the interests being redeemed and the Trust will transfer to the Authorized Participant CERFs, cash or Short-Term Securities. In order to obtain the CERFs, cash or Short-Term Securities to be transferred to the Authorized Participant, the Trust will redeem an equivalent portion of its interest in the Investing Pool Interests.

The Trusts will offer Shares on a continuous basis on each Business Day, but only in Baskets consisting of 50,000 Shares. Baskets will be typically issued only in exchange for an amount of

[12] The contract daily return on any given day is equal to the sum, for each of the commodities included in the applicable GS Index, of the applicable daily contract reference price on the relevant contract multiplied by the appropriate CPW and the appropriate "roll weight," divided by the total dollar weight of the such GS Index on the preceding day, minus one.

The "roll weight" of each commodity reflects the fact that the positions in contracts must be liquidated or rolled forward into more distant contract expirations as they near expiration. If actual positions in the relevant markets were rolled forward, the roll would likely need to take place over a period of days. Since the GS Indexes are designed to replicate the performance of actual investments in the underlying contracts, the rolling process incorporated in the GS Indexes also takes place over a period of days at the beginning of each month, referred to as the "roll period". On each day of the roll period, the "roll weights" of the first nearby contract expirations on a particular commodity and the more distant contract expiration into which it is rolled are adjusted, so that the hypothetical position in the contract on the commodity that is included in the applicable GS Index is gradually shifted from the first nearby contract expiration to the more distant contract expiration.

[13] The Manager's use of a price that is not the most recently announced CME settlement price, other than on a temporary basis based on extraordinary circumstances, would require Commission approval of an Exchange proposed rule change pursuant to Rule 19b–4.

CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount for the Business Day on which the creation order was received by the Trustee. The Basket Amount for a Business Day will have a per Share value equal to the NAV as of such day. However, orders received by the Trustee after 2:40 p.m., New York Time, will be treated as received on the next following Business Day. The Trustee will notify the Authorized Participants of the Basket Amount on each Business Day.

Before the Trusts will issue any Baskets to an Authorized Participant, that Authorized Participant must deliver to the Trustee a creation order indicating the number of Baskets it intends to purchase and providing other details with respect to the procedures by which the Baskets will be transferred. The Trustee will acknowledge the creation order unless it or the Sponsor decides to refuse the order as described in the prospectus.

Upon the transfer of (1) the required consideration of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) in the amounts, and to the accounts, specified by the Trustee, and (2) the Trustee's transaction fee per Basket (described below), the Trustee will deliver the appropriate number of Baskets to the DTC account of the Authorized Participant. In limited circumstances and with the approval of the Trustee, Baskets may be created for cash, in which case the Authorized Participant will be required to pay any additional issuance costs, including the costs to the applicable Investing Pool of establishing the corresponding CERF position.

Only Authorized Participants can transfer the required consideration and receive Baskets in exchange. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians and other securities market participants that wish to create or redeem Baskets. An Authorized Participant will have no obligation to create or redeem Baskets for itself or on behalf of other persons. An order for one or more baskets may be placed by an Authorized Participant on behalf of multiple clients. The Sponsor and the Trustee will maintain a current list of Authorized Participants.

No Shares will be issued unless and until the Trustee receives confirmation that (1) the required consideration has been received in the account or accounts specified by the Trustee and (2) the Manager confirms that Investing Pool Interests with an initial value equal to the consideration received for the Shares have been issued to the Trust. It is expected that delivery of the Shares will be made against transfer of consideration on the next Business Day (T+1) following the Business Day on which the creation order is received by the Trustee. If the Trustee has not received the required consideration for the Shares to be delivered on the delivery date, by 11 a.m., New York Time, the Trustee may cancel the creation order.[14]

Redemptions of Baskets.

Authorized Participants may typically surrender Baskets in exchange only for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount on the Business Day the redemption request is received by the Trustee. However, redemption requests received by the Trustee after 2:40 p.m., New York Time (or, on any day on which the CME is scheduled to close early, after the close of trading of CERFs on the CME on such day), will be treated as received on the next following Business Day. Holders of Baskets who are not Authorized Participants will be able to redeem their Baskets only through an Authorized Participant. It is expected that Authorized Participants may redeem Baskets for their own accounts or on behalf of Shareholders who are not Authorized Participants, but they are under no obligation to do so.

Before surrendering Baskets for redemption, an Authorized Participant must deliver to the Trustee a written request indicating the number of Baskets it intends to redeem and providing other details with respect to the procedures by which the required Basket Amount will be transferred. The Trustee will acknowledge the redemption order unless it or the Sponsor decides to refuse the redemption order as described in the Trusts' prospectuses.

After the delivery by the Authorized Participant to the Trustee's DTC account of the total number of Shares to be redeemed by an Authorized Participant, the Trustee will deliver to the order of the redeeming Authorized Participant redemption proceeds consisting of CERFs and cash (or, in the discretion of the Trustee, Short-term Securities in lieu of cash). In connection with a redemption order, the redeeming Authorized Participant authorizes the Trustee to deduct from the proceeds of redemption a transaction fee per Basket (described below). In limited circumstances and with the approval of the Trustee, Baskets may be redeemed for cash, in which case the Authorized Participants will be required to pay any additional redemption costs, including the costs to the Investing Pool of liquidating the corresponding CERF position. The Trust will receive these redemption proceeds pursuant to the Trust's contemporaneous redemption of Investing Pool Interests of corresponding value. Shares can be surrendered for redemption only in Baskets consisting of 50,000 Shares each.

It is expected that delivery of the CERFs, cash or Short-term Securities to the redeeming Shareholder will be made against transfer of the Baskets on the next Business Day following the Business Day on which the redemption request is received by the Trustee. If the Trustee's DTC account has not been credited with the total number of Shares to be redeemed pursuant to the redemption order by 11 a.m., New York Time, on the delivery date, the Trustee may cancel the redemption order.

DTC will accept the Shares for settlement through its book-entry settlement system. Shares do not have any voting rights.

Fees and Expenses of the Trustee.

Each order for the creation of Baskets must be accompanied by a payment to the Trustee of a transaction fee per Basket of $6.50 multiplied by the number of CERFs included in the Basket Amount. For redemption orders, the redeeming Authorized Participant will authorize the Trustee to deduct from the proceeds of the redemption a transaction fee per Basket equal to $6.50 multiplied by the number of CERFs included in the Basket Amount, plus any expenses, taxes or charges (such as stamp taxes or stock transfer taxes or fees) related to the creation or surrender for redemption. The creation and redemption transaction fee per basket is subject to modification from time to time.

The Trustee will be entitled to reimburse itself from the assets of the Trusts for all expenses and disbursements incurred by it for extraordinary services it may provide to the Trusts or in connection with any discretionary action the Trustee may take to protect the Trusts or the interests of the holders to the extent not paid by the Sponsor.

Dissemination of Information Relating to the Shares.

The Web site for the Trusts (*http://www.ishares.com*), which will be publicly accessible at no charge, will

[14] The price at which the Shares trade should be disciplined by arbitrage opportunities created by the ability to purchase or redeem shares of the Trust in Basket size. This should help ensure that the Shares will not trade at a material discount or premium to their net asset value or redemption value.

contain the following information: (a) The prior Business Day's NAV and the reported closing price; (b) the mid-point of the bid-ask price [15] in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (e) the prospectus; (f) the holdings of the Trusts, including CERFs, cash and Treasury securities; (g) the Basket Amount, and (h) other applicable quantitative information. The Exchange on its Web site at *http://www.nyse.com* will include a hyperlink to the Trusts' Web site at *http://www.ishares.com.*

As described above, the NAV for the Fund will be calculated and disseminated daily. The NYSE also intends to disseminate, during NYSE trading hours for the Trusts on a daily basis by means of CTA/CQ High Speed Lines information with respect to the Indicative Value (as discussed below), recent NAV, and Shares outstanding. The Exchange will also make available on *http://www.nyse.com* daily trading volume, closing prices, and the NAV.

The Sponsor for the Trusts (Barclays Global Investors International, Inc.) has represented to the Exchange that the Trustee for the Trusts will make the net asset value ("NAV") for the Trust available to all market participants at the same time.

At present, official calculation by the Index Sponsor of the value of each GS Index is performed continuously and is updated on Reuters at least every fifteen seconds during NYSE trading hours for the Shares and during business hours on each Business Day (as defined above) on which the offices of Goldman Sachs in New York City are open for business. In the event that the Exchange is open for business on a day that is not a GSCI Business Day, the Exchange will not permit trading of the Shares on that day.

In addition, values updated at least every fifteen seconds are disseminated on Reuters for the Total Return Indexes during Exchange trading hours. Daily settlement values for the GS Indexes, Total Return Indexes and Excess Return Indexes are also widely disseminated.

If the relevant trading facility fails to make a daily contract reference price available or publishes a daily contract reference price that, in the reasonable judgment of the Index Sponsor, reflects manifest error, the relevant calculation will be delayed until the price is made available or corrected; provided, that, if the price is not made available or corrected by 4 p.m. New York Time, the Index Sponsor may, if it deems that action to be appropriate under the circumstances, determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant GSCI calculation. If such actions by the Index Sponsor are implemented on more than a temporary basis, the Exchange will contact the Commission Staff and, as necessary, make an appropriate filing under Rule 19b–4.

Various data vendors and news publications publish futures prices and data. Futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, complete real-time data for such futures is available by subscription from Reuters and Bloomberg. The futures exchanges or which the underlying commodities and CERFs trade also provide delayed futures information on current and past trading sessions and market news generally free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

Indicative Value.

In order to provide updated information relating to the Trusts for use by investors, professionals, and other persons, the Exchange will disseminate through the facilities of CTA an updated Indicative Value on a per Share basis as calculated by Bloomberg. The Indicative Value will be disseminated at least every 15 seconds from 9:30 a.m. to 4:15 p.m. New York Time. The Indicative Value will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the applicable Investing Pool, *i.e.* CERFs. The Indicative Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the NYSE at 4:15 p.m. New York Time. The value of a Share may accordingly be influenced by non-concurrent trading hours between the NYSE and the various futures exchanges on which the futures contracts based on the Index commodities are traded. While the Shares will trade on the NYSE from 9:30 a.m. to 4:15 p.m. New York Time, the table above lists the trading hours for each of the Index commodities underlying the futures contracts.

When the market for futures trading for each of the Index commodities is open, the Indicative Value can be expected to closely approximate the value per Share of the Basket Amount. However, during NYSE trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and, therefore, increase the difference between the price of the Shares and the NAV of the Shares. Indicative Value on a per Share basis disseminated during NYSE trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Value provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange or creation or redemption of the Shares.

Other Characteristics of the Shares

General Information. A minimum of two Baskets, representing 100,000 Shares, will be outstanding for each Trust at the commencement of trading on the Exchange. Trading in Shares on the Exchange will be effected normally from 9:30 a.m. until 4:15 p.m. each day on which the Exchange is open for trading. The minimum trading increment for Shares on the Exchange will be $0.01.

Fees. The Exchange original listing fee applicable to the listing of each Trust will be $5,000. The annual continued listing fee for each Trust will be $2,000.

Continued Listing Criteria. Under the applicable continued listing criteria, the Shares may be delisted as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of the Total Return Indexes cease to be calculated by or available from a major market data vendor on at least a 15-second basis from a source unaffiliated with the Sponsor, the Trust or the Trustee; (3) the Indicative Value ceases to be available on at least a 15-second delayed basis from a major market data vendor; or (4) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange will remove

[15] The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

Shares from listing and trading upon termination of the Trust.

In addition, the Exchange will file a proposed change pursuant to Rule 19b–4 under the Act[16] seeking approval to continue trading the Shares and, unless approved, the Exchange will commence delisting the Shares, if: (1) The Index Sponsor substantially changes either the applicable Index component selection methodology or the weighting methodology; (2) a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement; (3) the Manager uses a price to value the Investing Pool's long position in CERFs based on a price other than the most recently announced CME settlement price, other than on a temporary basis based on extraordinary circumstances; or (4) a successor or substitute index is used in connection with the Shares. With respect to the successor or substitute index, the Rule 19b–4 filing will address, among other things, the listing and trading characteristics of such index and the Exchange's surveillance procedures applicable thereto.

Exchange Trading Rules and Policies. The Shares are considered "securities" pursuant to NYSE Rule 3 and are subject to all applicable trading rules.

The Trust is exempt from corporate governance requirements in Section 303A of the NYSE Listed Company Manual, including the Exchange's audit committee requirements in Section 303A.06.[17]

The Exchange has adopted Rules 1300B ("Commodity Trust Shares") to deal with issues related to the trading of the Shares. Specifically, for purposes of Rules 13 ("Definitions of Orders"), 36.30 ("Communications Between Exchange and Members' Offices"), 98 ("Restrictions on Approved Person Associated with a Specialist's Member Organization), 104 ("Dealings by Specialists"), 105(m) ("Guidelines for Specialists" Specialty Stock Option Transactions Pursuant to Rule 105"), 460.10 ("Specialists Participating in Contests"), 1002 ("Availability of Automatic Feature"), and 1005 ("Order May Not Be Broken Into Smaller Accounts"), the Shares will be treated similar to Investment Company Units.[18]

When these Rules discuss Investment Company Units, references to the word index (or derivative or similar words) are deemed to be references to the applicable commodity or commodity index price and reference to the word security (or derivative or similar words) are deemed to be references to Commodity Trust Shares.

The Exchange does not currently intend to exempt Commodity Trust Shares from the Exchange's "Market-on-Close/Limit-on-Close/Pre-Opening Price Indications" Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and the Index components. The Exchange will rely upon existing NYSE surveillance procedures governing equities with respect to surveillance of the Shares. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Shares, to detect violations of Exchange rules, consequently deterring manipulation. In this regard, the Exchange currently has the authority under NYSE Rule 476 to request the Exchange specialist in the Shares to provide NYSE Regulation with information that the specialist uses in connection with pricing the Shares on the Exchange, including specialist proprietary or other information regarding securities, commodities, futures, options on futures or other derivative instruments. The Exchange believes it also has authority to request any other information from its members—including floor brokers, specialists and "upstairs" firms—to fulfill its regulatory obligations.

With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange, the Kansas City Board of Trade, ICE and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current components of the Total Return Indexes and CERFs are traded are members of the Intermarket Surveillance Group ("ISG") and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in the underlying commodities or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to Exchange's "circuit breaker" rule.[19] If the value of the Total Return Index associated with

[16] 15 U.S.C. 78a.

[17] See Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is organized as a trust or other unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

See also Securities Exchange Act Release Nos. 48745, November 4, 2003; 68 FR 64154, November 12, 2003 (SR–NYSE–2002–33, SR–NASD–2002–77, et al.) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts); and 47654, April 25, 2003; 68 FR 18788, April 16, 2003 (noting in Section II(F)(3)(c) that "SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities").

[18] In particular, Rule 1300B provides that Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in the applicable futures contracts, except as otherwise provided therein.

[19] *See* NYSE Rule 80B.

a Trust's Shares or the applicable Indicative Value is not being disseminated on at least a 15 second basis during the hours the Shares trade on the Exchange, the Exchange may halt trading during the day in which the interruption to the dissemination of the Indicative Value or the Index value occurs. If the interruption to the dissemination of the Indicative Value or the Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Due Diligence

Before a member, member organization, allied member or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to Exchange Rule 405, and must determine that the recommendation complies with all other applicable Exchange and Federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

Information Memo

The Exchange will distribute an Information Memo to its members in connection with the trading in the Shares. The Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Memo, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules, the Indicative Value, dissemination information, trading information and the applicability of suitability rules, and exemptive relief granted by the Commission from certain rules under the Act.[20] The Memo will also reference that the Trusts are subject to various fees and expenses described in the Registration Statements. Finally, the Memo will also note to members language in the Registration Statements regarding prospectus delivery requirements for the Shares. The Memo will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the Commission has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the shares is based.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[21] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule

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 such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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*. Please include File No. SR–NYSE–2006–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–75 and should be submitted on or before January 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–22394 Filed 12–28–06; 8:45 am]

BILLING CODE 8011–01–P

[20] The applicable rules are: Rule 10a-1; Rule 200(g) of Regulation SHO, Section 11(d)(1) and Rule 11d1–2, and Rules 101 and 102 of Regulation M under the Act.

[21] 15 U.S.C. 78f(b)(5).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54998; File No. SR–NYSE–2006–98]

Self-Regulatory Organizations; New York Stock Exchange LLC.; Order Approving Proposed Rule Change and Notice of filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto, Regarding the Amendment of NYSE Rule 300 Relating to Trading Licenses and the Deletion of NYSE Rule 300T

December 21, 2006.

I. Introduction

On November 3, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 300 to eliminate the modified Dutch auction process for the pricing and issuance of annual trading licenses and to impose a fixed, annual price of $50,000 for trading licenses issued for calendar year 2007. The Exchange also proposed to increase the fee relating to the approval of any new member or pre-qualified substitute, as well as to delete NYSE Rule 300T that pertained only to the initial issuance of trading licenses for calendar year 2006. The proposed rule change was published for comment in the **Federal Register** on November 14, 2006.[3]

The Commission received three comments on the proposed rule change.[4] On November 28, 2006, NYSE submitted Amendment No. 1 to the proposed rule change. In Amendment No. 1, the Exchange proposed to remove the deposit and termination fee requirements associated with the issuance of trading licenses. On December 18, 2006, NYSE filed a response to two of the comment letters ("NYSE Response").

This order approves the proposed rule change. Simultaneously, the Commission provides notice of filing of Amendment No. 1 and grants accelerated approval of Amendment No. 1.

II. Summary of Comments and NYSE's Response

The Commission received three letters from two commenters on the proposed rule change.[5] Both commenters objected to the proposed fixed fee and favored retaining the Dutch auction process for pricing trading licenses. The Lipari Letter asserted that the 2006 trading license fee should be the reference point for an auction to establish the price of the trading licenses for 2007. The Lipari Letter noted that, because price discovery is a feature of trading on the floor of NYSE, it should also be employed in the pricing of trading licenses.

The First Peake Letter argued that, in the commenter's view, the value of a NYSE floor trading license has diminished as a result of the Exchange's merger with Archipelago Holdings, Inc. ("Archipelago"). The commenter further argued that a reduced presence of firms on the NYSE floor might further reduce the demand for trading licenses, particularly as Regulation NMS is implemented. The First Peake Letter also contended that the NYSE is in a quasi-monopolistic position on account of its market share and that the proposal is anticompetitive. The Second Peake Letter commented on the Commission's approval process with respect to the proposed rule change.

In response to the Lipari Letter and the First Peake Letter, the Exchange noted that the proposal to eliminate the Dutch auction process was made in response to comments it received from many of its member organizations about the undesirability of using this auction process to price trading licenses. The Exchange noted that the price for trading licenses for 2006 was $49,290 (not $42,290, as was stated in the Lipari Letter). The Exchange asserted that the proposed fixed trading license price of $50,000 for 2007 represents a minimal, incremental increase over the trading license price for 2006. The Exchange also argued that, when the effects of inflation are taken into account, the $50,000 trading license price for 2007 is actually lower than the 2006 trading license price.

The Exchange disagreed with the Liparti Letter's assertion that the Exchange is incapable of setting a fair price because of profit motives. The Exchange pointed out that it has other valuable sources of revenue from activity on the Exchange and that imposing an unreasonably high trading license price would likely reduce access to, and activity on, its trading facilities, thus diminishing the overall profitability of the Exchange.

In response to the First Peake Letter, the Exchange noted that the trading license application process for the 2007 trading licenses, which is already in progress, has demonstrated a robust demand for trading licenses at the proposed fixed price of $50,000. The Exchange noted that the reduction in physical presence on its floor is attributable to the roll-out of its Hybrid-Market initiative, which enables electronic execution on the Exchange. The Exchange asserted that, in the event that the price of access to its market (in this case $50,000 for a trading license) is too high or unfair, market participants have demonstrated their ability to use other venues for order execution.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NYSE's response to the comments, and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6(b)(4) of the Act.[7] Section 6(b)(4) requires, among other things, that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and users and other persons using its facilities. The Commission believes that the Exchange's proposal to eliminate the annual Dutch auction process to determine the price of trading licenses and to establish a fixed fee of $50,000 per trading license is reasonable. In the Commission's view, the fixed fee removes uncertainty in the process for establishing the price of trading licenses and helps to simplify the process for the issuance of trading licenses. While both commenters on the proposal believe that the Dutch auction process is a fairer means of establishing the price for trading licenses for members, the Commission notes that the Exchange has stated that the proposed rule change was based on comments it received from many of its member organizations about the undesirability of the Dutch auction process. The Exchange also stated that moving to a fixed price would simplify the process

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54713 (November 6, 2006), 71 FR 66359.

[4] November 28, 2006 letter from Junius W. Peake, Professor, University of Northern Colorado ("First Peake Letter"); December 5, 2006 letter from Frank Lipari, President, and Andrew W. Strobel, Chief Compliance Officer, Lipari Partners, Inc. ("Lipari Letter"); and December 18, 2006 letter from Junius W. Peake, Professor, University of Northern Colorado ("Second Peake Letter").

[5] *See id.*

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

for member organizations to obtain trading licenses.

The Commission also believes that the increased fee for the approval of any new member or pre-qualified substitute is reasonable. The Exchange has represented that the new fee is necessary to defray the administrative expenses associated with this process and that it is equivalent to the fee for transfers of memberships charged by the Exchange prior to its merger with Archipelago. The Commission also believes that the proposals to eliminate the deposit fee and termination fee requirements associated with the issuance of trading licenses and to remove NYSE Rule 300T are appropriate.

The Commission finds good cause for approving Amendment No. 1 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 1 would eliminate the deposit and termination fee requirements associated with the purchase of trading licenses. Because the changes set forth in Amendment No. 1 involve a reduction in fees and do not appear to raise any issues of regulatory concern, the Commission finds good cause for accelerating approval of Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–98 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–2006–98. 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 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–2006–98 and should be submitted on or before January 19, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2006–98) be, and it hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22397 Filed 12–28–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 55003; File No. SR–NYSE–2006–109]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to NYSE Regulation, Inc. Policies Regarding Exercise of Power to Fine NYSE Member Organizations and Use of Money Collected as Fines

December 22, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 2006, the New York Stock Exchange LLC ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Regulation, Inc. ("NYSE Regulation") proposed to adopt internal procedures to assure the proper exercise by NYSE Regulation of its power to fine member organizations of the Exchange and the proper use by NYSE Regulation of the funds so collected. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In conversation with the staff of the Commission, prior to Commission approval of rule changes related to the merger of the New York Stock Exchange, Inc. with Archipelago Holdings, Inc., the Exchange undertook to subsequently file with the Commission a proposed rule change regarding NYSE Regulation's use of fines collected from member organizations following disciplinary action by NYSE Regulation against such member organizations.[3]

The purpose of this proposed rule change is to provide increased transparency regarding the processes which NYSE Regulation has in place to insure that the power of the Exchange,

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77), at note 231 ("Approval Order").

through NYSE Regulation, to impose fines on its members for disciplinary violations is exercised appropriately, and particularly to guard against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose. The process proposed by NYSE Regulation is a combination of specific limits on the use of fine income coupled with active and ongoing board review of how income from fines is used by NYSE Regulation.

Important to an understanding of this issue is the specific corporate governance arrangements which have already been put in place with Commission approval to insure the independence of NYSE Regulation, the subsidiary to which the Exchange has delegated the performance of its regulatory functions. This not-for-profit wholly-owned subsidiary of the Exchange is governed by a board of directors all of whom meet the independence policy applied to the board of NYSE Group, Inc. ("NYSE Group"), and a majority of whom do not serve on any other board within the NYSE Group ("non-affiliated directors"). This arrangement assures that the non-affiliated directors remain completely free from any suggestion that their interests in serving NYSE Regulation might at times conflict with a duty to NYSE Group or one of its other affiliates. The chief executive officer of NYSE Regulation, Richard Ketchum, reports only to the board of NYSE Regulation, and not to the chief executive or any other officer of NYSE Group. In addition, NYSE Regulation has its own compensation committee and nominating and governance committee, both of which must be comprised of a majority of non-affiliated directors. None of the employees of NYSE Regulation are entitled to own the stock of NYSE Group.

The Exchange has the authority under the Act [4] to assess its members to cover its costs of regulation, and the Exchange has delegated this authority to NYSE Regulation with respect to regulatory and certain other fees. Subject to the requirement to file fees with the Commission, NYSE Regulation determines, assesses, collects and retains examination, access, registration, qualification, continuing education, arbitration, dispute resolution and other regulatory fees. NYSE Regulation funds its examination programs for assuring financial responsibility and compliance with sales practice rules, testing, and continuing education through fees assessed directly on member organizations.

NYSE Regulation also receives funding from markets for which it provides regulatory services; at this time, the Exchange and NYSE Arca, Inc. There is also an explicit agreement among NYSE Group, the Exchange, NYSE Market, Inc. and NYSE Regulation to provide adequate funding to NYSE Regulation.

Finally, the Exchange's Operating Agreement specifies that the Exchange, as the owner of NYSE Regulation, "shall not use any assets of, or any regulatory fees, fines or penalties collected by, [NYSE Regulation] for commercial purposes or distribute such assets, fees, fines or penalties to [NYSE Group] or any other entity other than NYSE Regulation."

Notwithstanding all the foregoing, subsequent to the Approval Order and to comply with the undertaking made to the Commission staff and referenced in the Approval Order, NYSE Regulation has adopted the following additional internal procedures to assure the proper exercise of its power to fine member organizations and the proper use of the funds so collected.

a. Fines will play no role in the annual NYSE Regulation budget process.

As in any corporate entity, NYSE Regulation prepares an operating budget in advance of each fiscal year. Beginning this year with the preparation of the 2007 operating budget, fines will be budgeted at zero, that is, budgeted expenses of NYSE Regulation will be offset entirely by budgeted income that does not include any anticipated income from fines. Among other things, this means that fines will not offset amounts budgeted for compensation of NYSE Regulation employees or directors.

During the course of a year, income from fines will be considered as available to fund non-compensation expenses of NYSE Regulation, which expenses were not anticipated in the budget process or which could not be included in the budget prepared in advance of the fiscal year because NYSE Regulation was unable to budget sufficient income from sources other than fines to offset the expenses.

b. The use of fine income by NYSE Regulation will be subject to specific review and approval by the NYSE Regulation board of directors.

On a quarterly basis, the staff of NYSE Regulation will provide to the board a report on the amount of fine income received to date during the year and recommendations regarding its proposed use to fund regulatory expenses as above described. The use of the fine income will be subject to board approval.

Following each year, the staff of NYSE Regulation will provide the board a report reprising the fines imposed and the utilization of fine income by NYSE Regulation during that year. This report will analyze fines imposed by NYSE Regulation for consistency with precedent from both other NYSE disciplinary cases as well as publicly available disciplinary cases adjudicated by the National Association of Securities Dealers, Inc. and the Commission.

Each year the board will also consider whether unused fine income has accumulated beyond a level reasonably necessary for future contingencies, and may determine to utilize any such excess to fund one or more special projects of NYSE Regulation, to reduce fees charged by NYSE Regulation to its member organizations or the markets that it serves, or for a charitable purpose.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [5] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

[4] 15 U.S.C. 78a, *et seq.*

[5] 15 U.S.C. 78f(b)(5).

(ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–109 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–109 and should be submitted on or before January 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22399 Filed 12–28–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54982; File No. SR–NYSE–2006–61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Changes and Amendment No. 1 thereto to Rules 601, 607, 612 and 629 Relating to Single Arbitrators for Claims not Exceeding $200,000

December 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 13, 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 NYSE. On December 19, 2006, the NYSE filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, matters in controversy involving customer or non-member claims not exceeding $200,000 (excluding costs and interest) would be decided by one public arbitrator, unless the customer or non-member requests that the matter be decided by one securities industry arbitrator.[4] In addition, the proposed rule change would reduce several customers' fees and hearing deposits for matters involving one arbitrator. The text of the proposed rule change, as amended, is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 NYSE is proposing to amend Rules 601 (Simplified Arbitration), 607 (Appointment of Arbitrators), 612 (Initiation of Proceedings), and 629 (Schedule of Fees). As described in more detail below, the proposed amendments would provide that all arbitration matters involving customers or non-members not exceeding $25,000 would be resolved on the papers (*i.e.*, without a hearing) by one public arbitrator or, upon request of the customer or non-member, by one securities industry arbitrator. The customer or non-member also could demand or consent to a hearing for matters not exceeding $25,000.

In addition, all arbitration matters involving customers or non-members exceeding $25,000, but not exceeding $200,000 (excluding costs and interest), would be heard by one public arbitrator at a hearing, unless the customer or non-member requests that the matter be heard by one securities industry arbitrator. The proposed amendments would clarify that, to the extent the rules provide for a choice in panel composition or method of arbitrator appointment, the customer's choice prevails.[5] Finally, the proposed amendments also would reduce several fees and hearing deposits for matters heard by one arbitrator.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which supplemented the original filing, the Exchange provided more information regarding the proposed amendments to certain arbitration fees and hearing deposits, and clarified certain aspects of the rule filing.

[4] NYSE stated that approximately one-third of NYSE arbitration matters since 2002 have involved claims of less than $200,000. Telephone conversation among Karen Kupersmith, Director of Arbitration, NYSE; Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Commission; and Michael Hershaft, Special Counsel, Commission (Dec. 20, 2006).

[5] In arbitration matters involving non-members and members, but not customers, the non-member's choice prevails. See NYSE Rules 607(a)(1) and 607(c)(2)(i)(a)–(b).

Simplified Arbitration

NYSE Rule 601 currently provides that any dispute, claim or controversy between a customer and an associated person or a member not exceeding $25,000 is resolved by one public arbitrator on the papers, unless the customer requests or consents to a hearing, or the arbitrator calls a hearing.[6] If the respondent files a related counterclaim exceeding $25,000, the arbitrator may refer the claim, counterclaim and/or a third-party claim to a panel of three arbitrators.[7] The arbitrator also may dismiss the counterclaim and/or third-party claim, without prejudice to the counterclaimants and/or third-party claimants pursuing their claims in a separate proceeding.

The proposal would amend NYSE Rules 601(a) and 601(f) to provide that all arbitration matters involving customers or non-members not exceeding $25,000 would be resolved by one public arbitrator on the papers, unless the customer or non-member demands or consents to a hearing, or the arbitrator calls a hearing. The proposed amendments to NYSE Rule 601(f) also would clarify that the customer or non-member may request that the matter be resolved by one securities industry arbitrator.

The proposal also would amend NYSE Rule 601(d)(2) to provide that if the respondent files a related counterclaim or third-party claim exceeding $25,000 but not exceeding $200,000, any party or the arbitrator may request a hearing before one arbitrator. If the respondent files a related counterclaim or third-party claim exceeding $200,000, the proposed amendments to NYSE Rule 601(d)(2) would provide that the arbitrator may refer the claim, counterclaim and/or third-party claim to a panel of three arbitrators pursuant to NYSE Rule 607. Under the proposed amendments to Rule 601(d)(2), the arbitrator also may dismiss the counterclaim and/or third-party claim, without prejudice to the counterclaimants and/or third-party claimants pursuing their claims in a separate proceeding.

The proposed amendments to the "Fees for Simplified Arbitration, Industry as Claimant" Schedule in NYSE Rule 601 would reduce the hearing deposit that members, member firms, member corporations, or allied members and non-members pay for claims not exceeding $25,000. Specifically, the proposed amendments would reduce the hearing deposit from $600 to $450 when the industry is a claimant and the decision is made after a hearing. The filing fee ($500) and fee for a decision on the papers ($300) would not be changed under the proposal.

Appointment of Arbitrators

NYSE Rule 607(a)(1) currently provides that in all matters involving customers or non-members where the matter in controversy exceeds $25,000 or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration appoints a panel of three arbitrators, a majority of whom are public, unless the customer or non-member requests that a majority be from the securities industry. The proposed amendments to NYSE Rule 607(a)(1)(i) would provide that all arbitration matters involving customers or non-members where the matter in controversy exceeds $25,000, but does not exceed $200,000 (excluding costs and interest), would be heard by one public arbitrator, unless the customer or non-member requests a securities industry arbitrator.

Under the proposed amendments to NYSE Rule 607(a)(1)(ii), all arbitration matters involving customers or non-members where the matter in controversy exceeds $200,000 would be heard by three arbitrators, a majority of whom would be public, unless the customer or non-member requests that a majority be from the securities industry.

The proposed amendments also would add a new paragraph (2) to NYSE Rule 607(b) which would clarify that, in all arbitration matters involving customers or non-members, to the extent the NYSE arbitration rules provide for a choice in panel composition or method of arbitrator appointment, the customer's choice would prevail.[8]

Initiation of Proceedings

Current NYSE Rule 612 sets forth the procedures for initiating a customer or non-member arbitration proceeding that is not being filed under NYSE Rule 601, which governs Simplified Arbitration. The proposed amendments to NYSE Rule 612 are intended to conform that rule with the proposed changes to NYSE Rules 601 and 607. In particular, the proposed amendments to NYSE Rule 612(c)(1) would provide that in matters exceeding $25,000, but not exceeding $200,000, if the respondent(s) files a related counterclaim, third-party claim, or cross-claim exceeding $200,000, the arbitrator may refer the claim, counterclaim, third-party claim, and/or cross-claim, to a panel of three arbitrators in accordance with Rule 607. The arbitrator also may dismiss the counterclaim, third-party claim, and/or cross-claim without prejudice to the counterclaimants, third-party claimants, and/or cross-claimants pursuing their claims in a separate proceeding pursuant to the proposed amendments to NYSE Rule 612(c)(1).

Schedule of Fees

NYSE Rule 629 sets forth the required fees and hearing deposits for arbitrations in the NYSE arbitration forum. The proposed amendments to NYSE Rule 629 would reduce the fees and hearing deposits that customers, members, and non-members pay for claims exceeding $25,000 and not exceeding $200,000, to reflect the reduced costs associated with a hearing by one arbitrator, rather than three. The proposed amendments to the schedules contained in NYSE Rules 629(c)(1)–(2) and 629(i) would reduce the hearing deposits to $450 from a maximum of $750 under the existing rule.

In Amendment No. 1, the NYSE stated that it is proposing to reduce fees and hearing deposits because the costs of administering an arbitration matter with one arbitrator is less than the costs associated with three arbitrators. In cases with one arbitrator, the proposed fees and hearing deposits are based on either the current hearing deposit or the fee charged for a pre-hearing conference with one arbitrator, whichever is less. The NYSE also notes in Amendment No. 1 that the costs associated with a pre-hearing conference, generally conducted either on the papers submitted or by telephone, are less than those associated with an in-person hearing.

In Amendment No. 1, the NYSE stated that the proposed fees and hearing deposits are intended to permit the NYSE to recover some of its direct, actual costs of administering arbitration cases. The NYSE further stated that those direct, actual costs are attributable in part to arbitrator compensation and travel expenses, court reporters and (when a hearing takes place outside New York) conference rooms. The NYSE also stated in Amendment No. 1 that under the proposed rule changes, the actual costs it bears for administering arbitration hearings involving a single arbitrator would remain greater than fees paid by customers or non-members.

Statutory Basis

The NYSE stated that it believes that the proposed rule change is consistent

[6] NYSE Rule 601(f).

[7] NYSE Rule 601(d).

[8] *See* footnote 5.

with Section 6(b)(4) [9] of the Act requiring exchanges to have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities, and Section 6(b)(5) [10] of the Act requiring exchanges to have rules designed to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NYSE has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, as amended, is consistent with the Act. The proposed rule change, as amended, is based on, but not identical to, the Uniform Code of Arbitration ("SICA Uniform Code") adopted by the Securities Industry Conference on Arbitration ("SICA").

The Commission requests comments on the differences between the NYSE proposal and the SICA Uniform Code. In particular, under SICA Uniform Code Section 16(a), one arbitrator hears claims up to $100,000; whereas the NYSE proposes that one arbitrator would hear claims not exceeding $200,000. Should NYSE's proposed rule be consistent with the SICA Uniform Code and only permit matters to be resolved by one arbitrator if they involve claims of $100,000 or less? In the alternative, should customers or non-members be able to request one arbitrator for claims exceeding $200,000? In addition, the SICA Uniform Code does not contain provisions similar to the amendments proposed to NYSE Rules 601(d)(2) and 612(c)(1), as discussed above

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*. Please include File Number SR–NYSE–2006–61 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–2006–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2006–61 and should be submitted on or before January 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22401 Filed 12–28–06; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54997; File No. SR–NYSEArca–2006–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect the Trading Sessions and Trading Halt Procedures for Certain Securities Trading on NYSE Arca, LLC

December 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through NYSE Arca Equities, is proposing to amend NYSE Arca Equities Rule 7.34 to reflect the trading sessions during which certain securities are eligible to trade on NYSE Arca, LLC ("NYSE Arca Marketplace"), the equities facility of NYSE Arca Equities, and to provide that the Exchange shall maintain a list on its Internet Web site that identifies all securities traded on the NYSE Arca Marketplace that do not trade for the duration of each of the three trading sessions specified in this rule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com/regulations/rules*),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

at the principal office of the Exchange, 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. The text of these statements may be examined at the places specified in Item III 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

NYSE Arca Equities Rule 7.34 currently provides, in part, that the NYSE Arca Marketplace shall have three trading sessions each day: an Opening Session (1 a.m. Pacific Time to 6:30 a.m. Pacific Time), a Core Trading Session (6:30 a.m. Pacific Time to 1 p.m. Pacific Time), and a Late Trading Session (1 p.m. Pacific Time to 5 p.m. Pacific Time), and that the Core Trading Session for Exchange Traded Funds defined in NYSE Arca Equities Rules 5.1(b)(13), 5.2(j)(3), and 8.100 shall conclude at 1:15 p.m. Pacific Time.[5]

This filing proposes that the Core Trading Session, for the securities described in NYSE Arca Equities Rules, 8.200, 8.201, 8.202, 8.203, and 8.300 shall conclude at 1:15 p.m. Pacific Time to reflect the recent adoption of these rules.[6] This is in addition to securities described in NYSE Arca Equities Rules 5.1(b)(13), 5.2(j)(3), and 8.100. In addition, this filing proposes to add securities described in NYSE Arca Equities Rule 5.1(b)(18) (defining "Exchange-Traded Funds") to securities traded in the Core Trading Session.

The Exchange also proposes to include in Rule 7.34 a list of those securities which are eligible to trade in one or more, but not all three, of these trading sessions, and to maintain on its Internet Web site (*http://www.nysearca.com*) a list that identifies all securities traded on the NYSE Arca Marketplace that do not trade for the duration of each of the three sessions specified in Rule 7.34.[7] The purpose of this proposed rule change is to provide transparency with respect to the trading hours eligibility of certain derivative securities products.

Finally, the Exchange proposes to add trading halt procedures applicable to trading the securities described in NYSE Arca Equities Rules 5.1(b)(13), 5.1(b)(18), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, and 8.300 (each referred to in proposed Rule 7.34 as "Derivative Securities Product") on an unlisted trading privileges ("UTP") basis in the Opening, Core, and Late Trading Sessions.

The proposed amendment to Rule 7.34 provides that, in the Opening Session, if a Derivative Securities Product begins UTP trading on the NYSE Arca Marketplace in the Opening Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the Intraday Indicative Value ("IIV") or the value of the underlying index, as applicable, to such product, by a major market data vendor, NYSE Arca may continue to trade such product for the remainder of the Opening Session.

During the Core Trading Session, if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market data vendor and the listing market halts trading in the product, NYSE Arca, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in the Derivative Securities Product on the NYSE Arca Marketplace.

If the IIV or the value of the underlying index continues not to be calculated or widely available after the close of the Core Trading Session, NYSE Arca may trade the Derivative Securities Product in the Late Trading Session only if the listing market traded such securities until the close of its regular trading session without a halt. Finally, if the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Opening Session on the next business day, NYSE Arca shall not commence trading of the Derivative Securities Product in the Opening Session that day. If an interruption in the calculation or wide dissemination of the IIV or the value of the underlying index continues, NYSE Arca may resume trading in the product only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in the product resumes in the listing market.

2. Statutory Basis

The proposal is consistent with Section 6(b) of the Act[8] in general and Section 6(b)(5) of the Act[9] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[10] and Rule 19b–4(f)(6) thereunder.[11] 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,

[5] NYSE Arca Equities Rules 5.1(b)(13), 5.2(j)(3), and 8.100 relate to Unit Investment Trusts, Investment Company Units, and Portfolio Depositary Receipts, respectively.

[6] NYSE Arca Equities Rules 8.200, 8.201, 8.202, 8.203, and 8.300 relate to Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, and Partnership Units, respectively.

[7] The Exchange currently disseminates on *http://www.nysearca.com* a list of derivative securities products that trade only in the Core Trading Session and those that also trade in the Opening Session and/or the Late Trading Session.

[8] 15 U.S.C. 78s(b).

[9] 15 U.S.C. 78s(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay.[13] The Commission believes that such waiver is consistent with the protection of investors and the public interest because the proposed rule change should provide transparency and more clarity with respect to the trading hours eligibility of certain derivative securities products and should promote consistency in the trading halts of derivative securities. For these reasons, the Commission designates the proposed rule change as operative immediately.[14]

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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–77 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–NYSEArca–2006–77. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–77 and should be submitted on or before January 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22396 Filed 12–28–06; 8:45 am]

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[12] *Id.*

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires an exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing notice requirement in this case.

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55002; File No. SR–NYSEArca–2006–32]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Various iShares® MSCI Index Funds Pursuant to Unlisted Trading Privileges

December 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2006, NYSE Arca, Inc. ("NYSE Arca" 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 substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to trade shares ("Shares") of the following Index Funds ("Funds") pursuant to unlisted trading privileges ("UTP") based on NYSE Arca Rule 5.2(j)(3):

- iShares MSCI Brazil (Symbol: EWZ)
- iShares MSCI South Africa (EZA)
- iShares MSCI South Korea (EWY)
- iShares MSCI Taiwan (EWT)

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the principal office of the Exchange, 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. The text of these statements may be examined at the places specified in Item III 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 proposing to trade the Shares of the Funds pursuant to UTP. Each Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the applicable underlying index ("Index"). Each Index is calculated by Morgan Stanley Capital Investment ("MSCI") for each trading day based on official closing prices of the Index components in the applicable foreign markets. Each Index consists of stocks traded primarily on the respective country's stock exchange. Each Fund utilizes a passive or indexing investment approach, which attempts to approximate the investment performance of its benchmark index through quantitative analytical

procedures. MSCI generally seeks to have 60% of the capitalization of a country's stock market reflected in the MSCI Index for such country.

The Commission previously approved the original listing and trading of the Shares of the Funds on the American Stock Exchange, LLC. ("Amex").[3] The Funds, with the exception of iShares MSCI South Africa, were subsequently listed on The New York Stock Exchange ("NYSE").[4] The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Trading hours on the Exchange for the Shares are the same as those set forth in NYSE Arca Equities Rule 7.34, except that the Shares issued by MSCI Brazil and iShares MSCI South Africa will not trade in the Opening Session (4 a.m. to 9:30 a.m. Eastern Time) unless the Indicative Optimized Portfolio Value ("IOPV") is calculated and disseminated during that time. The iShares MSCI South Korea Index Fund and iShares MSCI Taiwan Index Fund will trade during the Opening Session, and there is no overlap in trading hours of the Opening Session and the foreign markets trading the MSCI South Korea Index and MSCI Taiwan Index securities. The last calculated IOPV is available to investors during the Opening Session by means of the consolidated tape or major market data vendors. The IOPV for these two Funds is unchanged during the Opening Session from its last calculated value.

Quotations for and last sale information regarding the Funds are disseminated through the Consolidated Quotation System. The Index on which each Fund is based is calculated by MSCI for each trading day in the applicable foreign market based on official closing prices of the Index components in such markets. The Indexes are reported periodically in major financial publications, and the intra-day value of each Index is disseminated every 15 seconds throughout the trading day by organizations authorized by MSCI. The net asset value ("NAV") of each Fund is calculated and disseminated each business day, normally at the close of regular trading of the NYSE.

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem the proposed Funds, the IOPV for each Fund as calculated by Bloomberg, L.P. is disseminated through the facilities of the Consolidated Tape Association. The IOPV is disseminated on a per-share basis every 15 seconds during regular NYSE trading hours of 9:30 a.m. to 4:15 p.m. Eastern Time, or, for iShares MSCI South Africa (listed on Amex), 9:30 a.m. to 4 p.m. or 4:15 p.m., depending on the time Amex specifies for the trading of such Fund's Shares.

The IOPV may not reflect the value of all securities included in the applicable Index. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IOPV on a per-share basis disseminated during NYSE's or Amex's regular trading hours should not be viewed as a real-time update of the NAV of a particular Fund, which is calculated only once a day. The IOPV is intended to closely approximate the value per share of the portfolio of securities for the Fund and provide for a close proxy of the NAV at a greater frequency for investors.

For the iShares MSCI South Korea Index and MSCI Taiwan Index Funds, there is no overlap in trading hours between the foreign markets and NYSE. Therefore, for these Funds, the IOPV is calculated based on closing prices in the principal foreign market for securities in each Fund's portfolio, which are then converted from the applicable foreign currency to U.S. dollars. This IOPV is updated every 15 seconds during NYSE regular trading hours of 9:30 a.m. to 4:15 p.m. E.T. to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency.

The iShares MSCI Brazil and South Africa Index Funds include companies trading in markets with trading hours overlapping regular NYSE or Amex trading hours. For each of these Funds, the IOPV calculator updates the IOPV during the overlap period every 15 seconds to reflect price changes in the principal foreign market and converts such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but NYSE or Amex is open for trading, the IOPV is updated every 15 seconds to reflect changes in currency exchange rates.

The Commission has granted each Fund an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 ("1940 Act").[5] Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Funds' application for orders under the 1940 Act.[6]

In connection with the trading of each Fund, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading Shares of such Fund, including how the Fund Shares are created and redeemed, the prospectus or product description delivery requirements applicable to the Fund, applicable Exchange rules, how information about the value of the underlying index is disseminated, and trading information. The Information Circular will disclose that the NAV is determined for Brazil, South Korea, or Taiwan at different times than other MSCI Index Series. Further, the Information Circular will disclose the possible market impact of the Fund buying or selling securities in Brazil, South Korea, or Taiwan prior to the calculation of the NAV.

In addition, before an ETP Holder recommends a transaction in the Shares, the ETP Holder must determine the Shares are suitable for the customer, as required by NYSE Arca Equities Rule 9.2(a)–(b).

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and Section 6(b)(5) of the Act[8] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f–5 under the Act[9] because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's

[3] *See* Securities Exchange Act Release No. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR–AMEX–98–49). The Funds were formerly known as World Equity Benchmark Shares or WEBS.

[4] *See* Securities Exchange Act Release No. 52761 (November 10, 2005), 70 FR 70010 (November 18, 2005) (SR–NYSE–2005–76).

[5] 15 U.S.C. 80a–24(d).

[6] *See In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

[7] 15 U.S.C. 78s(b).

[8] 15 U.S.C. 78s(b)(5).

[9] 17 CFR 240.12f–5.

existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–32 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–NYSEArca–2006–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–32 and should be submitted on or before January 19, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires that an exchange have rules designed, among other things, 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 Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[12] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[13] The Commission notes that it previously approved the listing and trading of the Shares on Amex and, with the exception of iShares MSCI South Africa, subsequently NYSE.[14] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[15] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, MSCI updates the applicable IOPV every 15 seconds to reflect price changes of the Index components in the principal foreign markets, and converts such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but Amex or NYSE is open for trading, the IOPV will be updated every 15 seconds to reflect changes in currency exchange rates. NYSE Arca Rule 7.34 describes the situations when the Exchange would halt trading when the IOPV or the value of the Index underlying one of the Funds is not calculated or widely available.

The Commission notes that, if the Shares of any of the Funds should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to monitor the trading of the Shares.

2. In connection with the trading of the Shares, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would inform participants of the prospectus or product delivery requirements applicable to the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of

[10] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78*l*(f).

[13] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[14] *See supra notes* 3 and 4.

[15] 17 CFR 240.12f–5.

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the iShares MSCI South Africa on Amex and the others Shares on NYSE is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit these earlier findings or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2006–32) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–22402 Filed 12–28–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54989; International Series Release No. 1299; File No. SR–Phlx–2006–34]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Thereto Relating to U.S. Dollar-Settled Foreign Currency Options

December 21, 2006.

I. Introduction

On May 12, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the listing and trading of U.S. dollar-settled foreign currency options ("FCOs") on the British pound and the Euro (together, the "Currencies"). On September 29, 2006, the Exchange filed Amendment No. 1,[3] and on October 20, 2006, the Exchange filed Amendment No. 2.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on November 2, 2006.[5] The Commission received no comments on the proposal. On December 15, 2006, the Phlx filed Amendment No. 3 to the proposed rule change.[6] This order provides notice of the proposed rule change as modified by Amendments No. 1, 2, and 3 and approves the proposed rule change as amended on an accelerated basis.[7]

II. Description of the Proposal

The Exchange proposes to list U.S. dollar-settled FCOs[8] on the Currencies and to adopt rules and rule amendments to permit the trading of U.S. dollar-settled FCOs on the Exchange's electronic trading platform for options, Phlx XL.[9] The Exchange also proposes to amend a number of other rules applicable to U.S. dollar-settled FCOs, and to delete outdated references to the German mark, Italian lira, Spanish peseta, and the French franc.[10]

A. Contract Specifications and Amendments to FCO Rules

Background. U.S. dollar-settled FCOs are cash-settled, European-siyle options issued by The Options Clearing Corporation ("OCC") that allow holders to receive U.S. dollars representing the difference between the current foreign exchange spot price and the exercise price of the option. In contrast, a physical delivery option on a foreign currency, which the Exchange currently lists and trades, gives its owner the right to receive physical delivery (if it is a call) or to make physical delivery (if it is a put) of the underlying foreign currency when the option is exercised.[11] In addition, unlike other Phlx-traded FCOs, U.S. dollar-settled FCOs will be deemed to be exercised at expiration if the exercise settlement value is at least $1.00 per contract unless the clearing member instructs OCC not to exercise it.[12]

Delivery and Payment. Upon exercise of an in-the-money U.S. dollar-settled FCO structured as a call, the holder would receive, from OCC, U.S. dollars representing the difference between the exercise strike price and the closing settlement value of the U.S. dollar-settled FCO contract multiplied by the number of units of currency covered by the contract. Similarly, for a U.S. dollar-settled FCO structured as a put, the holder would receive U.S. dollars representing the excess of the exercise price over the closing settlement value of the U.S. dollar-settled FCO contract multiplied by the number of units of foreign currency covered by the contract.[13]

Contract Size. The contract sizes of the U.S. dollar-settled FCO contracts on the Currencies would be 10,000 British pounds and 10,000 Euros.[14]

Expirations. The Exchange proposes to permit U.S. dollar-settled FCO contracts to be listed with expirations that are the same as the expirations permitted for equity index options pursuant to Phlx Rule 1101A, with the exception of long term option series and quarterly expiring FCOs which the Exchange does not propose to list.[15] The Exchange anticipates that, at least initially, it would list expirations at one, two, three, six, and nine months, and that the options would be on three of the months from the March, June,

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated September 29, 2006 ("Amendment No. 1"). Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Form 19b–4 dated October 20, 2006 ("Amendment No. 2"). Amendment No. 2 replaced the Amendment No. 1 in its entirety.

[5] *See* Securities Exchange Act Release No. 54652 (October 25, 2006), 71 FR 64597 ("Notice").

[6] *See* Partial Amendment dated December 15, 2006 ("Amendment No. 3").

[7] This order specifically approves the listing and trading of U.S. dollar-settled FCOs on the British pound and the Euro. The listing and trading of additional U.S. dollar-settled FCOs on other foreign currencies will require the Exchange to file additional proposed rule changes on Form 19b–4.

[8] The Exchange previously traded U.S. dollar-settled options on the German mark and the Japanese yen beginning in September 1994 and February 1997, respectively. See Securities Exchange Act Release Nos. 33732 (March 8, 1994), 59 FR 12023 (March 15, 1994) and 36505 (November 22, 1995), 60 FR 61277 (November 29, 1995). U.S. dollar-settled German mark options and Japanese yen options were delisted on January 19, 1999 and August 23, 1999, respectively.

[9] *See* Securities Exchange Act Release No. 49832 (June 8, 2004), 69 FR 33442 (June 15, 2004) (SR–Phlx–2003–59) (approving Phlx XL).

[10] *See* Phlx Rules 722, 1000, 1001, 1009, 1014, 1033, 1034, 1069, 1079; and Options Floor Procedure Advice B–7.

[11] The Exchange has listed and traded physical delivery FCOs issued by OCC on a number of currencies since 1982. The Exchange's existing, physical delivery options on the Currencies would not be affected by this proposal and would continue to trade as they do today, by open outcry.

[12] However, the normal expiration date exercise procedures do not apply in circumstances in which the fixing of the exercise settlement amount is delayed beyond the last trading day before expiration. *See* OCC Rule 2302 (setting forth the expiration date exercise procedures), and Securities Exchange Act Release No. 54395 (December 13, 2006) (order approving SR–OCC–2006–10).

[13] *See* Phlx Rule 1044.

[14] The contract sizes for the physical delivery options on the Currencies are 31,250 British pounds and 62,500 Euros.

[15] *See* Phlx Rule 1012(a). The Exchange stated that it does not anticipate listing FLEX U.S. dollar-settled foreign currency options at this time. Currently, trades may be executed in certain FLEX options on equities and equity indexes. *See* Phlx Rule 1079.

September, December cycle, plus two additional near term months (five months at all times).[16] The expiration date for the consecutive and cycle month options would be 11:59 p.m. Eastern Time on the Saturday immediately following the third Friday of the expiration month.[17]

Trading Hours. The Exchange proposes to trade U.S. dollar-settled FCOs from 9:30 a.m. to 4 p.m. Eastern Time, Monday through Friday.[18] These trading hours differ from the trading hours for the physical delivery FCO contracts because the U.S. dollar-settled FCOs would, unlike the Exchange's physical delivery FCOs, trade on Phlx XL.[19] An expiring U.S. dollar-settled FCO contract would cease trading at 4:00 p.m. on the day prior to its expiration day.[20] Unlike trading in physical delivery FCOs, trading in U.S. dollar-settled FCOs would not close on bank holidays.

Settlement Values; Dissemination of Information. The closing settlement value would be the day's announced Noon Buying Rate,[21] as determined by the Federal Reserve Bank of New York on the trading day prior to the expiration date.[22] If the Noon Buying Rate is not announced by 2 p.m. Eastern Time, the closing settlement value would be the most recently announced Noon Buying Rate, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances. The closing settlement value would not be disseminated through the Options Price Reporting Authority ("OPRA"), but would be posted on the Exchange's Web site, where it would be publicly available to all visitors to the Exchange's Web site on an equal basis, without the need to enter any kind of password. The Exchange has represented that it will not disclose the settlement value to any person or group of persons other than employees of the Exchange who need to know, prior to posting the value on the Exchange's Web site.

Position and Exercise Limits. For purposes of position and exercise limits, positions in U.S. dollar-settled FCO contracts would be aggregated with positions in the physical delivery contracts. In addition, position and exercise limits for the U.S. dollar-settled FCOs would be the same as the position and exercise limits for the physical delivery contracts pursuant to Phlx Rules 1001 and 1002. However, each Euro U.S. dollar-settled option contract would count as one-sixth of a contract for purposes of position and exercise limits.[23] Similarly, each British pound U.S. dollar-settled option contract would count as one-third of a contract for purposes of position and exercise limits.[24] The other aggregation principles in Phlx Rule 1001 would continue to apply.

Strike Prices. The Exchange proposes to initially list exercise strike prices for each expiration around the current spot price at half-cent ($.005) intervals up to five percent on each side.[25] Thus, if the spot price initially were at 1.0000, the Exchange would list strikes in $.005 intervals up to 1.0500 and down to .9500 for a total of twenty-one strike prices available for trading. The Exchange would not list any strike prices at intervals other than these $.005 intervals.[26] As the spot price for U.S. dollar settled FCO moves, the Exchange would list new strike prices that, at the time of listing, do not exceed the spot price by more than 5% and are not less than the spot price by 5%. For example, if at the time of initial listing the spot price of the Euro is at 1.0000, the strike prices the Exchange would list would be .9500 to 1.0500. If the spot price then moves to 1.0500, the Exchange may list additional strikes at the following prices: 1.0550 to 1.1000. In that event, the Exchange would delist any previously-listed series outside of the current ten percent band that have no open interest. In addition, new strikes may be added during the life of the option in accordance with Phlx Rule 1012.[27]

Bids and Offers—Premium. Under Phlx Rule 1033, bids and offers in U.S. dollar-settled FCOs on the Currencies must be made in terms of U.S. dollars per unit of the underlying foreign currency. The minimum increment for U.S. dollar-settled FCOs quoting under $.0300 would be $.0005 per unit of the foreign currency, expressed as .05 per unit of the foreign currency, which equals a $5.00 minimum increment per contract consisting of 10,000 Euros or 10,000 British pounds. The minimum increment for U.S. dollar-settled FCOs quoting at $.0300 or higher would be $.0010 per unit of the foreign currency, expressed as .10 per unit of the foreign currency, which equals a $10.00 minimum increment per contract consisting of 10,000 Euros or 10,000 British pounds.[28]

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[16] By way of example, in September, the U.S. dollar-settled FCOs would have the following months listed: October, November, December, March, and June.

[17] *See* Phlx Rule 1000(b)(21).

[18] *See* Phlx Rule 101.

[19] Trading hours for the Exchange's physical delivery FCO contracts are from 2:30 a.m. to 2:30 p.m. Eastern Time, Monday through Friday. Beginning December 1, 2006, the trading hours for physical delivery FCOs on the Exchange will be from 7:30 a.m. to 2:30 p.m. Eastern Time, Monday through Friday. *See* Securities Exchange Act Release No. 54802 (November 21, 2006), 71 FR 8875 (November 28, 2006) (Notice of Filing and Immediate Effectiveness of SR–Phlx–2006–72).

[20] The Exchange notes that in order to facilitate trading of the U.S. dollar-settled FCOs on Phlx XL, trading would be permitted to occur after the settlement value is announced on the day prior to expiration, as discussed below.

[21] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (order granting accelerated approval of SR–NYSE–2005–65).

[22] *See* Phlx Rule 1057. If Friday is an Exchange holiday, the closing settlement value for U.S. dollar-settled FCOs would be determined on the basis of the Noon Buying Rate on the preceding trading day, which would also be the last day of trading for the expiring option.

[23] *See* Phlx Rule 1001. According to the Exchange, each U.S. dollar-settled Euro option contract would be treated as one-sixth of a contract for position and exercise limit purposes because the cash-settled Euro option contract is roughly one-sixth of the size of the physical delivery contract.

[24] The cash-settled British pound option contract is roughly one-third of the size of the physical delivery contract.

[25] According to the Exchange, the Exchange receives contributor bank quotes from a vendor in real-time and takes the average of the various quotes, to determine the foreign currency spot price.

[26] *See* proposed Commentary Section .06 to Phlx Rule 1012.

Strike prices would be expressed without reference to the first two decimal places. Minimum quoting increments and maximum quote spreads would also reflect this convention, as reflected in note 28, *infra*, and accompanying text.

For example, assuming that the actual spot value of the Euro is $1.00, a strike could be listed at $1.0050 and would be expressed as $100.50. Similarly, the minimum quoting increment would be $.0005 (expressed as $.05), if the bid is less than $.0300 (expressed as $3.00), or $.0010 (expressed as $.10), if the bid equals or exceeds $.0300 (expressed as $3.00). Bids could be made at $.0330 (expressed as $3.30), at $.0340 (expressed as $3.40), and so forth. Offers could be made at $.0350 (expressed as $3.50), at $.0360 (expressed as $ 3.60), and so forth. Maximum quote spread parameters for bids and offers made in open outcry would range from $.0025 (expressed as $.25), to $.0100 (expressed as $1.00), depending upon the size of the prevailing bid. Thus, a market maker could bid $.0330 (expressed as $3.30) and offer $.0370 (expressed as $ 3.70). (Following open rotation, however, quotes may be made electronically with a difference not to exceed $.0500 (expressed as $5.00) between the bid and the offer regardless of the price of the bid). *See* Amendment No. 3, *supra* note 6, and *infra* note 28.

Prior to commencement of trading of U.S. dollar-settled options on the Currencies, the Exchange intends to issue an informational memorandum to members and member organizations which explains this strike price and quoting convention.

[27] *See* Phlx 1012(a)(iv).

[28] *See* Phlx Rule 1034(a). By way of example, if the spot price of the Euro is at $1.2550 and an investor purchases the December Euro $1.2500 (expressed as $125.00) Call at a premium of $.0075 (expressed as $.75) and then sells the December Euro $1.2500 Call at a premium of $.0095 (expressed as $.95), the investor's profit would be $.0020 per Euro. The investor's total profit would be $.0020 per Euro multiplied by 10,000 Euros (the size of the contract) for a total of $20.00. Amendment No. 3 corrected a technical error in the use of the quoting convention in Phlx Rule 1034(a). Amendment No. 3 also revised an example in note

Continued

Margin Requirements. The U.S. dollar-settled FCOs would have the same customer margin requirements as are provided for the existing FCOs pursuant to Phlx Rule 722, Commentary .16.[29] The Exchange calculates the margin requirements for each foreign currency underlying U.S. dollar-settled FCO separately, rather than determining one margin level for all foreign currencies based upon the historical pricing information for all foreign currencies together. The Exchange informs members and the public of the margin levels for each currency option immediately following the quarterly reviews described in Phlx Rule 722, Commentary .16.

B. Surveillance

The Phlx will integrate U.S. dollar-settled FCOs into existing Phlx market surveillance programs for equity and index options, as well as for physical delivery foreign currency options, and intends to apply those same program procedures to the U.S. dollar-settled FCOs. The Exchange represents that these surveillance programs for U.S. dollar-settled FCOs will be adequate to monitor exchange trading of U.S. dollar settled FCOs and detect violation of exchange rules, thereby deterring manipulation.[30]

Futures on the British pound and the Euro, as well as options on such futures are traded on the Chicago Mercantile Exchange ("CME") (both exchange pit trading and GLOBEX trading). Euro Currency Trust Shares and British Pound Sterling Shares trade on the New York Stock Exchange ("NYSE") and on NYSE Arca. The Exchange represented that, to the best of the Exchange's knowledge, these U.S. markets are the primary trading markets in the world for exchange-traded futures, options on futures and trust shares on these currencies. The Exchange also represented that it may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG. Specifically, the Phlx can obtain such information from the NYSE and NYSE Arca in connection with shares of the Euro Currency Trust and the CurrencyShares™ British Pound Sterling Trust trading on the NYSE and NYSE Arca, and from the CME and London International Financial Futures Exchange ("LIFFE") in connection with Euro and Pound futures trading on those exchanges.[31]

In addition, the Phlx represented that it is able to obtain information regarding trading in the Euro Currency Trust Shares, British Pound Sterling Shares, Euro and British Pound options, and Euro and British Pound futures and options on futures through Phlx members, in connection with such members' proprietary or customer trades which they effect on any relevant market.[32] Pursuant to Phlx Rule 1022, specialists and Registered Options Traders ("ROTs") are required to identify all accounts maintained for foreign currency trading in which the specialist or ROT engages in trading activity or over which he exercises investment discretion, and no specialist or ROT may engage in foreign currency trading in any account not reported pursuant to the rule. Phlx Rule 1022 also requires every specialist and ROT to make available to the Phlx upon request all books, records and other information relating to transactions for their own account or accounts of associated persons with respect to the foreign currency underlying U.S. dollar-settled FCOs, including transactions in the cash market as well as the futures, options and options on futures markets. An amendment to Phlx Rule 1022(d) would also add transactions in "other foreign currency derivatives" to the list of currency related transactions with respect to which specialists and ROTs must provide information to the Exchange.

C. Trading on Phlx XL

The Exchange proposes that U.S. dollar-settled FCOs trade on Phlx XL, the Exchange's electronic trading platform for options. In this regard, the Exchange proposes to amend a number of rules that currently govern the trading of equity and equity index options that trade as "Streaming Quote Options" on Phlx XL to extend the coverage of those rules to U.S. dollar-settled FCOs and to include U.S. dollar-settled FCOs as a product that may be traded on Phlx XL as a Streaming Quote Option.[33] Exchange specialists, on-floor market makers known as Streaming Quote Traders ("SQTs"),[34] and remote market makers known as Remote Streaming Quote Traders ("RSQTs")[35] who stream their U.S. dollar-settled FCO quotes to the Exchange would be eligible to participate in the directed order flow program. Specialists in U.S. dollar-settled FCOs, like specialists in equity and equity index options, also would be eligible to participate in the Exchange's enhanced specialist participation programs.[36]

Obligations and Restrictions. U.S. dollar-settled FCOs would trade in the same general manner as equity index options,[37] which are also U.S. dollar-settled products.[38] In this regard, Phlx Rule 1014 is being amended to make

23 of the Notice to: (1) Reflect that the minimum increment when the bid equals or exceeds $.0300 (expressed as $3.00) is $.0010 (expressed as 10 cents), not $.0005 (expressed as 5 cents), as the example erroneously implied as originally drafted, (2) reduce the size of the bid in the example from an unrealistic $1.00 (expressed as $100.00) range to a more realistic $.0300 (expressed as $3.00) range while continuing to illustrate the same underlying concepts, and (3) note that the maximum quote spread parameters do vary depending on the size of the prevailing bid and whether the bid/offer is made on Phlx XL as opposed to open outcry. *See* Amendment No. 3, *supra* note 6.

[29] Pursuant to Phlx Rule 722, Commentary .16, the Exchange calculates the margin requirement for customers that assume short FCO positions by adding a percentage of the current market value of the underlying foreign currency contract to the option premium price less an adjustment for the out-of-the-money amount of the option contract. On a quarterly calendar basis, the Exchange reviews five-day price changes over the preceding three-year period for each underlying currency and sets the add-on percentage at a level which would have covered those price changes at least 97.5% of the time (the "confidence level"). If the results of subsequent reviews show that the current margin level provides a confidence level below 97%, the Exchange increases the margin requirement for that individual currency up to a 98% confidence level. If the confidence level is between 97% and 97.5%, the margin level would remain the same but would be subject to monthly follow-up reviews until the confidence level exceeds 97.5% for two consecutive months. If during the course of the monthly follow-up reviews, the confidence level drops below 97%, the margin level is increased to a 98% level and if it exceeds 97.5% for two consecutive months, the currency is taken off monthly reviews and is put back on the quarterly review cycle. If the currency exceeds 98.5%, the margin level is reduced to a 98% confidence level during the most recent three year period. Finally, in order to account for large price movements outside the established margin level, if the quarterly review shows that the currency had a price movement, either positive or negative, greater than two times the margin level during the most recent three year period, the margin requirement is set at a level to meet a 99% confidence level.

[30] *See* Amendment No. 3, *supra* notes 6 and 28.

[31] NYSE and NYSE Arca are members of ISG. CME and LIFFE are affiliate members of ISG.

[32] *See* Equity Floor Procedure Advice F–8 and Options Floor Procedure F–8, Failure to Comply with an Exchange Inquiry.

[33] *See* Phlx Rule 1080.

[34] *See* Phlx Rule 1014(b)(ii)(A).

[35] *See* Phlx Rule 1014(b)(ii)(B).

[36] The Exchange currently has several Enhanced Specialist Participation programs, embodied in Phlx Rule 1014(g). These programs establish specified percentages as the Enhanced Specialist Participation, depending on the category of option. Currently, the specialist in physical delivery FCOs is not entitled to a "specialist enhancement," although such a program was once in effect.

[37] However, Phlx Rule 1080, Commentary .01, is being revised to reflect that the Auto-Quote system applies to equity and equity index options, but not to U.S. dollar-settled FCOs. The Exchange's Auto-Quote system incorporates pricing model data, which generate automatic pricing of option series based on a number of factors, including the value of the underlying stock.

[38] *See* Phlx Rules 1014 and 1080. Conforming changes are being made to Options Floor Procedure Advices B–6, Priority of Options Orders for Equity Options and Index Options by Account Type, B–7, Time Priority of Bids/Offers in Foreign Currency Options, and F–6, Option Quote Parameters.

clear that the obligations and restrictions applicable to specialists and ROTs trading equity index options now generally would apply to specialists and ROTs in U.S. dollar-settled FCOs.[39] In addition, under the amendments to Phlx Rule 1014, specialists and ROTs in U.S. dollar-settled FCOs, like specialists in physical delivery FCOs, would be subject to rules relating to bid/ask differentials and other affirmative market making obligations and restrictions[40] but those rules with respect to U.S. dollar-settled FCOs would track rules currently applicable to equity options, in order to facilitate trading on the Phlx XL system by the system's current users who are accustomed to the existing bid/ask differentials applicable to equity options.[41]

In addition, the Exchange proposes to amend Phlx Rule 1063 and Options Floor Procedure Advice C–2 to provide that the Floor Broker Management System currently employed with respect to equity and equity index options would also be required to be used for U.S. dollar-settled FCOs.[42]

Openings. Phlx Rule 1017 governs the Exchange's fully automated opening system for options traded on Phlx XL.[43] Phlx Rule 1017 is being amended to reflect that U.S. dollar-settled FCOs would be opened using the automated opening system, subject to certain adjustments to current processes because FCO openings, unlike openings of equity and index options, would not depend upon the opening of trading in an underlying cash market.[44] More specifically, Phlx Rule 1017 would provide that Phlx XL would accept orders and quotes in U.S. dollar-settled FCOs beginning no later than one hour before market opening, and that the specialist assigned in the particular U.S. dollar-settled FCO must enter opening quotes not later than 30 seconds after market opening.[45] It would provide that in certain circumstances an anticipated opening price would be calculated if the quotes of at least two Phlx XL participants have been submitted within two minutes of market opening (or such shorter time as determined by the FCO Committee and disseminated to membership via Exchange circular). Finally, it would provide that the system would not open a series of U.S. dollar-settled FCOs if the opening price is not within an acceptable range (as determined by the FCO Committee and announced to Exchange members and member organizations by way of Exchange circular).

Block Trades. In addition, the block trade procedures in Phlx Rule 1016 are limited to physical delivery FCOs. According to the Exchange, the block trading rule currently enables market participants to execute large-size FCO orders in an orderly fashion at a price that may not be the best bid or offer for that particular FCO, but is the best price available for executing a block trade in such FCO. To take advantage of the block execution procedure, Phlx Rule 1016 requires a floor broker with a block order to quote the market in a particular FCO, announce that a block quotation for a specified number of contracts over 1,000 is sought, and ascertain from the trading crowd the best price at which the entire order can be executed. The Exchange believes that trading of U.S. dollar-settled FCOs on Phlx XL by SQTs and RSQTs who stream quotes into the system makes execution of block trades pursuant to the procedures required by Phlx Rule 1016 impractical.

Customized Foreign Currency Options. Phlx Rule 1069 is being amended to limit the applicability of the rule to physical delivery FCOs so that U.S. dollar-settled FCOs would not be eligible to trade on a customized basis.

Foreign Currency Options Committee. Phlx Rules 1014 and 1080 and Options Floor Procedure Advice A–13 is being amended to provide that the Foreign Currency Options Committee would have decision-making authority in certain instances with respect to U.S. dollar-settled FCOs (rather than the Options Committee, which oversees the trading of equity and equity index options on Phlx XL). In addition, the Phlx is deleting the words "on-floor" from the term "on-floor Governor" in Phlx Rule 1014(g), because the "on-floor Governor" category has previously been eliminated from the Exchange's by-laws.[46]

D. Customer Protection

Exchange rules designed to protect public customers trading in FCOs would apply to U.S. dollar-settled FCOs on the Currencies. Specifically, Phlx Rule 1024(b) prohibits members from accepting a customer order to purchase or write a U.S. dollar-settled FCO unless such customer's account has been specially approved in writing by a designated Foreign Currency Options Principal of the member for transactions in FCOs. Additionally, Phlx Rule 1026 is designed to ensure that options, including U.S. dollar-settled FCOs, are sold only to customers capable of evaluating and bearing the risks associated with trading in the instruments. Finally, under Phlx Rule 1027, members are permitted to exercise discretionary power with respect to trading U.S. dollar-settled FCOs in a customer's account only if the member has received prior written authorization from the customer and the account has been accepted in writing by a designated Foreign Currency Options Principal. In addition. the Foreign Currency Options Principal or a Registered Options Principal must approve and initial each discretionary U.S. dollar-settled FCO on the day the order is entered.[47] Phlx Rule 1025 relating to the supervision of accounts, Phlx Rule 1028 relating to confirmations, and Phlx Rule 1029 relating to delivery of options disclosure documents also would apply to trading in U.S. dollar-settled FCOs.

[39] However, Phlx Rule 1014(c)(i)(B), which provides for a maximum option price change with exceptions based upon the price of the underlying security, would not apply to U.S. dollar-settled FCOs. The Exchange does not have a maximum option price change rule that applies to physical delivery FCOs and is not proposing a maximum option price change rule for U.S. dollar-settled FCOs.

[40] However, Phlx Rule 1014(c)(i)(B), which provides for a maximum option price change with exceptions based upon the price of the underlying security, would not apply to U.S. dollar-settled FCOs.

[41] Other amendments to Phlx Rule 1014 would make clear that current provisions on priority/parity and bid/ask differentials that apply to FCO contracts would be limited to physical delivery FCOs. *See* paragraphs (c)(ii) and (h), and Commentary .16 of Phlx Rule 1014. Similarly, options Floor Procedure Advice F–17, relating to trades to be effected in the trading pit, is being amended so that it applies only to physical delivery FCOs, because U.S. dollar-settled FCOs will trade on Phlx XL.

[42] The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange. *See* Phlx Rule 1080, Commentary .06.

[43] For a description of the automated opening system, *see* Securities Exchange Act Release Nos. 52667 (October 25, 2005), 70 FR 65953 (November 1, 2005) (SR–Phlx–2005–25), and 53242 (February 7, 2006), 71 FR 7604 (February 13, 2006) (SR-Phlx-2006–11). The Exchange also is making a technical change to clarify the application of Phlx Rule 1017 to index options by inserting reference to "underlying securities constituting 100% of the index value." The rule currently refers to the opening of the "underlying security," which makes sense with respect to equity options, but not index options.

[44] *See* Phlx Rule 1017. In addition, the Exchange is making conforming changes to Options Floor Procedure Advices A–12 and A–14.

[45] Market opening, as with equity and equity index options, is normally at 9:30 a.m. Eastern Time.

[46] *See* Amendment No. 3, *supra* notes 6 and 28.

[47] *See* Phlx Rule 1027.

III. Commission Finding and Conclusions

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.[48] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[49] which requires that an exchange have rules designed, among other things, 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.

A. Settlement Value and Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information on the Currencies so that investors in U.S. dollar-settled FCOs can monitor the underlying spot market in the Currencies. The Commission also believes that the Phlx's procedures and the competitive nature of the spot market for the Currencies should help to ensure that the settlement values for U.S. dollar-settled FCO contracts will accurately reflect the spot price for foreign currencies. Finally, the closing settlement value, which will be the Noon Buying Rate on the trading day prior to expiration,[50] would be posted on the Exchange's Web site, where it would be publicly available to all visitors on an equal basis, without the need to enter any kind of password.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as U.S. dollar-settled FCOs on the Currencies, can commence on a national securities exchange. The Commission believes this goal has been satisfied by the application of Phlx customer protection rules for FCOs to U.S. dollar-settled FCOs.

C. Surveillance

The Commission notes that the Phlx will integrate U.S. dollar-settled FCOs into existing Phlx market surveillance market programs for equity and index options, as well as for physical delivery foreign currency options, and that the Phlx intends to apply those same program procedures to the U.S. dollar-settled FCOs. The Commission also notes that Phlx Rule 1022, Equity Floor Procedure Advice F–8, and Options Floor Procedure F–8, as amended to include transactions in "other foreign currency derivatives," provide Phlx with the authority to obtain information regarding trading in the Euro Currency Trust Shares, British Pound Sterling Shares, Euro and British Pound options, and Euro and British Pound futures and options on futures through Phlx members, in connection with such members' proprietary or customer trades which they effect on any relevant market. In addition, the Phlx may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. Specifically, the Phlx can obtain such information from the NYSE and NYSE Arca in connection with shares of the Euro Currency Trust and the CurrencyShares™ British Pound Sterling Trust trading on the NYSE and NYSE Arca, and from the CME and LIFFE in connection with Euro and Pound futures trading on those exchanges. The Commission believes that these rules provide the Phlx with the tools necessary to adequately surveil trading in the Securities.

D. Position and Exercise Limits

As noted above, U.S. dollar-settled FCO contracts will be aggregated with physical delivery contracts for position and exercise limit purposes. The Commission believes that aggregation of U.S. dollar-settled FCOs with the physical delivery contracts for position and exercise limit purposes is prudent and minimizes concerns regarding manipulations or disruptions of the markets for U.S. dollar-settled FCO contracts and physical delivery contracts.

E. Trading on Phlx XL

The Commission believes that the trading of U.S. dollar-settled FCOs on Phlx XL is consistent with the Act. The rules that currently govern the trading of equity and equity index options that trade as "Streaming Quote Options" on Phlx would be extended to include U.S. dollar-settled FCOs.[51]

F. Other Rules

The Commission believes that the other rule changes proposed by the Phlx to accommodate the trading of U.S. dollar-settled FCOs are consistent with the Act. First, the Commission believes it is reasonable for the Phlx to initially list exercise strike prices for each expiration around the current spot price at half-cent ($0.005) intervals up to five percent on each side.[52] The Commission notes that the Phlx has represented that it has the system capacity to support the additional quotations and messages that will result from listing options on U.S. dollar settled FCOs.[53]

Finally, the Commission believes that it is consistent with the Act for the Exchange to establish the minimum trading increment for U.S. dollar-settled FCOs at $.0005 (expressed as $.05) per unit of the foreign currency for U.S. dollar-settled FCOs quoted at less than $.0300 (expressed as $3.00), and at $.0010 (expressed as $.10) per unit of the foreign currency for U.S. dollar-settled FCOs quoted at $.0300 (expressed as $3.00) or higher.

G. Accelerated Approval

Pursuant to Section 19(b)(2) of the Act, the Commission finds good cause to approve the proposal, as amended, prior to the thirtieth day after the amended proposal is published for comment in the **Federal Register.** Amendment No. 3 clarifies the proposed rule change with respect to the Phlx quoting convention, deletes outdated references to "on-floor Governor" in Phlx Rule 1014, and contains Phlx representations with regard to the Phlx surveillance procedures. Accordingly, the Commission finds good cause to accelerate approval of the amended proposal prior to the thirtieth day after publication in the **Federal Register.**

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

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[48] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital . formation. *See* 15 U.S.C. 78c(f).

[49] 15 U.S.C. 78f(b)(5).

[50] If the Noon Buying Rate is not announced by 2 p.m. Eastern Time, the closing settlement value would be the most recently announced Noon Buying Rate, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.

[51] *See supra* notes 33 to 42 and accompanying text.

[52] When listing additional strikes, the Commission expects the Exchange to consider whether the listing of such strikes will be consistent with the maintenance of a fair and orderly market.

[53] *See* Letter, dated October 11, 2006, from Thomas A. Whitman, Senior Vice President, Phlx, to Elizabeth King, Associate Director, Division of Market Regulation ("Division"), Commission, Heather Seidel, Senior Special Counsel, Division, Commission, and David Hsu, Special Counsel, Division, Commission.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–34. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–34 and should be submitted on or before January 19, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[54] that the proposed rule change (SR–Phlx–2006–34), as modified by Amendments No. 1, 2, and 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[55]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22404 Filed 12–28–06; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Document No. SSA–2006–0110]

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of teleconference.

DATES: January 10, 2007—2 p.m. to 4 p.m. Eastern Daylight Savings Time. Ticket to Work and Work Incentives Advisory Panel Conference Call. Call-in number: 1–888–790–4158. Pass code: PANEL TELECONFERENCE. Leader/Host: Berthy De la Rosa-Aponte.

SUPPLEMENTARY INFORMATION: Type of meeting: On January 10, 2007, the Ticket to Work and Work Incentives Advisory Panel (the "Panel") will hold a teleconference. This teleconference meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces this teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the Act. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a).

The interested public is invited to listen to the teleconference by calling the phone number listed above. Public testimony will be taken from 3:30 p.m. until 4 p.m. Eastern Standard Time. You must be registered to give public comment. Contact information is given at the end of this notice.

Agenda: The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the starting date or can be received, in advance, electronically or by fax upon request.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

- Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024. Telephone contact with Tinya White-Taylor at (202) 358–6430.
- Fax at (202) 358–6440.
- Email to *TWWIIAPanel@ssa.gov.*
- To register for the public comment portion of the meeting please contact Tinya White-Taylor by calling (202) 358–6430 or by e-mail to *tinya.white-taylor@ssa.gov.*

Dated: December 18, 2006.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. E6–22433 Filed 12–28–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2006–25903; Notice 2]

BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

BMW of North America, LLC (BMW) has determined that certain vehicles that it produced in 2005 and 2006 do not comply with S4.5.1(b)(3) and S4.5.1(e)(3) of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection." Pursuant to 49 U.S.C. 30118(d) and 30120(h), BMW has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on October 2, 2006, in the **Federal Register** (71 FR 58048). NHTSA received no comments.

Affected are a total of approximately 27,975 model year 2006 BMW X5 vehicles produced between September 1, 2005 and June 28, 2006. The affected vehicles were produced according to FMVSS No. 208 S14, the advanced air bag requirements including air bag suppression and telltale. However, the affected vehicles were not equipped with the corresponding warning labels, specifically the FMVSS No. 208 S4.5.1(b)(3) sun visor label identified in

[54] 15 U.S.C. 78s(b)(2).

[55] 17 CFR 200.30–3(a)(12).

Figure 11, and the S4.5.1(e)(3) removable label on dash identified in Figure 12. Instead, the affected vehicles were equipped with the "pre-advanced" air bag warning labels, specifically the FMVSS No. 208 S4.5.1(b)(1) sun visor label identified in Figure 6a, and the S4.5.1(e)(1) removable label on dash identified in Figure 7. This is shown as follows:

SUN VISOR LABEL	
Required Label: S4.5.1(b)(3) Figure 11	Noncompliant Label: S4.5.1(b)(1) Fig. 6a.
WARNING—EVEN WITH ADVANCED AIR BAGS	WARNING—DEATH or SERIOUS INJURY can occur.
Children can be killed or seriously injured by the air bag	Children 12 and under can be killed by the air bag.
The back seat is the safest place for children	The BACK SEAT is the SAFEST place for children.
Never put a rear-facing child seat in front	NEVER put a rear-facing child seat in front.
Always use seat belts and child restraints	ALWAYS use SEAT BELTS and CHILD RESTRAINTS.
See owner's manual for more information about air bags	Sit as far back as possible from the air bag.

REMOVABLE LABEL ON DASH	
Required Label: S4.5.1(e)(3) Figure 12	Noncompliant Label: S4.5.1(e)(2) Figure 7.
This Vehicle is Equipped with Advanced Air Bags	WARNING.
Even with Advanced Air Bags.	
Children can be killed or seriously injured by the air bag	Children Can be KILLED or INJURED by Passenger Air Bag
The back seat is the safest place for children	The back seat is the safest place for children 12 and under.
Never put a rear-facing child seat in the front.	
Always use seat belts and child restraints	Make sure all children use seat belts or child seats.
See owner's manual for more information about air bags..	

BMW has corrected the problem that caused these errors so that they will not be repeated in future production.

BMW believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. BMW states that the labels it actually used are "more stringent" and "more emphatic, which would lead a consumer to act in a more cautious manner, and not in a less safe manner." BMW says,

> The difference in the warning message texts between the labels clearly indicates that the warning message on the affected vehicles' labels is stricter when compared to the advanced air bag labels. Therefore, even though the labels are incorrect, they would not result in a decrease in the safety message. Rather, they provide an increased emphasis.

BMW further states that the vehicles are equipped with passenger air bag telltale lamps, and therefore the owners will know from these lamps that the vehicles are equipped with an advanced air bag system.

BMW also says,

> * * * [T]he Owners Manual of the affected vehicles contains a description of the advanced air bag system including a description of the passenger air bag system telltale lamp. Owners who consult the Owners Manual will be able to read a description of the advanced air bag system along with a description of the passenger air bag system telltale lamp. Therefore, owners will know from their Owners Manual that their vehicle is equipped with a FMVSS 208 advanced air bag system.

BMW states that it has no record that customers contacted the company with inquiries, complaints, or comments on the air bag warning labels.

NHTSA agrees with BMW that the noncompliance is inconsequential to motor vehicle safety. The noncompliant labels lack a statement that the vehicle is equipped with advanced airbags. However, as BMW points out in its petition, both the passenger air bag telltale lamp and the owner's manual indicate the presence of advanced airbags.

Except for indicating that the vehicle is equipped with advanced airbags, the noncompliant permanent sun visor label contains virtually the same information as required by S4.5.1(b)(3). Therefore, there is no degradation of safety resulting from the sun visor label.

The noncompliant removable dash label contains similar information to that required by S4.5.1(e)(3) other than the statement, "Never put a rear-facing child seat in the front." However, this label does state that "The back seat is the safest place for children 12 and under," and this label is a removable label which most likely will not stay on the vehicle once it is purchased. The statement, "Never put a rear-facing child seat in the front" is present on the permanent sun visor label, and thus is permanently visible to the vehicle user. Therefore, NHTSA agrees with BMW that this noncompliance will not result in decreased safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, BMW's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: December 26, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–22429 Filed 12–28–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21019]

Fenway Partners Capital Fund III, L.P., *et al.*-Control-Coach America Holdings, Inc., *et al.*

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Fenway Partners Capital Fund III, L.P. (Fenway Partners), a noncarrier, and various subsidiary entities of Fenway Partners (collectively, applicants), have filed an application under 49 U.S.C. 14303 to acquire control of noncarrier Coach America Holdings, Inc. (Coach America), and 30 Coach America-controlled motor passenger carriers. Coach America currently controls through intermediate subsidiaries the following federally regulated motor carriers of passengers: America Charters Ltd.; American Coach Lines of Atlanta, Inc.; American Coach Lines of Jacksonville, Inc.; American Coach Lines of Miami, Inc.; American Coach Lines of Orlando, Inc.; CUSA LLC; CUSA ASL, LLC d/b/a Arrow Stage Lines; CUSA AT, LLC d/b/a Americoach

Tours; CUSA AWC, LLC d/b/a All West Coachlines; CUSA BCCAE, LLC d/b/a Blackhawk-Central City Ace Express; CUSA CC, LLC d/b/a Coach USA Los Angeles; CUSA CSS, LLC d/b/a Crew Shuttle Services; CUSA EE, LLC d/b/a El Expreso; CUSA ELKO, LLC d/b/a K–T Contract Services Elko; CUSA ES, LLC d/b/a Express Shuttle; CUSA FL, LLC d/b/a Franciscan Lines; CUSA FTT, LLC d/b/a Fun Time Tours; CUSA GCBS, LLC d/b/a Goodall's Charter Bus Service; CUSA GCT, LLC d/b/a Gulf Coast Transportation; CUSA KBC, LLC d/b/a Kerrville Bus Company; CUSA K-TCS, LLC d/b/a Coach USA and d/b/a Gray Line Airport Shuttle; CUSA K–TCS, LLC d/b/a Arizona Charters; CUSA PCSTC, LLC d/b/a Pacific Coast Sightseeing Tours & Charters; CUSA PRTS, LLC d/b/a Powder River Transportation Services; CUSA RAZ, LLC d/b/a Raz Transportation Company; Dillon's Bus Service Inc.; Florida Cruise Connection, Inc. d/b/a Cruise Connection; Midnight Sun Tours, Inc.; Southern Coach Company; and Southern Tours, Inc.[1] Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 12, 2007. Applicants may file a reply by February 27, 2007. If no comments are filed by February 12, 2007, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC-F–21019 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to the applicants' representative: Richard H. Streeter, Barnes & Thornburg LLP, 750 17th Street, NW., Washington, DC 20006–4675.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1608 [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Fenway Partners is a Delaware limited partnership organized in 2005 by Fenway Partners, Inc. (Fenway), a private equity firm that invests in numerous different businesses, including other transportation-related entities, through various limited partnerships and other investment entities. Fenway has $1.6 billion under management. Fenway Partners owns all of the outstanding stock of Coach Am Holdings Corp. (Coach Am Holdings), a Delaware corporation organized to consummate this transaction. Coach Am Holdings in turn owns all of the stock of Coach Am Acquisition Corp. (Coach Am Acquisition), another Delaware corporation set up for purposes of this transaction. Coach Am Acquisition will be merged into Coach America, with Coach America left as the surviving company. Following the merger, Coach America will be wholly owned by Coach Am Holdings, and, indirectly, by Coach Am Holdings' parent, Fenway Partners. No operating authorities will be transferred as a result of the transaction.

Coach America, a Delaware corporation, controls the previously named federally regulated motor carriers through its subsidiaries Coach America Group, Inc., and KBUS Holdings, LLC. The motor carriers controlled by Coach America had gross operating revenues for the 12-month period ending October 31, 2006, greater than the $2 million threshold required for Board jurisdiction (gross revenues of approximately $330 million in 2005).

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). They state that the proposed transaction will have no impact on the adequacy of transportation services available to the public, that the proposed transaction will not have an adverse effect on total fixed charges, and that there will be no material adverse impact on the employees of the Coach America-controlled carriers. Additional information, including a copy of the application, may be obtained from the applicants' representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective February 12, 2007, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: December 22, 2006.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–22307 Filed 12–27–06; 8:45 am]

BILLING CODE 4915–01–P

[1] The application, as originally filed, also sought authority to control CUSA NC, LLC d/b/a Nevada Charters (Nevada Charters). Applicants subsequently advised the Board that Nevada Charters has voluntarily surrendered its interstate operating authority and that applicants no longer seek authority to control Nevada Charters.

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning January 1, 2007, and ending on June 30, 2007, the prompt payment interest rate is 5¼ per centum per annum.

DATES: This notice announces the applicable interest rate for the January 1, 2007, to June 30, 2007, period.

ADDRESSES: Comments or inquiries may be mailed to Crystal Hanna, Senior Advisor, Borrowings Accounting Team,

Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from *http://www.publicdebt.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Stephanie Brown, Director, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–5181; Crystal Hanna, Senior Advisor, Borrowings Accounting Team, Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328, (304) 480–7488; Amy Mertz Brown, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504–3715; or Brenda L. Hoffman, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (202) 504–3706.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub. L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978, Sec. 12, Pub. L. 95–563, 92 Stat. 2389, and, indirectly, the Prompt Payment Act of 1982, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury for the Renegotiation Board under Pub. L. 92–41.

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning January 1, 2007, and ending on June 30, 2007, at 5¼ per centum per annum. This rate is determined pursuant to the above-mentioned sections for the purpose of said sections.

Dated: December 21, 2006.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 06–9866 Filed 12–21–06; 10:32 am]

BILLING CODE 4810–39–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of seventeen newly-designated persons whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers." In addition, OFAC is publishing changes to the identifying information associated with nine persons previously designated pursuant to Executive Order 12978.

DATES: The designation by the Secretary of the Treasury of the seventeen persons identified in this notice pursuant to Executive Order 12978 is effective on October 31, 2006. In addition, the changes to the listings of persons previously designated pursuant to Executive Order 12978 are also effective on October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia; or (3) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to this order; and (4) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to this Order.

On October 31, 2006, the Secretary of the Treasury, in consultation with the Attorney General and Secretary of State, as well as the Secretary of Homeland Security, designated seventeen persons whose property and interests in property are blocked pursuant to the Order.

The list of additional designees is as follows:

1. AGROPECUARIA LINDARAJA S.A., Calle 4N No. 1N–10, Ofc. 901, Cali, Colombia;NIT # 890327360–0 (Colombia); (ENTITY) [SDNT]
2. APOYOS DIAGNOSTICOS S.A. (a.k.a. APOYOS DIAGNOSTICOS DE OCCIDENTE S.A.; f.k.a. UNIDAD DE DIAGNOSTICO MEDICO ESPECIALIZADO LTDA.; f.k.a. "Unides Ltda."); Calle 26 No. 34–60, Tulua, Valle, Colombia;NIT # 800118755–2 (Colombia); (ENTITY) [SDNT]
3. CAMACHO VALLEJO ASESORES E.U. (a.k.a. CAMACHO VALLEJO CONTADORES); Calle 23BN No. 5N–37, Ofc. 202, Cali, Colombia;NIT # 805031109–7 (Colombia); (ENTITY) [SDNT]
4. CANADUZ S.A., Calle 23BN No. 5N–37, Ofc. 202, Cali, Colombia; (ENTITY) [SDNT]
5. CLINICA SAN FRANCISCO S.A. (f.k.a. CLINICA DE OCCIDENTE TULUA S.A.; f.k.a. CLINICA NUESTRA SENORA DE FATIMA S.A.); Calle 26 No. 34–60, Tulua, Valle, Colombia;NIT # 800191916–1 (Colombia); (ENTITY) [SDNT]
6. CORPORACION CLUB DEPORTIVO TULUA (a.k.a. CORTULUA); Carrera 26 No. 32–70 B. Salesiano, Tulua, Valle, Colombia;NIT # 800097185–2 (Colombia); (ENTITY) [SDNT]
7. CORPORACION HOTELERA DEL CARIBE LIMITADA (a.k.a. APARTAHOTEL TRES CASITAS; a.k.a. "Tres Casitas"); Avenida Colombia No. 1–60, San Andres, Providencia, Colombia;NIT # 800104679–1 (Colombia); (ENTITY) [SDNT]
8. INVERSIONES BRASILAR S.A. (f.k.a. INVERSIONES RIVERA CAICEDO Y CIA S.C.S.; f.k.a. "Inrica"); Carrera 11 No. 73–44 , Ofc. 803, Bogota, Colombia;NIT # 891305286–2 (Colombia); (ENTITY) [SDNT]
9. KUTRY MANAGEMENT INC., Torre Universal Building, 3rd Floor, Federico Boyd Avenue and 51st Street, Panama City, Panama; (ENTITY) [SDNT]
10. TARRITOS S.A., Calle 23 BN No. 5N–37, Ofc. 202, Cali, Colombia;NIT # 805028114–3 (Colombia); (ENTITY) [SDNT]
11. BUENO GUERRERO, Alfonso, c/o APOYOS DIAGNOSTICOS S.A., Tulua, Valle, Colombia; c/o CLINICA SAN FRANCISCO S.A., Tulua, Valle, Colombia; Carrera 52 No. 33–84, Tulua, Valle, Colombia; Carrera 45 No. 4A–10, Cali,

Colombia; DOB 17 Sep 1941; POB Tulua, Valle; Citizen Colombia; Nationality Colombia;Cedula No. 17056503 (Colombia); (INDIVIDUAL) [SDNT]

12. DUQUE JARAMILLO, German, c/o APOYOS DIAGNOSTICOS S.A., Tulua, Valle, Colombia; DOB 20 Apr 1951; POB Tulua, Valle; Citizen Colombia; Nationality Colombia;Cedula No. 14972076 (Colombia); (INDIVIDUAL) [SDNT]
13. MARTAN RODRIGUEZ, Oscar Ignacio, c/o CORPORACION CLUB DEPORTIVO TULUA, Tulua, Valle, Colombia; c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; Calle 27 No. 38A–26, Tulua, Valle, Colombia; Carrera 33A No. 19–67, Tulua, Valle, Colombia; DOB 08 Feb 1958; POB Guapi, Cauca, Colombia; Citizen Colombia; Nationality Colombia;Cedula No. 19365692 (Colombia);Passport AJ534873 (Colombia) issued: 23 Jun 2005 exp: 23 Jun 2015;Passport AF775306 (Colombia);Passport AD445570 (Colombia) exp: 12 Jun 1992; (INDIVIDUAL) [SDNT]
14. OSORIO VALENCIA, James Augusto, c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; Carrera 26 No. 8–60, Cali, Colombia; Calle 4N No. 1–10, Apt. 901, Cali, Valle, Colombia; DOB 16 Nov 1959; POB Miranda, Cauca, Colombia; Citizen Colombia; Nationality Colombia;Cedula No. 14880646 (Colombia);Passport AG940978 (Colombia);Passport AE758158 (Colombia); (INDIVIDUAL) [SDNT]
15. QUINTANA FUERTES, Andres Fernando, c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; c/o TARRITOS S.A., Cali, Colombia; DOB 03 Jul 1966; POB Candelaria, Valle; Citizen Colombia; Nationality Colombia;Cedula No. 16989000 (Colombia);Passport AI375038 (Colombia);Passport 16989000 (Colombia) exp: 13 Dec 2000; (INDIVIDUAL) [SDNT]
16. SANDOVAL SALAZAR, Ricardo, c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; c/o TARRITOS S.A., Cali, Colombia;Cedula No. 16683550 (Colombia); (INDIVIDUAL) [SDNT]
17. TRONCOSO POSSE, Jose Manuel, c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; DOB 26 Nov 1953; POB Bogota, Colombia; Citizen Colombia; Nationality Colombia;Cedula No. 19233258 (Colombia);Passport AE297484 (Colombia); (INDIVIDUAL) [SDNT]

In addition, OFAC has made changes to the identifying information associated with the following nine persons previously designated pursuant to the Order:

BOHADA AVILA, Lubin, c/o AGRONILO S.A., Toro, Valle, Colombia; Calle 142A No. 106A–21 apt. 302, Bogota, Colombia; Carrera 100 No. 11–90 of. 403, Cali, Colombia; c/o ARMAGEDON S.A., La Union, Valle, Colombia; c/o GAD S.A., La Union, Valle, Colombia; c/o INDUSTRIAS DEL ESPIRITU SANTO S.A., Malambo, Atlantico, Colombia; c/o FRUTAS DE LA COSTA S.A., Malambo, Atlantico, Colombia; Cedula No. 19093178 (Colombia) (individual) [SDNT]

CAMACHO VALLEJO, Francisco Jose, c/o AGRONILO S.A., Toro, Valle, Colombia; Calle 23 BN No. 5–37 of. 202, Cali, Colombia; Carrera 37 No. 6–36, Cali, Colombia; c/o CRETA S.A., La Union, Valle, Colombia; c/o ILOVIN S.A., Bogota, Colombia; c/o JOSAFAT S.A., Tulua, Valle, Colombia; Cedula No. 14443381 (Colombia) (individual) [SDNT]

CAMACHO VALLEJO, Javier, Carrera 65 No. 14C–90, Casa 65, Cali, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; citizen Colombia; nationality Colombia; Cedula No. 16614154 (Colombia) (individual) [SDNT]

CEDENO HERRERA, Luis Mario, c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; citizen Colombia; nationality Colombia; Cedula No. 16637213 (Colombia) (individual) [SDNT]

COLLAZOS TELLO, Jairo Camilo, c/o DIMABE LTDA., Bogota, Colombia;DOB 09 Dec 1953; POB Cali, Colombia; Cedula No. 14998261 (Colombia); Passport AH690431 (Colombia) (individual) [SDNT]

GRAJALES LEMOS, Aida Salome, c/o CRETA S.A., La Union, Valle, Colombia; Calle 14 No. 13–03, La Union, Valle, Colombia; c/o AGRONILO S.A., Toro, Valle, Colombia; c/o ALMACAES S.A., Bogota,Colombia; c/o CASA GRAJALES S.A., La Union, Valle, Colombia; c/o GAD S.A., La Union, Valle, Colombia; c/o GRAJALES S.A., La Union,Valle, Colombia; c/o HOTEL LOS VINEDOS, La Union, Valle, Colombia; c/o MACEDONIA LTDA., La Union, Valle, Colombia; c/o RAMAL S.A.,Bogota, Colombia; c/o SALIM S.A., La Union, Valle, Colombia; c/o FRUTAS DE LA COSTA S.A., Malambo, Atlantico, Colombia; DOB 13 Dec 1970; POB La Union, Valle, Colombia; Cedula No. 39789871 (Colombia) (individual) [SDNT]

PARDO OJEDA, Mauricio, Carrera 18C No. 149–33, Apt. 309, Bogota, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; c/o COLOMBO ANDINA COMERCIAL COALSA LTDA., Bogota, Colombia; c/o AGRONILO S.A., Toro, Valle, Colombia; c/o ALMACAES S.A., Bogota, Colombia; c/o BLACKMORE INVESTMENTS A.V.V., Oranjestad, Aruba; c/o CRETA S.A., La Union, Valle, Colombia; c/o G.L.G. S.A., Bogota, Colombia; c/o ILOVIN S.A., Bogota, Colombia; c/o JOSAFAT S.A., Tulua, Valle, Colombia; c/o RAMAL S.A., Bogota, Colombia; DOB 27 Jul 1961; citizen Colombia; nationality Colombia; Cedula No. 19445690 (Colombia) (individual) [SDNT]

RENTERIA CAICEDO, Beatriz Eugenia, Diagonal 130 No. 7–20, Apt. 806, Bogota, Colombia; Avenida 11 No. 7N–166, Cali, Colombia; 85 Brainerd Road, Townhouse 9, Allston, MA 02134; 18801 Collins Avenue, Apt. 322–3, Sunny Isles Beach, FL 33160; Calle 90 No. 10–05, Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; DOB 30 Nov 1977; citizen Colombia; nationality Colombia; Cedula No. 52424737 (Colombia); Passport AG034865 (Colombia); alt. Passport AE309750 (Colombia); SSN 594–33–3351 (United States) (individual) [SDNT]

RENTERIA CAICEDO, Maria Cecilia, 18801 Collins Avenue, Apt. 322–3, Sunny Isles Beach, FL 33160; Diagonal 130 No. 7–20, Apt. 806, Bogota, Colombia; 85 Brainerd Road, Townhouse 9, Allston, MA 02134; Avenida 11 No. 7N–166, Cali, Colombia; Calle 90 No. 10–05, Bogota, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; DOB 27 May 1981; POB Cali, Colombia; citizen Colombia; nationality Colombia; Cedula No. 52410645 (Colombia); Passport AF624588 (Colombia); alt. Passport AD454168 (Colombia) (individual) [SDNT]

The listings now appear as follows:

BOHADA AVILA, Lubin, c/o AGRONILO S.A., Toro, Valle, Colombia; Calle 142A No. 106A–21 apt. 302, Bogotá, Colombia; Carrera 100 No. 11–90 of. 403, Cali, Colombia; c/o ARMAGEDON S.A., La Union, Valle, Colombia; c/o GAD S.A., La Union, Valle, Colombia; c/o INDUSTRIAS DEL ESPIRITU SANTO S.A., Malambo, Atlantico, Colombia; c/o TARRITOS S.A., Cali, Colombia; Cedula No. 19093178 (Colombia) (individual) [SDNT]

CAMACHO VALLEJO, Francisco Jose, c/o AGRONILO S.A., Toro, Valle, Colombia; Calle 23 BN No. 5–37 of. 202, Cali, Colombia; Carrera 37 No. 6–36, Cali, Colombia; c/o CRETA S.A., La Union, Valle, Colombia; c/o ILOVIN S.A., Bogotá, Colombia; c/o JOSAFAT S.A., Tulua, Valle, Colombia; c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; c/o CAMACHO VALLEJO ASESORES E.U., Cali, Colombia; c/o CANADUZ S.A., Cali, Colombia; c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; Cedula No. 14443381 (Colombia) (individual) [SDNT]

CAMACHO VALLEJO, Javier, Carrera 65 No. 14C–90, Casa 65, Cali, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogotá, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogotá, Colombia; c/o CAMACHO VALLEJO ASESORES E.U., Cali, Colombia; citizen Colombia; nationality Colombia; Cedula No. 16614154 (Colombia) (individual) [SDNT]

CEDENO HERRERA, Luis Mario, c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogotá, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogotá, Colombia; c/o AGROPECUARIA LINDARAJA S.A., Cali, Colombia; c/o INVERSIONES BRASILAR S.A., Bogotá, Colombia; citizen Colombia;

nationality Colombia; Cedula No. 16637213 (Colombia) (individual) [SDNT]

COLLAZOS TELLO, Jairo Camilo, c/o DIMABE LTDA., Bogotá, Colombia; c/o AGROPECUARIA LINDARAJA, Cali, Colombia; c/o INVERSIONES BRASILAR S.A., Bogota, Colombia; DOB 09 Dec 1953; POB Cali, Colombia; Cedula No. 14998261 (Colombia); Passport AH690431 (Colombia) (individual) [SDNT]

GRAJALES LEMOS, Aida Salome, c/o CRETA S.A., La Union, Valle, Colombia; Calle 14 No. 13–03, La Union, Valle, Colombia; c/o AGRONILO S.A., Toro, Valle, Colombia; c/o ALMACAES S.A., Bogotá, Colombia; c/o CASA GRAJALES S.A., La Union, Valle, Colombia; c/o GAD S.A., La Union, Valle, Colombia; c/o GRAJALES S.A., La Union, Valle, Colombia; c/o HOTEL LOS VINEDOS, La Union, Valle, Colombia; c/o MACEDONIA LTDA., La Union, Valle, Colombia; c/o RAMAL S.A., Bogotá, Colombia; c/o SALIM S.A., La Union, Valle, Colombia; c/o TARRITOS S.A., Cali, Colombia; DOB 13 Dec 1970; POB La Union, Valle, Colombia; Cedula No. 39789871 (Colombia) (individual) [SDNT]

PARDO OJEDA, Mauricio, Carrera 18C No. 149–33, Apt. 309, Bogotá, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; c/o COLOMBO ANDINA COMERCIAL COALSA LTDA., Bogota, Colombia; c/o CANADUZ S.A., Cali, Colombia; CORPORACION HOTELERA DEL CARIBE LIMITADA, San Andres, Colombia; c/o KUTRY MANAGEMENT INC., Panama City, Panama; c/o TARRITOS S.A., Cali, Colombia; DOB 27 Jul 1961; citizen Colombia; nationality Colombia; Cedula No. 19445690 (Colombia) (individual) [SDNT]

RENTERIA CAICEDO, Beatriz Eugenia, Diagonal 130 No. 7–20, Apt. 806, Bogota, Colombia; Avenida 11 No. 7N–166, Cali, Colombia; 85 Brainerd Road, Townhouse 9, Allston, MA 02134; 18801 Collins Avenue, Apt. 322–3, Sunny Isles Beach, FL 33160; Calle 90 No. 10–05, Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o CANADUZ S.A., Cali, Colombia; DOB 30 Nov 1977; citizen Colombia; nationality Colombia; Cedula No. 52424737 (Colombia); Passport AG034865 (Colombia); alt. Passport AE309750 (Colombia); SSN 594–33–3351 (United States) (individual) [SDNT]

RENTERIA CAICEDO, Maria Cecilia, 18801 Collins Avenue, Apt. 322–3, Sunny Isles Beach, FL 33160; Diagonal 130 No. 7–20, Apt. 806, Bogota, Colombia; 85 Brainerd Road, Townhouse 9, Allston, MA 02134; Avenida 11 No. 7N–166, Cali, Colombia; Calle 90 No. 10–05, Bogota, Colombia; c/o COMPANIA AGROPECUARIA DEL SUR LTDA., Bogota, Colombia; c/o INVERSIONES AGROINDUSTRIALES DEL OCCIDENTE LTDA., Bogota, Colombia; c/o CANADUZ S.A., Cali, Colombia; DOB 27 May 1981; POB Cali, Colombia; citizen Colombia; nationality Colombia; Cedula No. 52410645 (Colombia); Passport AF624588 (Colombia); alt. Passport AD454168 (Colombia) (individual) [SDNT]

Dated: October 31, 2006.

Barbara Hammerle,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. E6–22342 Filed 12–28–06; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF TREASURY

Office of Foreign Assets Control

Unblocking Of Specially Designated Narcotics Traffickers Pursuant To Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of four individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, occurred on December 22, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Houghton, Assistant Director, Designation Investigations, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President issued Executive Order 12978 (the "Order") pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code.

In the Order, the President declared a national emergency to address actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad. The Order imposes economic sanctions on foreign persons who are determined to play a significant role in international narcotics trafficking centered in Colombia; or materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order; or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order.

The Order included 4 individuals in the Annex, which resulted in the blocking of all property or interests in property of these persons that was or thereafter came within the United States or the possession or control of U.S. persons. The Order authorizes the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to designate additional persons or entities determined to meet certain criteria set forth in EO 12978.

On December 22, 2006, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers the individuals listed below, whose property and interests in property were blocked pursuant to EO 12978.

The list of the unblocked individuals follows:

1. FOMEQUE CAMPO, Deicy (a.k.a. FOMEQUE CAMPO, Daysy), Avenida 4N No. 10N–100, Cali, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 38650034 (Colombia) (individual) [SDNT]
2. PATIO NARANJO, Joaquin Gustavo, Avenida 4N No. 10N–100, Cali, Colombia; c/o INDUSTRIA DE PESCA SOBRE EL PACIFICO S.A., Buenaventura, Colombia; Cedula No. 2730245 (Colombia) (individual) [SDNT]
3. PARRA QUINTERO, Hector Alonso, Carrera 80A No. 13A–29 Apto 601, Cali, Colombia; c/o PARQUE INDUSTRIAL PROGRESO S.A., Yumbo, Colombia; Cedula No. 14878105 (Colombia); Passport 14878105 (Colombia); (individual) [SDNT]
4. VIDAL CAGGIGAS, Rolando, 10720 NW 66th Street, No. 502, Miami, Florida 33178, U.S.A.; 9443 Fontainebleau Boulevard, No. 114, Miami, Florida 33172, U.S.A.; DOB 01 Aug 1961; Passport No. 16822748 (Colombia); Cedula No. 16822748 (Colombia) (individual) [BPI–SDNT]

Dated: December 21, 2006.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E6–22344 Filed 12–28–06; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF TREASURY

Office of the Thrift Supervision

[AC–06: OTS Nos. 01427, H4049, H4050, and H4348]

Osage Federal Bank, Osage Federal MHC, Osage Federal Financial, Inc., and Osage Bancshares, Inc., Pawhuska, Oklahoma; Approval of Conversion Application.

Notice is hereby given that on November 9, 2006, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of osage Federal MHC and Osage Federal Bank, Pawhuska, Oklahoma, to convert to the stock form of organization. Copies of the application are available for inspection by appointment phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and OTS Midwest Regional Office, 225 East John Carpenter Freeway, Suite 500, Irving, TX 75062–2731.

Dated: December 22, 2006.

By the Office of Thrift Supervision.

Sandra E. Evans,

Legal Information Assistant.

[FR Doc. 06–9914 Filed 12–28–06; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–07: OTS Nos. 17968, H4021, H4099, and H4345]

Westfield Bank, Westfield Mutual Holding Company, Westfield Financial, Inc., and New Westfield Financial, Inc., Westfield, MS; Approval of Conversion Application

Notice is hereby given that on November 8, 2006, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of Westfield Mutual Holding Company and Westfield Bank, Westfield, Massachusetts, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and OTS Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, NJ 07311.

Dated: December 22, 2006.

By the Office of Thrift Supervision.

Sandra E. Evans

Legal Information Assistant.

[FR Doc. 06–9915 Filed 12–28–06; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L.102–40), dated May 7, 1991, revised the disciplinary grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the Panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided, without charge, a list of the names of employees on the Panel upon request and may submit comments concerning the suitability for service on the Panel of any employee whose name is on the list.

DATES: Names that appear on the Panel may be selected to serve on a Board or as a grievance examiner after January 29, 2007.

ADDRESSES: Requests for the list of names of employees on the Panel and written comments may be directed to: Secretary of Veterans Affairs (051), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Requests and comments may also be faxed to (202) 273–9776.

FOR FURTHER INFORMATION CONTACT: Latoya Smith, Employee Relations and Performance Management Service, Office of Human Resources Management and Labor Relations, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Smith may be reached at (202) 273–9935.

SUPPLEMENTARY INFORMATION: Pub. L. 102–40 requires that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Dated: December 18, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E6–22341 Filed 12–28–06; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
December 29, 2006

Part II

Department of Labor

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

Performance of Functions; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended; Final Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

RIN 1215–AB51

Performance of Functions; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: On June 8, 2005, the Department of Labor (DOL) published interim final regulations that govern its responsibilities under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act). Part B of the Act provides lump-sum payments of $150,000 and medical benefits to covered employees and, where applicable, to survivors of such employees, of the Department of Energy (DOE), its predecessor agencies and certain of its vendors, contractors and subcontractors. Part B also provides lump-sum payments of $50,000 and medical benefits to individuals found eligible by the Department of Justice (DOJ) for $100,000 under section 5 of the Radiation Exposure Compensation Act (RECA) and, where applicable, to their survivors. Part E of the Act provides variable lump-sum payments (based on a worker's permanent impairment and/or calendar years of qualifying wage-loss) and medical benefits for covered DOE contractor employees and, where applicable, provides variable lump-sum payments to survivors of such employees (based on a worker's death due to a covered illness and any calendar years of qualifying wage-loss). Part E also provides these same payments and benefits to uranium miners, millers and ore transporters covered by section 5 of RECA and, where applicable, to survivors of such employees.

At the same time the Department published the interim final regulations, it also invited written comments and advice from interested parties regarding possible changes to those regulations. This document amends the interim final regulations based on comments that the Department received.

DATES: *Effective Date:* This rule will be effective on February 27, 2007, and will apply to all claims filed on or after that date. This rule will also apply to any claims that are pending on February 27, 2007.

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–693–0031 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor's interim final regulations implementing its responsibilities under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*), were published in the **Federal Register** on June 8, 2005 (70 FR 33590). They took effect immediately and included a 60-day period for comment. During the comment period, the Department received 533 timely comments: two joint comments from 39 congressional representatives; two from labor organizations; four from attorneys; four from advocacy groups; one from a lay representative; one from DOE; one from a DOE contractor; and 518 from individuals. The Department also received untimely comments from one physician, one attorney, one advocacy group, the Coconino County (Arizona) Board of Supervisors, one labor organization, the Navajo Nation and 23 individuals; all of the points they raised were also raised by the timely comments. Almost all of the timely comments (521) addressed the issue of eligibility for survivor benefits under Part E of EEOICPA; 494 of the comments addressed this issue alone. They also addressed a number of other issues, including the administrative claims process used to adjudicate claims under EEOICPA, entitlement qualifications, and the extent of coverage provided under Part E. The Department's section-by-section analysis of the timely comments it received is set forth below (see sections I and II).

Some minor changes have been made to the interim final regulations that did not result from any comments. One such change is the addition of new language to § 30.112(b) to recognize that pursuant to § 30.106, entities other than DOE may be verifying alleged periods of employment that claimants have reported to OWCP. A second change is the addition of language to § 30.301(c) clarifying that OWCP will also not issue a subpoena for the testimony of employees of the National Institute for Occupational Safety and Health (NIOSH) or contractors of either OWCP or NIOSH acting in their official capacities with respect to the EEOICPA claims adjudication process. In addition, the existing language of § 30.316(c) has been modified so that a recommended decision on a claim that is pending for more than one year after the date it was reopened for issuance of a new final decision will be considered a final decision on that claim as of that date, and § 30.400(a) has been modified to reflect the current practice of OWCP to pay for medically necessary treatment of a primary cancer in claims where the accepted occupational illness or covered illness is a secondary cancer.

When publishing a final rule following a comment period, it is customary to publish only the changes that have been made to the rule; however, in order to be more user-friendly, the Department is publishing the entire rule, including the parts that have not been changed. By doing so, only one document containing all of the regulations and commentary needs to be consulted rather than multiple documents.

I. Comments on the Interim Final Regulations

The section numbers used in the headings of the following analysis are those that were used in the interim final regulations. Unless otherwise stated, the section numbers in the text of the analysis refer to the numbering used for the final regulations. No comments were received with respect to part 1.

Section 30.5

One individual suggested that the definition for the statutory term "Department of Energy facility" be modified to more clearly identify the "list of facilities established by the Department of Energy" referred to in the interim final regulation. To eliminate any confusion with respect to this list, and as suggested by the comment, § 30.5(x) has been amended in this final rule to specify which list of facilities the Department has adopted. Another individual believed that the five-year latency period requirement for specified cancers listed in § 30.5(ff)(5) was "in error" and suggested that it be deleted. However, the latency period requirement is contained within section 7384l(17)(A) of the Act and cannot be modified in these regulations. Therefore, the suggested change was not made. A third individual suggested that § 30.5(gg) be modified to more clearly describe the requirements for eligibility of survivors under Part E. Section 30.5(gg) is only intended to inform readers that survivors must be alive to receive a payment. Because complete descriptions of the requirements for

eligibility of survivors under Part B and Part E of EEOICPA already appear at § 30.500, the suggested change is unnecessary and was not made.

Sections 30.100, 30.101, 30.102 and 30.103

One attorney pointed out that while employees and survivors can use Forms EE–1 and EE–2 to file their initial claims with OWCP, there was no form provided for filing a claim for an alleged consequential illness or injury. The absence of a specific form for claiming an alleged consequential illness or injury is intentional since in those situations, OWCP would already have all of the necessary factual information that could be requested by a form. Claimants need only submit written "words of claim" to OWCP, together with the type of supporting medical evidence described in §§ 30.207(d), 30.215, 30.222(b), 30.226 or 30.232(c), to file a claim for a consequential illness or injury. Therefore, no new form has been designed and the suggested changes to §§ 30.100 and 30.101 were not made.

Two individuals disputed the provision in § 30.101(c) that a survivor must be alive to receive a payment under the Act and noted that if all of the eligible survivors die before payment can be made, no payment can be made to any other individual as the heir of a deceased eligible survivor. However, this result is required under both Parts B and E of EEOICPA pursuant to sections 7384s(e)(1) and 7385s–3(c), which require that survivors under both Part B and Part E must be alive at the time of payment, and cannot be altered by regulation. Therefore, the requested change to § 30.101(c) was not made.

Three advocacy groups suggested that the provision in § 30.102 that OWCP will only adjudicate a claim for an increased impairment rating if it is filed at least two years from the date of the last award of impairment benefits is unreasonable and proposed that the waiting period to be reduced to either one year or six months. The claim development process that OWCP uses when it determines a covered Part E employee's minimum impairment rating is necessarily complex and usually takes a considerable amount of time to complete. For example, the medical evidence submitted in support of an alleged rating may not contain all of the information that OWCP will need to determine an impairment rating. OWCP would then have to seek that information from another source, or obtain an impairment evaluation by another physician before it would be able to determine the extent of the alleged permanent impairment based on the evidence in the case record. If claimants were permitted to apply for an increased impairment rating sooner than two years after their prior award for impairment benefits, the claims processing system would inevitably become less efficient and claimants who have not had their initial impairment claims adjudicated and who have not received benefits for their compensable permanent impairments would necessarily have to wait even longer to receive a decision from OWCP. Therefore, in order to maintain an efficient system of adjudication for all claimants and to best use its limited resources, OWCP concludes that the two-year waiting period should remain in place and none of the suggested changes to this section have been adopted.

One of these same advocacy groups also noted that while § 30.103 requires claimants to use approved forms when filing claims under Part E of EEOICPA, "the present forms do not allow for claiming diseases other than cancer, berylliosis or silicosis." On June 20, 2005, the Office of Management and Budget approved new versions of Forms EE–1 and EE–2 that allow claimants to file for all illnesses potentially compensable under Part E. As noted in § 30.103(b), these forms are available on the Internet at *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm*. Therefore, the suggested change to § 30.103 is unnecessary and has not been made.

Section 30.106

One individual questioned whether DOE was in possession of sufficient employment data to enable it to verify alleged periods of employment for "most" claims. OWCP does not dispute that there are a number of facilities for which DOE does not have access to any employment data. However, OWCP has developed a number of alternative methods to be used for verifying alleged employment at those facilities. In acknowledgement of this situation, § 30.106 describes the various alternative methods by which OWCP may seek to verify alleged periods of employment at those facilities for which DOE has no employment data, and no change to this section was made in the final rule.

Sections 30.111, 30.113 and 30.114

One individual and two labor organizations questioned the description of the *general* burden of proof that all claimants must meet in order to establish their entitlement to any compensation under either Parts B or E of EEOICPA. Section 30.111(a) describes the general burden of proof that claimants must meet, "[e]xcept where otherwise provided in the Act and these regulations," with respect to all of the required elements involved in a claim. As one of these labor organizations noted, there are differing burdens of proof between Parts B and E, as well as between different claimed illnesses within a single Part of the Act. This fact, however, does not mean that the description of the *general* burden of proof in § 30.111(a) is incorrect. OWCP is committed to helping claimants meet their burden of proof and is aware that some claimants may have difficulty proving both the presence of and their exposure to a toxic substance at a particular facility under Part E. In an effort to remedy this situation, OWCP is currently developing exposure matrices that will compile information provided by a variety of sources, including DOE, former worker medical survey programs, and epidemiological studies. For all of the DOE facilities, extensive documentation exists covering thousands of toxic materials. The matrices now being developed will be posted on our Web site and will be available to claimants and their representatives. While it is not possible to define precisely in a regulation how these complex matrices will be used in each case, OWCP's procedural guidance documents will provide additional clarity in this regard, and those documents will also be available to the public on our Web site. Nevertheless, it would not be appropriate to relieve claimants of their ultimate obligation to prove their claims, which is a standard requirement of all state and federal workers' compensation programs. Since Part E was intended to substitute for the state workers' compensation benefits that claimants could have sought DOE's assistance in obtaining under former Part D of EEOICPA, OWCP's application of standard workers' compensation principles is appropriate and no changes were made to § 30.111(a).

Another individual suggested that OWCP amend § 30.111(c) to state that an affidavit submitted by a claimant is not, in and of itself, sufficient to establish a period of alleged employment. Section 30.111(c) currently states that such affidavits "may be relied on in determining whether a claim meets the requirements of the Act. * * *" However, since § 30.112(b)(3) already makes clear that OWCP may reject a claim when the only evidence of covered employment is a "self-serving affidavit," the suggested change is unnecessary and was not adopted in the

final rule. A third individual suggested that language be added to § 30.111 stating that when OWCP requests a second opinion from a medical specialist, it will only provide such specialist with copies of the "medical" evidence in the case file to review instead of all "relevant" evidence in the file. This suggestion ignores the fact that factual evidence from a case file may be highly relevant (*e.g.*, evidence of exposure levels, environmental assessments, etc.) to the probative value of the specialist's medical opinion and as a result, the requested change was not made.

A third individual requested that § 30.113(a) be changed to indicate that OWCP will accept various types of "electronic" submissions in support of claims for compensation under EEOICPA, while an advocacy group suggested that § 30.113(c) be changed due to its belief that all statements regarding the substance of lost or destroyed factual or medical evidence would be "self-serving" and therefore not acceptable. Both of these provisions have been in effect since the issuance of the first final rule on December 26, 2002, and have not proved problematic in practice. Therefore, the requested changes were not made in this final rule.

A fourth individual disagreed with the general requirement in § 30.114 that claims for compensation under EEOICPA be supported with medical evidence that establishes the existence of the alleged occupational illness under Part B or covered illness under Part E. However, these medical requirements are derived from the statutory requirements in the Act itself and cannot be altered through the rulemaking process. Therefore, the requested change to § 30.114 was not made.

Section 30.115

Two individuals asserted that application of the dose reconstruction process discussed in § 30.115 of the interim final regulations to Part E cancer claims would be neither just nor fair, and one advocacy group asked how OWCP planned to adjudicate the claims of employees with non-specified cancers (those not listed at § 30.5(ff)) at newly designated Special Exposure Cohort worksites. With respect to the first of these two concerns, the discussion of § 30.213 in the preamble to the interim final rule described the scientific and administrative reasons why OWCP decided to use the existing dose reconstruction process from Part B to adjudicate certain radiogenic cancer claims filed under Part E, and the two commenters have not presented any arguments challenging the underlying bases for that decision. As for the comment regarding OWCP's adjudication of non-specified cancer claims following an administrative addition of a class of employees to the Special Exposure Cohort, this question involves the manner in which the Department of Health and Human Services (HHS) defines the new class of employees and the unique factual basis for its addition to the Special Exposure Cohort. However, since neither of these matters are within the jurisdiction of OWCP, they cannot be addressed in the context of this rulemaking (see § 30.2(b)). For the above reasons, no changes were made to § 30.115 in the final rule based on these three comments.

Section 30.213

OWCP received 19 comments regarding the operation of § 30.213 with respect to the 50 percent compensable level of probability of causation (PoC) it will use to adjudicate claims for radiogenic cancer under Part E of EEOICPA (three comments were received from advocacy groups, 11 from individuals, two from congressional representatives, one from a lay representative, and two from a single labor organization). These comments requested that OWCP lower the compensability level below the 50 percent level that is used for Part B claims, but gave no scientific or other rationale for setting the compensability level at any particular point below 50 percent. Rather, the commenters base their arguments on the fact that the statutory causation standard for Part E uses language that differs from the language used for Part B. For the reasons set forth below, OWCP has determined that it is more consistent with congressional intent and current science to continue to use HHS's regulations in making the determination required by section 7385s–4(c)(1)(A) of the Act because those regulations provide the only reasonable factual basis upon which OWCP can determine if it is "at least as likely as not" that exposure to radiation at a DOE facility or RECA section 5 facility was a "significant factor in aggravating, contributing to, or causing" radiogenic cancer for which compensation is claimed under Part E.

It is clear from the scientific literature that it is not possible to definitively attribute any individual's cancer to any particular cause, and no commenter identified a method of attribution. As noted in Science Panel Report No. 6, *Use of Probability of Causation by the Veterans Administration in the Adjudication of Claims of Injury Due to Ionizing Radiation*, issued by the Committee on Interagency Radiation Research and Policy Coordination of the Office of Science and Technology Policy, Executive Office of the President (August 1988), "[a]nalysis of medical findings cannot separate the 'radiogenic cases' from those unrelated to radiation exposure; no 'biological markers' have yet been identified that can unequivocally point to radiogenic cancers as distinct from non-radiogenic cancers. An excess incidence of cancer is identifiable in a statistical sense only."

It is, thus, not surprising that Congress required the use of statistical probability in the determination whether to compensate an individual with a claimed cancer under Part B. Under Part B, an individual will be determined to have sustained "cancer in the performance of duty for purposes of the compensation program if, and only if, the cancer [at issue] was at least as likely as not *related to* employment at the facility" (emphasis added), determined pursuant to guidelines based upon radiation dose and "the upper 99 percent confidence interval of the probability of causation in the radioepidemiological tables published under section 7(b) of the Orphan Drug Act (42 U.S.C. 241 note)," as well as a number of other factors. The technical documentation prepared by HHS to explain the computer program used to make this calculation similarly notes that "it is not possible to determine, for a given individual, whether his or her cancer resulted from workplace exposure to ionizing radiation." (NIOSH—Interactive RadioEpidemiological Program (IREP) Technical Documentation, June 18, 2002). Part B, thus, requires that a claimed cancer be determined to be "related to" employment at a covered facility if the radiation dose and other factors combined indicate that there is a statistical probability that the cancer would not have occurred in the absence of work-related exposure to radiation. In other words, the PoC determination made for purposes of Part B is actually a determination that there is a 50 percent or better chance that radiation was a factor, however slight, "in aggravating, contributing to, or causing" a claimed cancer because, in the absence of work-related exposure to radiation, the cancer would not have occurred at all.

Because it is impossible to determine the extent to which any individual factor contributed to the development of cancer, OWCP has concluded that the only way to comply with the statutory

mandate in Part E is, in effect, to interpret "a significant factor" as including any factor. Accordingly, the determination made pursuant to HHS regulations issued under Part B whether there is a 50 percent probability that radiation was a factor in the development of cancer (*i.e.*, that in the absence of work-related exposure to radiation, the cancer would not have occurred at all) will be deemed sufficient to establish that radiation was not only a factor, but was also a significant factor "in aggravating, contributing to, or causing" the cancer in question.

The position taken by the commenters appears to be based on a misunderstanding of the test used by Congress in Part B of EEOICPA for determining coverage for cancer due to exposure to radiation. The standard used is whether a cancer suffered by a worker is "related to" his or her employment at a covered facility. The commenters suggest that Part B awards benefits only for cancers caused by exposure to radiation, while Part E was intended to award benefits where the cancer was either caused by or contributed to by exposure to radiation. This misunderstanding may well stem from use of the term "probability of causation" to describe the results of the statistical determination made by the radioepidemiological tables used in the process. By using the term "related to" in Part B, however, Congress encompassed all cancers for which there is a statistical probability that exposure to radiation was a factor in the development of the cancer. Despite the use of the word "causation" in the term "probability of causation," the determination reached is not an individual determination of the mechanism of cause and effect leading to a particular cancer, which as explained above is not scientifically possible, but a statistical prediction of the probability that the cancer would not have occurred in the absence of exposure to radiation. Thus, the HHS technical documentation describes PoC as "the likelihood that an existing cancer resulted from that [workplace radiation] exposure." (NIOSH–IREP Technical Documentation, June 18, 2002). Scientific analysis does not distinguish between cancers that are caused or contributed to by radiation. Since the actual mechanisms of cause (or contribution) for a given cancer are not known, only probabilistic assertions can be made, and they address only whether the cancer is more or less likely not to have occurred absent the exposure. The IREP approach identifies all conceivable cancers that might have resulted from the radiation exposure. This probabilistic approach is the only generally accepted scientific means of assigning responsibility for cancers in relation to radiation exposure. The Department of Veterans Affairs and the Defense Department also utilize essentially the same statistical probability test to adjudicate benefits for potentially radiogenic cancer cases incurred by veterans exposed to radiation.

Further, it should be noted that the epidemiological method utilized in this determination is actually far more favorable towards claimants than merely requiring a determination that radiation exposure was "at least as likely as not" a significant factor. The method specified by Congress for Part B and adopted by OWCP for Part E requires that OWCP use the upper 99 percent confidence interval to determine whether cancers of employees are to be compensable. In essence, a confidence interval indicates the likelihood that a statistical sample will reflect actual results and is often demonstrated in terms of a margin of error (*e.g.*, ±5 percentage points in a poll). The precise statistical definition of the 99 percent confidence interval is that if a study or poll were conducted 100 times, the results would be within the sample's margin of error 99 times and one time the results would be either higher or lower. For purposes of the calculations performed under Parts B and/or E of EEOICPA, an upper 99 percent confidence interval establishes a significant margin of error in favor of claimants for whether the exposures that appeared at least as likely as not to cause cancer actually did. That is, use of this confidence interval means that there is only a one percent chance that the exposure level has been underestimated and a 99 percent chance that it has been overestimated. Because of this extremely claimant-favorable margin of error, we believe that it is reasonable to conclude that the use of this method for adjudicating radiogenic cancer claims under Part E will provide compensation in any case in which it is at least as likely as not that an employee would not have suffered cancer absent his or her employment-related exposure to radiation.

This conclusion finds further support in the *Report of the NCI–CDC Working Group to Revise the 1985 NIH Radioepidemiological Tables* (September 2003), which found that the PoC model was a viable method to adjudicate claims for radiation-related instances of cancer that appropriately summarized "the likelihood that prior radiation exposure might be causally related to cancer occurrence." The report described the Department of Veterans Affairs' use of PoC calculated at the 99 percent credibility limit (the term used in that report for confidence interval) as "highly unlikely to exclude persons with meritorious claims. However it is likely to award many persons whose true [PoC's] are very much less than 50 percent." For example, as noted in that report, because of the substantial margin for error established by use of the 99 percent confidence level, a cancer that is actually nine percent likely to have been caused by the alleged exposure, but for which data is limited, could yield a PoC of 82 percent under the HHS PoC guidelines.

OWCP also believes that utilizing the 50 percent PoC process for Part E is more likely to result in a scientifically valid and consistent determination process than attempting to reach a determination based on medical opinions from physicians that inevitably contain a significant speculative component. Use of the PoC-guidelines for claims under both Part B and Part E allows OWCP to adjudicate the entitlement of radiogenic cancers that are potentially compensable under both Part B and Part E in a uniform manner. Any process for determining coverage of claims for radiogenic cancers that would yield inconsistent results as to whether that cancer is compensable under Parts B and E is unlikely to be understood or accepted by claimants and other stakeholders.

The commenters' argument that eligibility for a radiogenic cancer under Part E should be based on a lower than 50 percent PoC level apparently is based on their interpretation of the language of section 7385s–4(c)(1)(A), which requires a determination that it is "at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing" the claimed cancer. While Congress utilized different terminology to establish the test for compensation in Part E and Part B, the differences reflect the fact that Part B was intended to establish narrowly drawn tests for specific medical conditions, such as radiogenic cancer or chronic beryllium disease. Part E, on the other hand, sets forth a broad test that must be used to determine the compensability of a virtually unlimited array of illnesses potentially caused by exposure to the tens of thousands of toxic substances present at Department of Energy facilities. While there is no way to distinguish between causation and

contribution in regard to cancer related to exposure to radiation (because it is only possible to determine the statistical probability that, absent work-related exposure to radiation, the employee in question would not have incurred the cancer or cancers from which he or she suffered), Part E applies to other types of illnesses for which the concept of "contribution" may be highly relevant. Indeed, unlike the case of radiogenic cancer, it is possible to determine that toxic exposure contributed to a number of other illnesses or that other pre-existing illnesses were aggravated by toxic exposure. Therefore, the difference in the statutory language between the standard in Part B and the standard in Part E does not indicate that Part E was intended to establish a more lenient test, but can be explained by the fact that it was designed to cover a wide variety of situations and circumstances, as opposed to the more narrowly drawn Part B radiogenic cancer standard, where no difference existed between causation and contribution.

It should also be noted that the regulation specifies that the PoC model will be determinative under Part E only with respect to claims where the sole alleged condition is radiogenic cancer. When a claim for cancer under Part E cannot be accepted based on exposure to radiation alone because the PoC was determined to be less than 50 percent, the claimant is provided the opportunity to establish that the cancer was caused by a combination of exposure to radiation and exposure to one or more other toxic substances. OWCP will adjudicate those claims for cancer allegedly due to exposure to radiation combined with exposure to one or more other toxic substances using the eligibility criteria for other covered illnesses in §§ 30.230 through 30.232. As a result, no changes were made to § 30.213(c) in the final rule.

Sections 30.230, 30.231 and 30.232

One labor organization suggested that the statutory terms "aggravated," "contributed to" and "caused" from one portion of the Part E causation standard appearing in section 7385s–4(c)(1)(A) of EEOICPA be defined in § 30.230 of the final rule so it will be "possible to determine how DOL will adjudicate claims." However, these statutory terms have a long and settled history in workers' compensation law, and OWCP believes any attempt to further define those terms (which involve matters of administrative discretion and professional medical opinion) would only lead to increased confusion. As a result, § 30.230 has not been amended in the final rule.

Two comments from congressional representatives, three from advocacy groups and one from an individual asserted that it would be extremely difficult for claimants to satisfy their burden of proof under § 30.231 to establish both the presence of a toxic substance and the employee's exposure to the substance without the development of site exposure assessments of toxic substances. OWCP shares this concern and is committed to studying all of the available information pertaining to these sites and making publicly available a listing of the toxic substances present at such sites. The information compiled from these studies will be accepted as probative evidence in determining the eligibility of claimants, barring extraordinary and unusual circumstances, and § 30.231(b) has been modified to clarify OWCP's policies regarding this matter. However, the remainder of the suggested changes to the burden of proof described in § 30.231 have not been adopted.

One advocacy group objected to the requirement in § 30.232(a)(2) that each claimant under Part E provide a signed medical release authorizing the release of any diagnosis, medical opinion or medical records documenting the employee's alleged covered illness and that it resulted from exposure to a toxic substance. The advocacy group is concerned that in some cases such documents may no longer exist. OWCP is aware of this problem and has established procedures in § 30.113 by which a claimant can nevertheless meet this requirement through the submission of affidavits attesting to medical evidence that was contained in documents that no longer exist. However, a signed medical release is needed in all Part E claims so OWCP may thoroughly investigate the claim. Thus, the suggestion to drop this requirement was not adopted. The same advocacy group and another advocacy group suggested that the requirement contained in § 30.232(c) that a claimant establish that a covered Part E employee suffered an injury, illness, impairment or disease as a consequence of a covered illness be deleted. These commenters feel that OWCP claims examiners should have enough documentation and medical evidence in the case file to made these determinations without requiring the submission of additional medical evidence. However, the nature of these consequential conditions is that they only arise subsequent to the development of an underlying condition, thus necessitating the submission of more recent medical evidence establishing their causal relationship to an existing covered illness. Accordingly, the suggestion was not adopted in the final rule.

Section 30.300

Two comments from individuals, two from congressional representatives and one from an advocacy group suggested that OWCP use Physicians Panels to make determinations when there is a dispute with regard to issues of causation or the degree of impairment. After considering the use of Physicians Panels in the adjudication of Part E claims, OWCP decided in the interim final rule to base the formal adjudicatory and review structure for those claims on the same successful and streamlined structure that has been used for Part B claims since 2001. The use of Physicians Panels as deciding bodies for claims submitted to DOE under former Part D of EEOICPA proved to be both inefficient and extremely time-consuming. Nevertheless, OWCP will use a full range of qualified medical specialists to assist in the development of claims, especially the kind of complex cases these comments discuss. When a claim involves extreme complexity and multiple medical disciplines, OWCP may refer the claimant to a panel of physicians for a medical evaluation. Once a report is received, OWCP's adjudicatory staff will then consider it when they make a decision on the claim. OWCP continues to believe that this type of claims adjudication process provides for a more efficient and expeditious handling of medical disputes and the application of more uniform criteria to resolve such disputes. Thus, the suggested changes have not been adopted.

The same advocacy group suggested that OWCP state in the regulations the processes it will follow with respect to classified information that may be pertinent to a claim under EEOICPA, and urged that in situations where the claimant or his or her representative lacked the requisite security clearances, OWCP should ask the Ombudsman to provide a properly cleared lawyer or qualified technical expert to evaluate the factual evidence and advocate on behalf of the claimant during the claims adjudication process. OWCP is also concerned about the impact of using classified information to adjudicate claims under the Act. However, since it is not the classifying agency with respect to such information, it cannot allow greater access to the information than is currently permitted. As for the suggestion that OWCP should ask the Ombudsman to nominate or otherwise provide a person with the requisite security clearance to advocate for

claimants, the Ombudsman is not authorized to perform that function by either the statute or Secretary's Order 1–2005 (70 FR 33328), which established the Office of the Ombudsman within the Department. The Ombudsman does not have any role in the claims adjudication process administered by OWCP. Thus, the suggestions were not adopted in the final rule.

Another advocacy group suggested that the claims adjudication processes described in § 30.300 be altered to include a review by an "independent entity" like an administrative law judge. This same suggestion was made by several commenters with respect to this section as it appeared in the first interim final rule governing its administration of the Act that OWCP published on May 25, 2001 (66 FR 28948). As it noted when it subsequently published the first final rule governing its administration of EEOICPA on December 26, 2002 (67 FR 78874), OWCP believed that utilizing administrative law judges or another type of independent review body would unnecessarily complicate and delay the claims adjudication process to the detriment of claimants. The commenter did not present any new reason not previously considered by OWCP when it originally decided to retain the adjudicatory structure described in § 30.300, or any evidence of problems with it since its inception in 2001. Therefore, the suggested change to this section of the regulations was not adopted.

Sections 30.301 and 30.302

One advocacy group suggested that OWCP extend the ability to request issuance of a subpoena to include Part E claims as well as Part B claims, and that this ability should be extended to all stages of the claims adjudication process. Section 30.301 indicates that a claimant may request that a Final Adjudication Branch (FAB) reviewer issue a subpoena in connection with a claim under Part B of EEOICPA. The statutory authority underlying this section is derived from section 7384w, which only applies to claims filed under Part B; Part E does not contain a similar provision. Therefore, OWCP does not have authority to extend the ability to request a subpoena to claimants under Part E. Further, OWCP has found it to be more efficient to limit the use of subpoenas by claimants to the portion of the claims adjudication process that includes the right to request an oral hearing, *i.e.*, the portion before the FAB. OWCP claims examiners regularly assist claimants in obtaining relevant documents and information in the early development of claims under EEOICPA, and adding subpoena requests to this assistance would not appear to be either efficient or productive. Therefore, the suggested changes to § 30.301 have not been adopted.

One attorney suggested that § 30.302 be modified so that claimants will be relieved of their obligation to pay the costs associated with subpoenas they have requested when the subpoenaed witness submits evidence into the case record that is relevant to the claimant's case and where the witness failed before the hearing to provide written evidence after being requested to provide such evidence by the claimant. OWCP believes that the suggested modification erroneously presumes that there will likely be situations where a witness will refuse to provide requested evidence without issuance of a subpoena by a FAB reviewer. This has not been the experience of OWCP in other benefit programs it administers, and OWCP does not contemplate that it will occur in its future administration of Part B. Up to the present time, OWCP has not encountered significant difficulty obtaining the factual or medical evidence necessary for it to adjudicate these claims, and there is no reason to think that these sorts of difficulties will occur in the future. Therefore, the suggestion to modify § 30.302 was not adopted in the final rule.

Section 30.303

DOE commented that the 60-day period within which it was required to respond to a request from OWCP for information or documents relevant to a claim under Part E of the Act in § 30.303 was unreasonable, and noted that it would not be able to respond to such a request in a timely manner if the evidence needed to be reviewed for declassification purposes. As an alternative, DOE proposed that the standard for compliance with such a request be "as soon as possible." While it does not dispute the validity of this concern, OWCP believes that the suggested proposal would effectively remove the time period for response from § 30.303. However, in order to accommodate DOE's belief that it requires additional time to comply with these necessary requests, OWCP has amended § 30.303(a) to provide DOE with 90 days within which to respond.

Sections 30.307 and 30.316

One attorney suggested that §§ 30.307(a) and 30.316(e) be amended to provide that a copy of the recommended decision and the final decision be sent to both the claimant and the claimant's representative. These sections currently provide that the recommended decision and final decision be sent to the claimant, unless he or she has a representative. In such a case, the recommended decision and final decision are to be sent only to the representative. OWCP believes that these suggestions have merit, and also notes that this has been the administrative practice of the program for some time. Thus, §§ 30.307(a) and 30.316(e) have been amended in the final rule to provide that OWCP will send a copy of the recommended decision and the final decision on a claim to both the claimant and the claimant's representative, if any.

Section 30.315

One attorney suggested that § 30.315 be amended to permit, at the discretion of the FAB reviewer, a postponement of a hearing if the claimant's representative provides reasonable notice that the representative has a medical reason that prevents his or her attendance at the claimant's hearing. The interim final rule permits such a postponement where the claimant is prevented from attending the hearing for medical reasons, and it is the current practice of OWCP to permit such postponements for representatives whose attendance is prevented for the same reasons. Thus, § 30.315(b) has been amended as suggested by the commenter.

Section 30.320

One attorney suggested that § 30.320(b) be amended to require the reopening of a final adverse decision on a claim if the claimant submits new evidence of a medical condition or discovers additional medical reports. The section currently requires the Director for Energy Employees Occupational Illness Compensation to a reopen a final decision on a claim if he concludes that the claimant has submitted new and material evidence with regard to either covered employment or exposure to a toxic substance, or identifies either a material change in the PoC guidelines, a material change in the dose reconstruction methods or a material addition of a class of employees to the Special Exposure Cohort. The experience of OWCP with respect to the processing and adjudicating of claims based on occupational or covered illnesses is that new medical evidence of a condition is easily obtained and, upon consideration, rarely sufficient to warrant the reversal of an earlier determination regarding a claimed condition. To permit an automatic reopening of a final decision based on such evidence would inevitably lead to

numerous frivolous reopenings and the attendant administrative inefficiencies would deprive claimants with meritorious claims of the opportunity to have those claims adjudicated in a timely manner. It should be noted, however, that claims may be reopened on the basis of new medical evidence by the Director under § 30.320(a), which permits the Director, at his discretion, to reopen a final decision at any time. For these reasons, the suggestion regarding § 30.320(b) has not been adopted.

Sections 30.400, 30.403, 30.404 and 30.405

OWCP received three comments from advocacy groups, one from an attorney and two from congressional representatives objecting to the wording in §§ 30.400, 30.403, 30.404 and 30.405 that suggested that there was no way for a claimant to administratively challenge a denial of a particular medical benefit. The wording in question was intended to describe the process that OWCP's medical billing contractor uses to inform claimants of decisions on medical bills that are submitted for payment. However, this wording incorrectly suggested that there was no administrative method by which a claimant could challenge an adverse medical billing determination by OWCP's contractor. To rectify this situation, and as suggested by the commenters, §§ 30.400, 30.403, 30.404 and 30.405 have been changed to indicate that a claimant may administratively challenge an adverse medical billing determination by utilizing the internal adjudicatory processes described in subpart D of the regulations.

Sections 30.410 and 30.411

One advocacy group asked that OWCP clarify the provisions in §§ 30.410(b) and 30.411(c) regarding disruptions of directed medical examinations. The provisions in question are intended to remind employees and their representatives that these medical examinations are under the control of medical professionals and are not, therefore, a proper forum for disputing aspects of individual claim adjudications. These physicians have been asked to conduct an examination at the request of OWCP in order to further clarify aspects of an employee's alleged medical condition, not to treat the employee, and therefore they do not have the type of ethical obligations regarding the employee that would otherwise naturally arise with a normal "doctor-patient" relationship. Since any attempt to interfere with a directed examination would disrupt the purpose of the examination, § 30.410(b) and § 30.411(c) set out the consequences of taking such actions, and have not been altered in the final rule.

This same advocacy group disagreed with § 30.411(b), which states that when OWCP finds that a conflict in the medical evidence exists, OWCP will select a third physician to conduct a referee examination that resolves such conflict. This process has been in place since the inception of OWCP's administration of Part B, and was not altered in any way with the promulgation of the interim final rule. Further, this same process has been used successfully in other benefit programs administered by OWCP. Accordingly, § 30.411(b) was not modified in the final rule.

The same advocacy group and another advocacy group criticized the absence of any "conflict of interest" provisions with respect to physicians in the interim final rule. These comments asserted that it was important that OWCP indicate that physicians involved in the claims adjudication process who submitted medical evidence upon which OWCP claims examiners would make determinations on claims would be subject to some sort of constraints regarding such matters as prior involvement with a claimant, former work for a claimant's employer, etc. OWCP agrees with the general thrust of these comments, and has added provisions to §§ 30.410 and 30.411 that indicate that physicians who perform directed medical examinations at the request of OWCP in connection with the claims adjudication process will be subject to "conflict of interest" standards devised by OWCP to ensure their compliance with ethical standards of professional conduct.

Sections 30.500 and 30.501

A total of 521 comments objecting to the definitions of "covered" child and "surviving spouse" for the purposes of Part E in § 30.500(a) were received from 502 individuals and one lay representative (several individual commenters submitted multiple comments on this issue). While the definition of a "surviving spouse" is the same one that applies to Part B claims, a "covered" child under Part E must meet the same definition of a "child" used in Part B and, as of the date of the covered Part E employee's death, be either under the age of 18, under the age of 23 and a full-time student who was continuously enrolled in one or more educational institutions since attaining the age of 18 years, or any age and incapable of self-support. These definitions merely follow, as they must, the definitions for these two terms that appear in section 7385s–3(d). Since these terms cannot be altered through the rulemaking process, the suggestions were not adopted and no changes were made to § 30.500(a).

The same lay representative and two of the same individuals also objected to the order of precedence for survivors under Part E that is set out in § 30.501(b) and argued that a surviving spouse should not be required to share an award with children of a deceased Part E employee under any circumstances. This section states that if there is a surviving spouse and at least one "covered" child of a deceased covered Part E employee who is living at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, half of the payment is made to the surviving spouse and the other half is shared equally among all "covered" children of the employee who are living at the time of payment. As was the case with the survivor definitions discussed in the preceding paragraph, the regulatory order of precedence for survivors under Part E of the Act merely tracks the statutory order of precedence contained in section 7385s–3(c)(3) of EEOICPA. Since the order of precedence for survivors under Part E cannot be modified by regulation, the suggestion was not adopted.

Section 30.505

Two advocacy groups suggested that the unified benefit payment processes for both Parts B and E described in § 30.505(a) be amended to require OWCP to issue a "partial" award of $12,500 to covered Part E employees at the time it determines that they have contracted a covered illness, and to determine the balance of any compensation due them within another six months. Unlike Part B of EEOICPA, which compensates individuals upon a finding that a covered Part B employee contracted an occupational illness, Part E monetary compensation can only be awarded if OWCP further determines that a covered Part E employee's wage-loss, impairment or death was due to his or her covered illness. Thus, this suggestion would result in the issuance of a monetary award to a claimant before OWCP has determined that the statutory entitlement criteria established by Part E have been met, and that a payment is due after any required offsets have been calculated. Shortening the monetary benefit payment processes for Part E as suggested by these two commenters would violate the explicit terms of EEOICPA, and therefore the

suggestions to change § 30.505(a) have not been adopted.

One labor organization suggested that § 30.505(d) be amended to permit a claimant to receive up to the $250,000 maximum aggregate compensation payable under Part E for both wage-loss and impairment, for each of his or her covered illnesses. As OWCP noted in the preamble discussion of this provision of the interim final rule, 42 U.S.C. 7385s–12 "limits the aggregate compensation (other than medical benefits) that OWCP may pay under Part E to all claimants for each individual whose illness or death serves as a basis for compensation or benefits under Part E to a total of $250,000. This is the only reading of the statutory language that is consistent with the statutory requirement that the computation of both impairment benefits and wage-loss benefits under [section] 7385s–2 be based upon impairment or wage-loss that is 'the result of any covered illness.' This reading is also consistent with congressional intent, as reflected in the Conference Report for Public Law 108–375, which states that the 'maximum aggregate benefit available under [Part] E of EEOICPA is $250,000.' *See* H.R. Conf. Rep. No. 108–767, at 894 (2004)." Thus, the suggested changes have not been adopted.

Section 30.509

Two advocacy groups asked why § 30.509(c) indicates that OWCP will only make an impairment determination for a deceased Part E employee if an eligible survivor makes an election to receive the compensation of the employee as permitted by section 7385s–1(2)(B) of EEOICPA, when the Conference Report states that survivors under Part E are to receive a minimum lump-sum payment of $125,000. These comments are based on a misunderstanding of the operation of § 30.509, which describes the very limited universe of survivors who are eligible to make the election described in section 7385s–1(2)(B), and the fact that the only survivors entitled to utilize this election provision would not be entitled to survivor benefits because the election is only available to survivors of a covered Part E employee who died "from a cause other than the covered illness of the employee." Survivors who make this election will therefore not be eligible to receive any other compensation (such as the $125,000 lump-sum payment) under the terms of section 7385s–3. Accordingly, the provision discussed in § 30.509(c) is correct, and no changes were made to this section in the final rule.

Sections 30.513 Through 30.517

One lay representative suggested that in § 30.517, OWCP should more specifically describe the circumstances under which it would decide to waive its statutory right to recover an overpayment pursuant to section 7385j–2 of EEOICPA. While § 30.513 of the interim final regulations notes the general authority of OWCP to waive recovery of an overpayment of EEOICPA benefits, §§ 30.514 through 30.517 elaborate on that authority with a substantial amount of detail. In light of the variety of factual circumstances and fairness considerations that may apply in any specific case, it is not possible to identify particular circumstances rather than general principles concerning how this authority is to be exercised. Therefore, since §§ 30.513 through 30.517 in the interim final regulations adequately identify the standards that OWCP will use to make these determinations without depriving OWCP of sufficient flexibility to administer this aspect of the program, the suggested changes have not been adopted.

Section 30.600

One individual suggested that § 30.600(b) make it clearer that a claimant can grant a person a "power of attorney" to act on his or her behalf, and that such person can then designate a representative to pursue the claim under EEOICPA. OWCP believes there is merit in this suggestion. Thus, additional language was added to § 30.600(b) to clarify that a person who has been granted a power of attorney by a claimant under EEOICPA may designate a representative to pursue that claim before OWCP. Also, one attorney suggested that OWCP change § 30.600(c)(2) to allow an attorney or representative to complete, but not sign, a Form EN–20. OWCP believes that this suggestion has merit, and § 30.600(c)(2) has been amended as requested.

Section 30.603

One attorney suggested that the 10 percent limit for attorney fees for filing objections to a recommended decision should apply to the amount of the lump-sum awarded in the final decision. The interim final rule currently applies this limit to the amount by which the lump-sum award is *increased* as a result of the objections, and is consistent with the mandate in section 7385s–9 to limit such fees in Part E cases in the same manner as Part B cases. Since Part B claimants either receive a full lump-sum award or no award at all, successful objections to a recommended decision provide a claimant with an "increased" lump-sum award equal to the entire amount payable under Part B. Section 30.603(b)(2) in the interim final rule merely applies this same principle to Part E cases as required by the explicit terms of the Act. Since lump-sum awards to covered Part E employees may vary according to their level of impairment and the extent of their wage-loss, there may be instances where an objection to a recommended decision proposing to award benefits under Part E may result in a final decision awarding greater benefits. In such a case, the gain to the covered Part E employee from the filing of the objection will not be the entire lump-sum award; the gain will the difference between the lump-sum payment and the amount proposed in the recommended decision. To be consistent with Part B, as required by the statute, the attorney fees under Part E have to be limited to the difference in lump-sum amounts. Thus, the suggested change has not been adopted.

This attorney and two other attorneys also objected to the provision in § 30.603(b)(1) that does not permit a representative to charge a two percent fee unless he or she was retained prior to the initial filing of the claim. This provision, however, is based on the limitation contained in 42 U.S.C. 7385g(b)(1), which states that a representative may only charge a two percent fee "for the filing of an initial claim for payment of lump-sum compensation. * * *" OWCP believes that it would violate the statute to permit a representative to charge a fee of two percent of the lump-sum award if the representative was retained after the claim was filed. One of these two other attorneys also suggested that the term "initial claim" be defined to include the filing of amended claim forms, the submission of additional documents or data, or the reopening of the claim following the issuance of a final decision by the FAB; in the alternative, he also suggested that the limitations described in the interim final rule not apply to claims that were filed prior to the effective date of that rule, *i.e.*, June 8, 2005. OWCP believes that an expansive definition of the term "initial claim" would be inconsistent with the plain meaning of the statute, which has not changed in this regard since section 7385g was amended on December 28, 2001. For this same reason, OWCP also believes that there would be no justification for applying the fee limitations described in § 30.603 only to claims filed on or after June 8,

2005. Thus, none of these suggested changes were adopted in the final rule.

Section 30.609

Two advocacy groups disagreed with the requirement in § 30.609 that claimants must report (for offset purposes) any payments that they receive due to medical malpractice resulting from treatment of their occupational illness or covered illness. Such medical malpractice payments have as their genesis exposures for which compensation is payable under Part B or Part E of EEOICPA. Under section 7385 of EEOICPA, benefits payable under Part B or Part E must be offset to reflect these types of payments. Thus, OWCP must be informed of these types of payments so it can perform the statutorily mandated offset of EEOICPA benefits, and the suggestion to eliminate this section has not been adopted in the final rule.

Section 30.626

One lay representative and five individuals objected to § 30.626, which describes the required coordination of payments under Part E of EEOICPA with benefits from state workers' compensation programs for the same covered illness or illnesses. However, OWCP is required to coordinate Part E benefits in this manner by section 7385s–11 of the Act. Thus, the suggestion to eliminate this section has not been adopted.

Sections 30.801, 30.805, 30.806 and 30.815

One individual suggested that § 30.801 indicate that compensation will be provided to employees who have suffered occasional days of lost pay due to their covered illnesses. However, Part E is not a program that provides compensation for *any* wage-loss, regardless of amount, that a covered Part E employee may experience due to his or her covered illness. Instead, Part E only provides compensation under a specific formula in section 7385s–2(a)(2)(A) based on a qualifying amount of wage-loss sustained in a given calendar year, and this formula cannot be altered in this final rule. Thus, the suggestion has not been adopted.

One labor organization asserted that it is more difficult for employees who worked intermittently at DOE facilities to establish their average annual wage and their alleged calendar years of wage-loss through reliance on wage data received from the Social Security Administration, and that this will result in employees having to use the methods of § 30.806 to convince OWCP to determine a different average annual wage and/or the extent of compensable calendar years of wage-loss than it determined using § 30.805. However, the labor organization did not put forward any discernable proposal to address the purported problem it raised in its comment. While it is possible that some employees may incur difficulties in securing the type of records described as acceptable to OWCP in § 30.806, these difficulties alone should not relieve them of their burden to produce records that show a level of wage-loss sufficient to make them eligible for an award. OWCP claims examiners are instructed to accept tax returns, pay stubs, union records and pension records as evidence of earnings. In addition, claims examiners can request earning records from employers. Therefore, no change has been made to § 30.806 in the final rule. However, because of these concerns, § 30.805 has been amended in the final rule to more precisely define the term "wages." Another labor organization asserted that some occupations are more likely to be affected by the business cycle than others, and asked that the wages of employees in these occupations be determined by looking to the average wages of their "peer group" rather than to their own individual wages. OWCP does not believe that adjustments for fluctuations in demand for labor in certain occupations can be made fairly or efficiently, nor does it believe that it has the authority to make this type of change to the statutory formulae for determining these matters by regulation. As a result, this suggested change has also not been adopted.

One individual suggested a stylistic change for the wording of § 30.815(b), which he felt was too confusing. Section 30.815(b) is merely intended to inform readers that in most situations, OWCP will determine the number of compensable years of wage-loss in accordance with the procedures described in §§ 30.800 through 30.811. The suggested change is not substantive in nature and would be, in OWCP's opinion, more confusing than the language that currently appears in § 30.815(b). Therefore, the suggested change to this section has not been adopted in the final rule.

Section 30.901

One labor organization questioned OWCP's ability to make the type of apportionment determinations described in § 30.901(a) of the interim final rule and asserted that there was no reasoned basis for allocating the cause of a permanent impairment of an organ or body function among both compensable and non-compensable exposures. This provision was based on the somewhat ambiguous language of section 7385s–2(a)(1)(A) of the Act, which can be read in such a way as to require the apportionment described in § 30.901(a) of the interim final rule. However, after carefully considering both the dearth of support for such apportionments in the medical literature and the practical difficulties that claims examiners would be faced with if they were required to make these particular types of determinations, OWCP agrees with the commenter and has decided to interpret the statutory provision in question as not requiring such an apportionment. Thus, OWCP has modified § 30.901(a) in the final rule to remove this requirement. Conforming changes have also been made to §§ 30.901(d), 30.902, and 30.908(b) and (c).

One lay representative, four individuals and the same labor organization also criticized the description of the criteria for physicians to perform impairment evaluations set out in § 30.901(b), and suggested that OWCP modify that description to make the criteria less restrictive so as to increase the potential pool of physicians who can perform impairment evaluations acceptable to OWCP. After considering several different potential criteria since the issuance of the interim final rule, OWCP believes that it has developed criteria that will satisfy the commenters' concern that there will be few physicians who meet the criteria in a given locality, or that claimants will not be able to use their local physicians to perform the testing and measurements upon which an impairment evaluation under Part E can be performed by a physician who meets the criteria. As changed, these criteria will now provide that a physician has to establish (to OWCP's satisfaction) that he or she possesses knowledge and experience in using the American Medical Association's *Guides to the Evaluation of Permanent* Impairment (AMA's *Guides*) and/or possesses the requisite professional background and work experience to conduct acceptable impairment evaluations. Further, while a claimant's local physician may not be able to satisfy all of the criteria described in § 30.901(b) and perform the impairment evaluation itself, the claimant can still elect to have such a physician perform the underlying objective testing and other procedures that another physician who does satisfy the criteria could rely upon in arriving at an evaluation of his or her impairment. Since OWCP has changed the policy to which the commenters

objected, no changes were made to § 30.901(b) in the final rule.

Sections 30.905 and 30.906

One individual objected to the provision in § 30.905(b)(1) that only impairment evaluations performed by physicians who meet the criteria identified by OWCP will be considered probative. The comment suggests that impairment evaluations performed by physicians of the Radiation Exposure Screening and Education Program (RESEP) that is administered by the Health Resources and Services Administration within HHS be considered probative under Part E of EEOICPA. OWCP has no objection to claimants submitting impairment evaluations performed by a RESEP physician, so long as that physician meets the qualifications set forth by OWCP. The same would be true for physicians who are affiliated with other government-sponsored health clinics. Not all physicians, however, have the necessary training to perform impairment evaluations (as noted above, claimants can utilize any physician to perform the testing and measurements upon which an impairment evaluation can be performed by a physician who meets OWCP's criteria). Thus, OWCP must put into place certain criteria to identify those physicians who are qualified to perform impairment evaluations upon which it can base its ratings. As a result, no changes to § 30.905(b)(1) were made in the final rule. Two other individuals objected to the requirement found in § 30.905(b)(2) that an impairment evaluation must have been performed within one year of its submission to OWCP for it to be considered probative in determining the permanent impairment of a covered Part E employee and suggested that this requirement be deleted. OWCP does not find any merit to this objection because the Act requires OWCP to determine the minimum impairment rating of the employee as of the time it is adjudicating the claim for the award. In light of this requirement, OWCP believes that it is reasonable to insist that the rating be based on an impairment evaluation that is no more than one year old. Two advocacy groups also suggested that this same requirement be deleted because covered Part E employees with previous temporary impairments from which they have recovered would not receive compensation. OWCP believes that the reasoning behind these latter comments ignores the mandate in the Act to compensate covered Part E employees for their permanent impairment rather than their temporary impairment. Thus, the suggestions to delete the requirement in § 30.905(b)(2) were not adopted.

Two attorneys suggested that § 30.906 be amended to provide that OWCP will pay for the cost of any additional impairment evaluation if such impairment evaluation increases the minimum impairment rating. In the interim final rule, this section states that OWCP will pay for one evaluation if it meets the criteria set forth in § 30.905(b), and that it will also pay for any additional impairment evaluations that it directs the employee to undergo (and reimburse the employee for reasonable expenses, as defined in the rule, that are associated with such an evaluation). OWCP is not persuaded that there is a reasonable basis for paying for additional impairment evaluations beyond those already described in § 30.906, and therefore the suggestion was not adopted in the final rule.

Sections 30.907 and 30.908

Two advocacy groups asserted that § 30.907(b) did not provide a process whereby a dispute regarding a covered Part E employee's impairment evaluation could be resolved. While § 30.907(b) in the interim final rule noted that the procedures for "directed medical examinations" set out in §§ 30.410 and 30.411 of the regulations applied to these types of disputes, OWCP acknowledges that it did not explicitly note that such procedures include the process by which OWCP resolves medical disputes in general. Therefore, in order to make this provision more clear, § 30.907(b) has been modified slightly in the final rule to explicitly note that OWCP will resolve medical disputes regarding impairment through the "referee examination" process set out in § 30.411.

One labor organization objected to the provisions in § 30.908 requiring that medical evidence of impairment submitted to the FAB in opposition to the impairment evaluation that was relied upon in a recommended decision conform to the requirements set out in § 30.905(b) in order to be afforded any probative value, and noted that claimants have the burden of proving that the new medical evidence has greater probative value than the impairment evaluation relied upon in the recommended decision. Requirements of this sort that set out minimum standards for new evidence and the assumption of the burden of proof when challenging a determination made below are standard features of any adjudicative system, and are necessary to conserve scarce administrative resources. OWCP does not agree that their use in this context is either unduly burdensome on claimants or inherently unfair in a system such as Part E. Therefore, no changes were made to § 30.908 as a result of the comment.

Section 30.910

Two comments from congressional representatives, four from advocacy groups and two from individuals objected to the provision in § 30.910(a) of the interim final rule that an impairment that cannot be assigned a numerical percentage using the AMA's *Guides* will not be included in a covered Part E employee's impairment rating, and noted that the Conference Report for Public Law 108–375 suggests that for those illnesses for which the AMA's *Guides* do not provide a method to assign a numerical percentage, the Department should devise another method to determine the amount of an impairment award to a covered Part E employee. *See* H.R. Conf. Rep. No. 108–767, at 893 (2004). However, as the Department pointed out when it promulgated § 30.910, the plain language of section 7385s–2(b) requires OWCP to determine the amount of an impairment award to a covered Part E employee in accordance with the AMA's *Guides* and does not contain the exception referred to in the Conference Report for "an illness for which the [AMA's *Guides*] do not provide an impairment rating. * * *" It should be noted that this suggestion appears to be based on the assumption that the AMA's *Guides* cannot be used to determine an impairment rating for an illness unless they explicitly provide a method to evaluate that particular illness. However, because the *Guides* evaluate the impairment of organs and body functions rather than illnesses *per se*, even a newly identified illness can be evaluated using the *Guides* so long as its effects on those organs and/or body functions are known and quantifiable.

As noted above, section 7385s–2(b) of EEOICPA requires that impairment ratings "shall be determined in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment*." The discussion of mental impairments that do not originate from documented physical dysfunctions of the nervous system in Chapter 14 (Mental and Behavioral Disorders) of the AMA's *Guides* states that "there are no precise measures of impairment in mental disorders. The use of percentages implies a certainty that does not exist." Chapter 14 then explains that the authors of the current (fifth) edition of

the AMA's *Guides* are "unaware of data that show the reliability" of any percentages for these particular types of impairments and that "the Committee on Disability and Rehabilitation of the American Psychiatric Association advised *Guides* contributors against the use of percentages in the chapter on mental and behavioral disorders of the fourth edition, and that remains the opinion of the authors of the present chapter." In support of their decision not to assign numerical percentages to mental impairments that do not originate from documented physical dysfunctions of the nervous system, the authors point out that "[n]o available empirical evidence supports any method for assigning a percentage of impairment of the whole person" to these disorders. Since the AMA's *Guides* clearly takes the position that there is no basis to calculate numerical percentages of mental impairment due to mental disorders, attempting to do so by devising a rating mechanism independent of the AMA's *Guides* would violate EEOICPA's requirement that impairment ratings be determined "in accordance with" the AMA's *Guides*. Thus, § 30.910(b) indicates that these types of mental impairments will not be included in an impairment rating; no change was made to this section in the final rule.

Section 30.911

Two comments from individuals, two from congressional representatives, two from advocacy groups and two from attorneys questioned the appropriateness of the provision in § 30.911(a) in light of the progressive nature of the covered illnesses that would be compensable under Part E of EEOICPA. OWCP's intent in the interim final rule was to apply the requirement that an individual reach "maximum medical improvement" in order for an impairment rating to be determined in a manner that is appropriate for the conditions covered by EEOICPA. OWCP recognizes that many of these covered illnesses are progressive, and that many employees may find themselves in a situation where their accepted condition is not likely to improve but can be expected to gradually deteriorate. The intent in the interim final rule was to allow for minimum impairment ratings to be calculated and compensated in such circumstances. However, since the wording of § 30.911(a) in the interim final rule did not convey this intent as clearly as it could have, this provision has been modified slightly in the final rule by changing the word "change" to "improve" in the final rule.

II. Miscellaneous Comments

Several of the 533 timely comments the Department received raised issues that either were not addressed in the interim final regulations or involved extraneous matters. The Department's analysis of these miscellaneous comments follows:

The Ombudsman

OWCP received one comment from an advocacy group pointing out that the interim final regulations did not address the role and functions of the Ombudsman provided for in section 7385s–15 of EEOICPA. However, this omission was intentional and required by the terms of section 7385s–15(d), which requires that the Ombudsman be independent "from other officers and employees of the Department [of Labor] engaged in activities relating to the administration of the provisions of" Part E of EEOICPA. Instead, the role and the functions of the Ombudsman are set out in Secretary's Order 1–2005. Therefore, the final rule also does not address either the role or the functions of the Ombudsman.

The Rulemaking Process

OWCP received one comment from an attorney on a specific aspect of the rulemaking process. Without identifying any particular provision of the regulations, the commenter opined that at least some of them would not be comprehensible to some members of the public and should be rewritten in "plain English." OWCP acknowledges that some of the regulations for Part E involve complex medical matters or complicated arithmetic calculations. However, while these concepts can be difficult to comprehend, OWCP went to great lengths in an effort to ensure that the corresponding regulations in subparts I and J were written in a clear and understandable manner. Since the commenter neither identified a particularly incomprehensible provision of the regulations nor provided any suggested improvements, no additional changes were made to the regulations based on this comment.

Coverage

One DOE contractor and four individuals made suggestions about which workers or survivors should be covered by Part E of EEOICPA. However, the Act mandates the categories of workers and survivors covered under Part B and Part E and the regulations cannot be changed to either expand or restrict these categories unless the Act is amended. Therefore, the suggested changes have not been made in this final rule.

III. Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this final rule with respect to the following changes: (1) Corrections of typographical errors; and (2) minor wording changes and clarifications that do not affect the substance of the regulations. For these changes, publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful.

IV. Statutory Authority

Section 7384d of EEOICPA provides general statutory authority, which E.O. 13179 allocates to the Secretary, to prescribe rules and regulations necessary for administration of Part B of the Act. Section 7385s–10(e) also provides the Secretary with the general statutory authority to prescribe regulations necessary for administration of Part E of the Act. Sections 7384t, 7384u and 7385s–8 provide the specific authority regarding medical treatment and care, including authority to determine the appropriateness of charges. The Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

V. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* The requirements set out in §§ 30.401, 30.404, 30.420, 30.421, 30.512, 30.518, 30.700, 30.701 and 30.702 of this rule were both submitted to and approved by OMB under the PRA in OMB Control Nos. 1215–0054 (expires June 30, 2007), 1215–0055 (expires October 31, 2009), 1215–0137 (expires March 31, 2007), 1215–0144 (expires October 31, 2009), 1215–0176 (expires January 31, 2007), 1215–0193 (expires March 31, 2007) and 1215–0194 (expires March 31, 2007). The requirements in §§ 30.100, 30.101, 30.102, 30.103, 30.111, 30.112, 30.113, 30.114, 30.206, 30.207, 30.212, 30.213, 30.214, 30.215, 30.221, 30.222, 30.226, 30.231, 30.232, 30.415, 30.416, 30.417, 30.505, 30.620, 30.806, 30.905 and 30.907of this rule were also both submitted to and approved by OMB under the PRA in OMB Control No. 1215–0197 (expires August 31, 2007).

Following publication of this final rule, the Department plans to seek OMB approval of two new information collections under the PRA and will issue 60-day **Federal Register** notices

seeking public comment on (1) a collection that will annually request updated information relating to state workers' compensation benefits received by EEOICPA Part E beneficiaries; and (2) a collection annually requesting verifying information on state workers' compensation benefits from state authorities. These collections will implement the Department's responsibilities under section 7385s–11 of EEOICPA.

VI. Executive Order 12866

This rule is being treated as a "significant regulatory action," within the meaning of E.O. 12866, because it is "economically significant" as defined by section 3(f)(1) of that Order. The payment of the benefits provided for by EEOICPA through the program administered pursuant to this regulatory action has an annual effect on the economy of $100 million or more. However, this rule does not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, as defined by section 3(f)(1) of E.O. 12866. This rule is also a "significant regulatory action" because it meets the criterion of section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA.

Based on the factors and assumptions set forth below, DOL's estimate of the aggregate cost of benefits and administrative expenses of this regulatory action implementing Part B and Part E of EEOICPA is, in millions of dollars:

	FY2007	FY2008	FY2009	FY2010	FY2011
Admin	$162	$163	$147	$127	$111
Benefits	1,123	861	752	656	579

The Department's estimate of the benefits to be paid pursuant to EEOICPA and of the administrative costs of providing those benefits is based on program experience to date, data collected from other federal agencies, assumptions about the incidence of cancer, covered beryllium disease, chronic silicosis and other covered illnesses in the claimant population, life expectancy tables, dose reconstruction acceptance rates, Physicians Panel acceptances under the former Part D of the Act, the anticipated distribution of benefit amounts, and its experience in estimating administrative and medical costs of workers' compensation programs. The Department's benefit estimates are not based on any projections regarding the number of future additions to the Special Exposure Cohort (SEC).

For Part B benefits, estimates for cancer claims are based on the actual number of claims received by OWCP, the anticipated number of future claims, and the historical approval rates for both SEC and non-SEC claims. Part B benefit estimates for beryllium exposure are based on the actual number of such claims received by OWCP, anticipated future claims, and the historical approval rate. Benefit estimates for chronic silicosis are based on similar factors. Benefit estimates for claims that require receipt of an award from DOJ under section 5 of RECA are based on historical claim receipts and include the amounts awarded by DOJ under RECA but paid from the compensation fund. Medical benefits for living employees eligible under Part B are computed using an average of $10,000 per year.

Part E benefit estimates for Part E cases are based on cases received by OWCP to date, future expected receipts, and the average Part B approval rate. The benefit amounts for Part E are calculated based on an estimated distribution of approved claims with varying degrees of compensable impairment and wage-loss, with an average benefit amount of $135,000 and average medical costs of $10,000 per year for each eligible living employee. Additional Part E benefits for individuals who are determined to be eligible RECA section 5 uranium workers are computed based upon the number of such claims received to date and the expected number of such claims in the future.

Administrative cost estimates were developed based upon OWCP's experience to date in administering Part B and the other workers' compensation programs that fall within its area of administrative responsibility, using calculations of the number of incoming claims and forecasting the necessary full-time equivalents and other resources that are necessary to efficiently administer the program.

No more extensive economic impact analysis of this rule is necessary because this regulatory action only addresses the transfer of funds from the federal government to individuals who qualify under EEOICPA and to providers of medical services in that program. This regulatory action has no affect on the functioning of the economy and private markets, on the health and safety of the general population, or on the natural environment. In addition, because this rule implements a statutory mandate, there are no feasible alternatives to this regulatory action. Finally, to the extent that policy choices have been made in interpreting statutory terms, those choices have no significant impact on the cost of this regulatory action. Such policy choices may affect who will be entitled to receive benefits (such as covered Part E employees with unratable impairments due to a covered illness), but will not have a significant impact on the number of eligible Part B or E beneficiaries or the level of benefits to which they are entitled.

OMB has reviewed the rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

VII. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this final rule prior to its effective date. The report will state that the Department has concluded that this final rule is a "major rule" because it will likely result in an annual effect on the economy of $100 million or more.

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of federal regulatory actions on state, local, and tribal governments, and the private sector, "other than to the extent that such regulations incorporate requirements specifically set forth in law." For purposes of the Unfunded Mandates Reform Act, this final rule does not include any federal mandate that may result in increased annual expenditures in excess of $100 million by state, local or tribal governments in the aggregate, or by the private sector.

IX. Regulatory Flexibility Act

The Department believes that this rule has "no significant economic impact upon a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of this rule that apply cost-control measures to payments for medical expenses are the only ones that could have a monetary effect on small businesses, and have been in effect since OWCP began administration of Part B of EEOICPA on July 31, 2001. The economic effect of these cost-control measures are not significant for a substantial number of those businesses who participate in the program under Parts B and E of EEOICPA, however, because no one business bills a significant amount to OWCP for EEOICPA-related services, and the monetary effect on bills that are submitted, while a worthwhile savings for the Government in the aggregate, are not significant for any individual business affected.

The cost-control provisions are: (1) A set schedule of maximum allowable fees for professional medical services; (2) a set schedule for payment of pharmacy bills; and (3) a prospective payment system for hospital inpatient services. The methodologies used for the first two of these provisions were explained in the text of the preamble to two earlier regulatory actions that implemented EEOICPA in 2001 (66 FR 28948) and 2002 (67 FR 78874), which essentially adopted payment systems that are prevalent in the industry. Their adoption for use in connection with OWCP's administration of Part E of the Act results in continued efficiencies for the Government and providers. The Government benefits because OWCP did not develop new cost containment measures for Part E claims, but rather adopted existing and well-recognized measures that were already in place. The providers benefit because submitting a bill and receiving a payment is almost the same as submitting it to Medicare, a program with which they are already familiar and have existing systems in place for billing—they do not have to incur unnecessary administrative costs to learn a new process because the EEOICPA bill process for Part E claims is identical to the bill process that applies to Part B claims, and is not readily distinguishable from the Medicare billing process. Similarly, pharmacies are familiar with billing through clearing houses and having their charges subject to limits by private insurance carriers. By adopting private sector uniform billing requirements and a familiar cost control methodology, OWCP has not altered the billing environment with which pharmacies are already familiar. The methods chosen, therefore, represent systems familiar to the providers. The third of these three provisions does not have an effect on a substantial number of "small entities" under Small Business Administration (SBA) standards, since most hospitals providing services for medical conditions covered by EEOICPA have annual receipts that exceed the set maximum.

The implementation of these cost-control methods does not have a significant effect on any single medical professional or pharmacy since they are already used by Medicare, CHAMPUS, and the Departments of Labor and Veterans Affairs, among Government entities, and by private insurance carriers. In actual terms, the amount by which these provider bills are reduced does not have a significant impact on any one small entity since these charges are currently being processed by other payers applying similar cost-control provisions. The costs to providers whose charges are reduced also are relatively small because EEOICPA bills simply do not represent a large share of any single provider's total business. Since the small universe of potential claimants is spread across the United States and this bill processing system covers only those employees who have sustained an occupational illness or a covered illness and require medical treatment on or after October 30, 2000, the number of bills submitted by any one small entity which may be subject to these provisions is likely to be very small. Therefore, the "cost" of this rule to any one pharmacy or medical professional is negligible. On the other hand, OWCP reaps substantial aggregate cost savings that benefit both OWCP (by strengthening the integrity of the program) and the taxpayers to whom the costs of the program are eventually charged.

The Assistant Secretary for Employment Standards has certified to the Chief Counsel for Advocacy of the SBA that this rule does not have a significant impact on a substantial number of small entities. The factual basis for this certification has been provided above. Accordingly, no regulatory impact analysis is required.

X. Executive Order 12988 (Civil Justice Reform)

This final rule has been drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. While Part B of EEOICPA does not provide any specific procedures that claimants under that Part must follow in order to seek review of decisions on their claims, Part E specifies that claimants under that Part have 60 days to file petitions for review of decisions on their claims in the United States district courts, and mandates the use of an "arbitrary and capricious" standard of review. It is reasonably likely that some EEOICPA claimants will seek review of adverse decisions in United States district courts pursuant to 28 U.S.C. 1331 (for claims under Part B of EEOICPA) or the EEOICPA itself (for claims under Part E). This rule should help minimize the burden placed on courts by litigation seeking to challenge decisions under EEOICPA by providing claimants with an opportunity to seek administrative review of adverse decisions prior to resorting to the court system, and by providing a clear legal standard for affected conduct. The rule has been reviewed carefully to eliminate drafting errors and ambiguities.

XI. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with E.O. 13045, the Department has evaluated the environmental health and safety effects of this rule on children. The Department has determined that the final rule will have no effect on children.

XII. Executive Order 13132 (Federalism)

The Department has reviewed this final rule in accordance with E.O. 13132 and has determined that it does not have any "federalism implications." The final rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

XIII. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with E.O. 13211, the Department has evaluated the effects of this final rule on energy supply, distribution or use, and has determined that this rule is not likely to have a significant adverse effect on them.

XIV. Submission to Congress and the General Accountability Office

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the Department will submit to each House of the Congress and to the Comptroller General

a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this notice. The report will note that this rule constitutes a "major rule" as defined by 5 U.S.C. 804(2).

XV. Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance as No. 17.310.

List of Subjects

20 CFR Part 1

Organization and functions (Government agencies).

20 CFR Part 30

Administrative practice and procedure, Cancer, Claims, Kidney diseases, Leukemia, Lung diseases, Miners, Radioactive materials, Tort claims, Underground mining, Uranium, Workers' compensation.

Text of the Rule

■ For the reasons set forth in the preamble, 20 CFR Chapter 1 is amended as follows:

Subchapter A—Organization and Procedures

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

PART 1—PERFORMANCE OF FUNCTIONS

Sec.

Authority: 5 U.S.C. 301, 8145 and 8149 (Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263); 42 U.S.C. 7384d and 7385s–10; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 13–71, 36 FR 8155; Employment Standards Order No. 2–74, 39 FR 34722.

§ 1.1 Under what authority was the Office of Workers' Compensation Programs established?

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order No. 13–71 (36 FR 8755), established in the Employment Standards Administration an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order No. 2–74 (39 FR 34722). The Assistant Secretary subsequently designated as the head thereof a Director who, under the general supervision of the Assistant Secretary, administers the programs assigned to OWCP by the Assistant Secretary.

§ 1.2 What functions are assigned to OWCP?

The Assistant Secretary of Labor for Employment Standards has delegated authority and assigned responsibility to the Director of OWCP for the Department of Labor's programs under the following statutes:

(a) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 *et seq.*), except 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board.

(b) The War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(c) The War Claims Act (50 U.S.C. App. 2003).

(d) The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*), except activities, pursuant to Executive Order 13179 ("Providing Compensation to America's Nuclear Weapons Workers") of December 7, 2000, assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General.

(e) The Longshore and Harbor Workers' Compensation Act, as amended and extended (33 U.S.C. 901 *et seq.*), except: 33 U.S.C. 919(d) with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b) as it pertains to the Benefits Review Board; and activities, pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary of Labor for Occupational Safety and Health.

(f) The Black Lung Benefits Act, as amended (30 U.S.C. 901 *et seq.*).

§ 1.3 What rules are contained in this chapter?

The rules in this chapter are those governing the OWCP functions under the Federal Employees' Compensation Act, the War Hazards Compensation Act, the War Claims Act and the Energy Employees Occupational Illness Compensation Program Act of 2000.

§ 1.4 Where are other rules concerning OWCP functions found?

(a) The rules of the OWCP governing its functions under the Longshore and Harbor Workers' Compensation Act and its extensions are set forth in subchapter A of chapter VI of this title.

(b) The rules of the OWCP governing its functions under the Black Lung Benefits Act program are set forth in subchapter B of chapter VI of this title.

(c) The rules and regulations of the Employees' Compensation Appeals Board are set forth in chapter IV of this title.

(d) The rules and regulations of the Benefits Review Board are set forth in Chapter VII of this title.

§ 1.5 When was the former Bureau of Employees' Compensation abolished?

By Secretary of Labor's Order issued September 23, 1974 (39 FR 34723), issued concurrently with Employment Standards Order 2–74 (39 FR 34722), the Secretary revoked the prior Secretary's Order No. 18–67 (32 FR 12979), which had delegated authority and assigned responsibility for the various workers' compensation programs enumerated in § 1.2, except the Black Lung Benefits Program and the Energy Employees Occupational Illness Compensation Program not then in existence, to the Director of the former Bureau of Employees' Compensation.

§ 1.6 How were many of OWCP's current functions administered in the past?

(a) Administration of the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act was initially vested in an independent establishment known as the U.S. Employees' Compensation Commission. By Reorganization Plan No. 2 of 1946 (3 CFR, 1943–1949 Comp., p. 1064; 60 Stat. 1095, effective July 16, 1946), the Commission was abolished and its functions were transferred to the Federal Security Agency to be performed by a newly created Bureau of Employees' Compensation within such Agency. By Reorganization Plan No. 19 of 1950 (15 FR 3178, 3 CFR, 1949–1954 Comp., page 1010, 64 Stat. 1271), said Bureau was transferred to the Department of Labor (DOL), and the authority formerly vested in the Administrator, Federal Security Agency, was vested in the Secretary of Labor. By Reorganization Plan No. 6 of 1950 (15 FR 3174, 3 CFR, 1949–1953 Comp., page 1004, 64 Stat. 1263), the Secretary of Labor was authorized to make from time to time such provisions as he shall deem appropriate, authorizing the performance of any of his functions by any other officer, agency, or employee of the DOL.

(b) In 1972, two separate organizational units were established within the Bureau: an Office of Workmen's Compensation Programs (37 FR 20533) and an Office of Federal Employees' Compensation (37 FR 22979). In 1974, these two units were

abolished and one organizational unit, the Office of Workers' Compensation Programs, was established in lieu of the Bureau of Employees' Compensation (39 FR 34722).

■ 2. Subchapter C consisting of part 30 is revised to read as follows:

Subchapter C—Energy Employees Occupational Illness Compensation Program Act of 2000

PART 30—CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED

Subpart A—General Provisions

Introduction

Sec.

Definitions

Information in Program Records

Rights and Penalties

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Filing Claims for Benefits Under EEOICPA

Verification of Alleged Employment

Evidence and Burden of Proof

Special Procedures for Certain Radiogenic Cancer Claims

Subpart C—Eligibility Criteria

General Provisions

Eligibility Criteria for Claims Relating to Covered Beryllium Illness Under Part B of EEOICPA

Eligibility Criteria for Claims Relating to Radiogenic Cancer Under Parts B and E of EEOICPA

Eligibility Criteria for Claims Relating to Chronic Silicosis Under Part B of EEOICPA

Eligibility Criteria for Certain Uranium Employees Under Part B of EEOICPA

Eligibility Criteria for Other Claims Under Part E of EEOICPA

Subpart D—Adjudicatory Process

Recommended Decisions on Claims

Hearings and Final Decisions on Claims

Authority: 5 U.S.C. 301; 31 U.S.C. 3716 and 3717; 42 U.S.C. 7384d, 7384t, 7384u and 7385s–10; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 4–2001, 66 FR 29656.

Subpart A—General Provisions

Introduction

§ 30.0 What are the provisions of EEOICPA, in general?

Part B of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.*, provides for the payment of compensation benefits to covered Part B employees and, where applicable, survivors of such employees, of the United States Department of Energy (DOE), its predecessor agencies and certain of its contractors and subcontractors. Part B also provides for the payment of supplemental compensation benefits to other covered Part B employees who have already been found eligible for benefits under section 5 of the Radiation Exposure Compensation Act, as amended (RECA), 42 U.S.C 2210 note, and where applicable, survivors of such persons. Part E of the Act provides for the payment of compensation benefits to covered Part E employees and, where applicable, survivors of such employees. The regulations in this part describe the rules governing filing, processing, and paying claims for benefits under both Part B and Part E of EEOICPA.

(a) Part B of EEOICPA provides for the payment of either lump-sum monetary compensation for the disability of a covered Part B employee due to an occupational illness or for monitoring for beryllium sensitivity, as well as for medical and related benefits for such illness. Part B also provides for the payment of monetary compensation for the disability of a covered Part B employee to specified survivors if the employee is deceased at the time of payment.

(b) Part E of EEOICPA provides for the payment of monetary compensation for the established wage-loss and/or impairment of a covered Part E employee due to a covered illness, and for medical and related benefits for such covered illness. Part E also provides for the payment of monetary compensation for the death (and established wage-loss, where applicable) of a covered Part E employee to specified survivors if the covered Part E employee is deceased at the time of payment.

(c) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of EEOICPA and this part.

§ 30.1 What rules govern the administration of EEOICPA and this chapter?

In accordance with EEOICPA, Executive Order 13179 and Secretary's Order No. 4–2001, the primary responsibility for administering the Act, except for those activities assigned to the Secretary of Health and Human Services (HHS), the Secretary of Energy and the Attorney General, has been delegated to the Assistant Secretary of Labor for Employment Standards. The Assistant Secretary, in turn, has delegated the responsibility for administering the Act to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise

provided by law, the Director of OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

§ 30.2 In general, how have the tasks associated with the administration of EEOICPA claims process been assigned?

(a) In E.O. 13179, the President assigned the tasks associated with administration of the EEOICPA claims process among the Secretaries of Labor, HHS and Energy, and the Attorney General. In light of the fact that the Secretary of Labor has been assigned primary responsibility for administering EEOICPA, almost the entire claims process is within the exclusive control of OWCP. This means that all claimants file their claims with OWCP, and OWCP is responsible for granting or denying compensation under the Act (see §§ 30.100 through 30.102). OWCP also provides assistance to claimants and potential claimants by providing information regarding eligibility and other program requirements, including information on completing claim forms and the types and availability of medical testing and diagnostic services related to occupational illnesses under Part B of the Act and covered illnesses under Part E of the Act. In addition, OWCP provides an administrative review process for claimants who disagree with its recommended and final adverse decisions on claims of entitlement (see §§ 30.300 through 30.320).

(b) However, HHS has exclusive control of the portion of the claims process under which it provides reconstructed doses for certain radiogenic cancer claims (see § 30.115). HHS also has exclusive control of the process for designating classes of employees to be added to the Special Exposure Cohort under Part B of the Act, and has promulgated regulations governing that process at 42 CFR part 83. Finally, HHS has promulgated regulations at 42 CFR part 81 that set out guidelines that OWCP follows when it assesses the compensability of an employee's radiogenic cancer (see § 30.213). DOE and DOJ must, among other things, notify potential claimants and submit evidence that OWCP deems necessary for its adjudication of claims under EEOICPA (see §§ 30.105, 30.112, 30.206, 30.212 and 30.221).

§ 30.3 What do these regulations contain?

This part 30 sets forth the regulations governing administration of all claims that are filed with OWCP, except to the extent specified in certain provisions. Its provisions are intended to assist persons seeking benefits under EEOICPA, as well as personnel in the various federal agencies and DOL who process claims filed under EEOICPA or who perform administrative functions with respect to EEOICPA. The various subparts of this part contain the following:

(a) Subpart A: The general statutory and administrative framework for processing claims under both Parts B and E of EEOICPA. It contains a statement of purpose and scope, together with definitions of terms, information regarding the disclosure of OWCP records, and a description of rights and penalties involving EEOICPA claims, including convictions for fraud.

(b) Subpart B: The rules for filing claims for entitlement under EEOICPA. It also addresses general standards regarding necessary evidence and the burden of proof, descriptions of basic forms and special procedures for certain cancer claims.

(c) Subpart C: The eligibility criteria for occupational illnesses and covered illnesses compensable under Parts B and E of EEOICPA, respectively.

(d) Subpart D: The rules governing the adjudication process leading to recommended and final decisions on claims for entitlement filed under Parts B and E of EEOICPA. It also describes the hearing and reopening processes.

(e) Subpart E: The rules governing medical care, second opinion and referee medical examinations and impairment evaluations directed by OWCP as part of its adjudication of entitlement, and medical reports and records in general. It also addresses the kinds of medical treatment that may be authorized and how medical bills are paid.

(f) Subpart F: The rules relating to the payment of monetary compensation available under Parts B and E of EEOICPA. It includes provisions on medical monitoring for beryllium sensitivity, on the identification, processing and recovery of overpayments of compensation, and on the maximum aggregate amount of compensation payable under Part E.

(g) Subpart G: The rules concerning the representation of claimants in connection with the administrative adjudication of claims before OWCP, subrogation of the United States, the effect of tort suits against beryllium vendors and atomic weapons employers, and the coordination of benefits under Part E of EEOICPA with state workers' compensation benefits for the same covered illness.

(h) Subpart H: Information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

(i) Subpart I: The rules relating to the adjudication of alleged periods of wage-loss of covered Part E employees. It also includes provisions on the use by OWCP of Social Security Administration earnings information and certain medical evidence to establish compensable wage-loss.

(j) Subpart J: The rules relating to the adjudication of alleged permanent impairment due to the exposure of covered Part E employees to toxic substances. It includes provisions relating to the medical evaluation of ratable impairments, the rating of progressive conditions, and qualifications of physicians.

Definitions

§ 30.5 What are the definitions used in this part?

(a) *Act* or *EEOICPA* means the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*).

(b) *Atomic weapon* means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principle purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(c) *Atomic weapons employee* means:

(1) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

(2)(i) An individual employed at a facility that the National Institute for Occupational Safety and Health (NIOSH) reported had a potential for significant residual contamination outside of the period described in paragraph (c)(1) of this section;

(ii) By the atomic weapons employer that owned the facility referred to in paragraph (c)(2)(i) of this section, or a subsequent owner or operator of such facility; and

(iii) During a period reported by NIOSH, in its report dated October 2003 and titled "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities," or any update to that report, to have a potential for significant residual radioactive contamination.

(d) *Atomic weapons employer* means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(e) *Atomic weapons employer facility* means any facility, owned by an atomic weapons employer, that:

(1) Is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling; and

(2) Is designated as such in the list periodically published in the **Federal Register** by DOE.

(f) *Attorney General* means the Attorney General of the United States or the United States Department of Justice (DOJ).

(g) *Benefit* or *Compensation* means the money the Department pays to or on behalf of either a covered Part B employee under Part B, or a covered Part E employee under Part E, from the Energy Employees Occupational Illness Compensation Fund. However, the term "compensation" used in section 7385f(b) of EEOICPA (restricting entitlement to only one payment of compensation under Part B) means only the payments specified in section 7384s(a)(1) and in section 7384u(a). Except as used in section 7385f(b), these two terms also include any other amounts paid out of the Fund for such things as medical treatment, monitoring, examinations, services, appliances and supplies as well as for transportation and expenses incident to the securing of such medical treatment, monitoring, examinations, services, appliances, and supplies.

(h) *Beryllium sensitization or sensitivity* means that the individual has an abnormal beryllium lymphocyte proliferation test (LPT) performed on either blood or lung lavage cells.

(i) *Beryllium vendor* means the specific corporations and named predecessor corporations listed in section 7384l(6) of the Act and any of the facilities designated as such in the list periodically published in the **Federal Register** by DOE.

(j) *Chronic silicosis* means a non-malignant lung disease if:

(1) The initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) A written diagnosis of silicosis is made by a medical doctor and is accompanied by:

(i) A chest radiograph, interpreted by an individual certified by NIOSH as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher; or

(ii) Results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(iii) Lung biopsy findings consistent with silicosis.

(k) *Claim* means a written assertion to OWCP of an individual's entitlement to benefits under EEOICPA, submitted in a manner authorized by this part.

(l) *Claimant* means the individual who is alleged to satisfy the criteria for compensation under the Act.

(m) *Compensation fund* or *fund* means the fund established on the books of the Treasury for payment of benefits and compensation under the Act.

(n) *Contemporaneous record* means any document created at or around the time of the event that is recorded in the document.

(o) *Covered beryllium illness* means any of the following:

(1) Beryllium sensitivity as established by an abnormal LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease (see § 30.207(c)).

(3) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in paragraphs (o)(1) or (2) of this section.

(p) *Covered Part E employee* means, under Part E of the Act, a Department of Energy contractor employee or a RECA section 5 uranium worker who has been determined by OWCP to have contracted a covered illness (see paragraph (r) of this section) through exposure at a Department of Energy facility or a RECA section 5 facility, as appropriate.

(q) *Covered Part B employee* means, under Part B of the Act, a covered beryllium employee (see § 30.205), a covered employee with cancer (see § 30.210(a)), a covered employee with chronic silicosis (see § 30.220), or a covered uranium employee (see paragraph (s) of this section).

(r) *Covered illness* means, under Part E of the Act relating to exposures at a DOE facility or a RECA section 5 facility, an illness or death resulting from exposure to a toxic substance.

(s) *Covered uranium employee* means, under Part B of the Act, an individual who has been determined by DOJ to be entitled to an award under section 5 of RECA, whether or not the individual was the employee or the deceased employee's survivor.

(t) *Current or former employee as defined in 5 U.S.C. 8101(1)* as used in § 30.205(a)(1) means an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(4) An individual appointed to a position on the office staff of a former President; or

(5) An individual selected and serving as a Federal petit or grand juror.

(u) *Department* means the United States Department of Labor (DOL).

(v) *Department of Energy* or *DOE* includes the predecessor agencies of the DOE, including the Manhattan Engineering District.

(w) *Department of Energy contractor employee* means any of the following:

(1) An individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months.

(2) An individual who is or was employed at a DOE facility by:

(i) An entity that contracted with the DOE to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) A contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(x)(1) *Department of Energy facility* means, as determined by the Director of OWCP, any building, structure, or premise, including the grounds upon which such building, structure, or premise is located:

(i) In which operations are, or have been, conducted by, or on behalf of, the DOE (except for buildings, structures, premises, grounds, or operations covered by E.O. 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(ii) With regard to which the DOE has or had:

(A) A proprietary interest; or

(B) Entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(2) DOL has adopted the determinations of the Department of Energy regarding Department of Energy facilities that were contained in the list of facilities published in the **Federal Register** on August 23, 2004 (69 FR 51825). DOL will periodically update this list as it deems appropriate in its sole discretion by publishing a revised list of Department of Energy facilities in the **Federal Register**.

(y) *Disability* means, for purposes of determining entitlement to payment of Part B benefits under section 7384s(a)(1) of the Act, having been determined by OWCP to have or have had established chronic beryllium disease, cancer, or chronic silicosis.

(z) *Eligible surviving beneficiary* means any individual who is entitled under sections 7384s(e), 7384u(e), or 7385s–3(c) and (d) of the Act to receive a payment on behalf of a deceased covered Part B employee or a deceased covered Part E employee.

(aa) *Employee* means either a current or former employee.

(bb) *Occupational illness* means, under Part B of the Act, a covered beryllium illness, cancer sustained in the performance of duty as defined in § 30.210(a), specified cancer, chronic silicosis, or an illness for which DOJ has awarded compensation under section 5 of RECA.

(cc) *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor. One of the four divisions of OWCP is the Division of Energy Employees Occupational Illness Compensation.

(dd) *Physician* includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

(ee) *Qualified physician* means any physician who has not been excluded under the provisions of subpart H of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(ff) *Specified cancer* (as defined in section 4(b)(2) of RECA and in EEOICPA) means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that the onset of the disease was at least 2 years after first exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) Bone cancer;

(4) Renal cancers; or

(5) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease); and

(iii) Primary cancer of the:

(A) Thyroid;

(B) Male or female breast;

(C) Esophagus;

(D) Stomach;

(E) Pharynx;

(F) Small intestine;

(G) Pancreas;

(H) Bile ducts;

(I) Gall bladder;

(J) Salivary gland;

(K) Urinary bladder;

(L) Brain;

(M) Colon;

(N) Ovary; or

(O) Liver (except if cirrhosis or hepatitis B is indicated).

(6) The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(gg) *Survivor* means:

(1) For claims under Part B of the Act, and subject to paragraph (gg)(3) of this section, a surviving spouse, child, parent, grandchild and grandparent of a deceased covered Part B employee.

(2) For claims under Part E of the Act, and subject to paragraph (gg)(3) of this section, a surviving spouse and child of a deceased covered Part E employee.

(3) Those individuals listed in paragraphs (gg)(1) and (gg)(2) of this section do not include any individuals not living as of the time OWCP makes a lump-sum payment or payments to an eligible surviving beneficiary or beneficiaries.

(hh) *Time of injury* means:

(1) In regard to a claim arising out of exposure to beryllium or silica, the last date on which a covered Part B employee was exposed to such substance in the performance of duty in accordance with sections 7384n(a) or 7384r(c) of the Act; or

(2) In regard to a claim arising out of exposure to radiation under Part B, the last date on which a covered Part B employee was exposed to radiation in the performance of duty in accordance with section 7384n(b) of the Act or, in the case of a member of the Special Exposure Cohort, the last date on which the member of the Special Exposure Cohort was employed at the Department of Energy facility or the atomic weapons employer facility at which the member was exposed to radiation; or

(3) In regard to a claim arising out of exposure to a toxic substance, the last date on which a covered Part E employee was employed at the Department of Energy facility or RECA section 5 facility, as appropriate, at which the exposure took place.

(ii) *Toxic substance* means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

(jj) *Workday* means a single workshift whether or not it occurred on more than one calendar day.

Information in Program Records

§ 30.10 Are all OWCP records relating to claims filed under EEOICPA considered confidential?

All OWCP records relating to claims for benefits under EEOICPA are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974.

§ 30.11 Who maintains custody and control of claim records?

All OWCP records relating to claims for benefits filed under the Act are covered by the Privacy Act system of records entitled DOL/ESA–49 (Office of Workers' Compensation Programs, Energy Employees Occupational Illness Compensation Program Act File). This system of records is maintained by and under the control of OWCP, and, as such, all records covered by DOL/ESA–49 are official records of OWCP. The protection, release, inspection and copying of records covered by DOL/ESA–49 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses published in the **Federal Register**. All questions relating to access, disclosure, and/or amendment of claims records maintained by OWCP are to be resolved in accordance with this section.

§ 30.12 What process is used by a person who wants to obtain copies of or amend EEOICPA claim records?

(a) A claimant seeking copies of his or her official EEOICPA file should address a request to the District Director of the OWCP district office having custody of the file.

(b) Any request to amend a record covered by DOL/ESA–49 should be directed to the district office having custody of the official file.

(c) Any administrative appeal taken from a denial issued by OWCP under this section shall be filed with the Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

Rights and Penalties

§ 30.15 May EEOICPA benefits be assigned, transferred or garnished?

(a) Pursuant to section 7385f(a) of the Act, no claim for EEOICPA benefits may be assigned or transferred.

(b) Provisions of the Social Security Act (42 U.S.C. 659) and regulations issued by the Office of Personnel Management at 5 CFR part 581 permit the garnishment of payments of EEOICPA monetary benefits to collect overdue alimony and child support. A request to garnish a payment for either of these purposes should be submitted to the district office that is handling the EEOICPA claim, and must be accompanied by a copy of the pertinent state agency or court order.

§ 30.16 What penalties may be imposed in connection with a claim under the Act?

(a) Other statutory provisions make it a crime to file a false or fraudulent claim or statement with the federal government in connection with a claim under the Act. Included among these provisions is 18 U.S.C. 1001. Enforcement of criminal provisions that may apply to claims under the Act is within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801 *et seq.*, to impose civil penalties and assessments against persons or entities who make, submit or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under EEOICPA. The Department's regulations implementing PFCRA are found at 29 CFR part 22.

§ 30.17 Is a beneficiary who defrauds the government in connection with a claim for EEOICPA benefits still entitled to those benefits?

When a beneficiary either pleads guilty to or is found guilty on either federal or state criminal charges of defrauding the federal or a state government in connection with a claim for benefits under the Act or any other federal or state workers' compensation law, the beneficiary forfeits (effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial) any entitlement to any further benefits for any injury, illness or death covered by this part for which the time of injury was on or before the date of such guilty plea or verdict. Any subsequent change in or recurrence of the beneficiary's medical condition does not affect termination of entitlement under this section.

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Filing Claims for Benefits Under EEOICPA

§ 30.100 In general, how does an employee file an initial claim for benefits?

(a) To claim benefits under EEOICPA, an employee must file a claim in writing. Form EE–1 should be used for this purpose, but any written communication that requests benefits under EEOICPA will be considered a claim. It will, however, be necessary for an employee to submit a Form EE–1 for OWCP to fully develop the claim. Copies of Form EE–1 may be obtained from OWCP or on the Internet at *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.* The employee's claim must be filed with OWCP, but another person may do so on the employee's behalf.

(b) The employee may choose, at his or her own option, to file for benefits for only certain conditions that are potentially compensable under the Act (*e.g.*, the employee may not want to claim for an occupational illness or a covered illness for which a payment has been received that would necessitate an offset of EEOICPA benefits under the provisions of § 30.505(b) of these regulations). The employee may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines his or her eligibility for benefits.

(c) Except as provided in paragraph (d) of this section, a claim is considered to be "filed" on the date that the employee mails his or her claim to OWCP, as determined by postmark, or on the date that the claim is received by OWCP, whichever is the earliest determinable date. However, in no event will a claim under Part B of EEOICPA be considered to be "filed" earlier than July 31, 2001, nor will a claim under Part E of EEOICPA be considered to be "filed" earlier than October 30, 2000.

(1) The employee, or the person filing the claim on behalf of the employee, shall affirm that the information provided on the Form EE–1 is true, and must inform OWCP of any subsequent changes to that information.

(2) Except for a covered uranium employee filing a claim under Part B of the Act, the employee is responsible for submitting with his or her claim, or arranging for the submission of, medical evidence to OWCP that establishes that he or she sustained an occupational illness and/or a covered illness. This required medical evidence is described in § 30.114 and does not refer to mere recitations of symptoms the employee experienced that the employee believes indicate that he or she sustained an occupational illness or a covered illness.

(d) For those claims under Part E of EEOICPA that were originally filed with DOE as claims for assistance under former section 7385o of EEOICPA (which was repealed on October 28, 2004), a claim is considered to be "filed" on the date that the employee mailed his or her claim to DOE, as determined by postmark, or on the date that the claim was received by DOE, whichever is the earliest determinable date. However, in no event will a claim referred to in this paragraph be considered to be "filed" earlier than October 30, 2000.

§ 30.101 In general, how is a survivor's claim filed?

(a) A survivor of an employee who sustained an occupational illness or a covered illness must file a claim for compensation in writing. Form EE–2 should be used for this purpose, but any written communication that requests survivor benefits under the Act will be considered a claim. It will, however, be necessary for a survivor to submit a Form EE–2 for OWCP to fully develop the claim. Copies of Form EE–2 may be obtained from OWCP or on the Internet at *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.* The survivor's claim must be filed with OWCP, but another person may do so on the survivor's behalf. Although only one survivor needs to file a claim under this section to initiate the development process, OWCP will distribute any monetary benefits payable on the claim among all eligible surviving beneficiaries who have filed claims with OWCP.

(b) A survivor may choose, at his or her own option, to file for benefits for only certain conditions that are potentially compensable under the Act (*e.g.*, the survivor may not want to claim

for an occupational illness or a covered illness for which a payment has been received that would necessitate an offset of EEOICPA benefits under the provisions of § 30.505(b) of these regulations). The survivor may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines his or her eligibility for benefits.

(c) A survivor must be alive to receive any payment under EEOICPA; there is no vested right to such payment.

(d) Except as provided in paragraph (e) of this section, a survivor's claim is considered to be "filed" on the date that the survivor mails his or her claim to OWCP, as determined by postmark, or the date that the claim is received by OWCP, whichever is the earliest determinable date. However, in no event will a survivor's claim under Part B of the Act be considered to be "filed" earlier than July 31, 2001, nor will a survivor's claim under Part E of the Act be considered to be "filed" earlier than October 30, 2000.

(1) The survivor, or the person filing the claim on behalf of the survivor, shall affirm that the information provided on the Form EE–2 is true, and must inform OWCP of any subsequent changes to that information.

(2) Except for the survivor of a covered uranium employee claiming under Part B of the Act, the survivor is responsible for submitting, or arranging for the submission of, evidence to OWCP that establishes that the employee upon whom the survivor's claim is based was eligible for such benefits, including medical evidence that establishes that the employee sustained an occupational illness or a covered illness. This required medical evidence is described in § 30.114 and does not refer to mere recitations by the survivor of symptoms the employee experienced that the survivor believes indicate that the employee sustained an occupational illness or a covered illness.

(e) For those claims under Part E of EEOICPA that were originally filed with DOE as claims for assistance under former section 7385o of EEOICPA (which was repealed on October 28, 2004), a claim is considered to be "filed" on the date that the survivor mailed his or her claim to DOE, as determined by postmark, or on the date that the claim was received by DOE, whichever is the earliest determinable date. However, in no event will a claim referred to in this paragraph be considered to be "filed" earlier than October 30, 2000.

(f) A spouse or a child of a deceased DOE contractor employee or RECA section 5 uranium worker, who is not a covered spouse or covered child under Part E, may submit a written request to OWCP for a determination of whether that deceased DOE contractor employee or RECA section 5 uranium worker contracted a covered illness under section 7385s–4(d) of EEOICPA.

(1) Any such request submitted pursuant to paragraph (f) of this section will not be considered a survivor's claim for benefits under Part E of the Act.

(2) As part of its consideration of any request submitted pursuant to paragraph (f) of this section, OWCP will apply the eligibility criteria in subpart C of this part. However, the adjudicatory procedures contained in subpart D of this part will not apply to OWCP's consideration of such a request, and OWCP's response to the request will not constitute a final agency decision on entitlement to any benefits under EEOICPA.

§ 30.102 In general, how does an employee file a claim for additional impairment or wage-loss under Part E of EEOICPA?

(a) An employee previously awarded impairment benefits by OWCP may file a claim for additional impairment benefits. Such claim must be based on an increase in the employee's minimum impairment rating attributable to the covered illness or illnesses from the impairment rating that formed the basis for the last award of such benefits by OWCP. OWCP will only adjudicate claims for such an increased rating that are filed at least two years from the date of the last award of impairment benefits. However, OWCP will not wait two years before it will adjudicate a claim for additional impairment that is based on an allegation that the employee sustained a new covered illness.

(b) An employee previously awarded wage-loss benefits by OWCP may be eligible for additional wage-loss benefits for periods of wage-loss that were not addressed in a prior claim only if the employee had not reached his or her Social Security retirement age at the time of the prior award. OWCP will adjudicate claims filed on a yearly basis in connection with each succeeding calendar year for which qualifying wage-loss under Part E is alleged, as well as claims that aggregate calendar years for which qualifying wage-loss is alleged.

(c) Employees should use Form EE–10 to claim for additional impairment or wage-loss benefits under Part E of EEOICPA.

(1) The employee, or the person filing the claim on behalf of the employee, shall affirm that the information provided on Form EE–10 is true, and must inform OWCP of any subsequent changes to that information.

(2) The employee is responsible for submitting with any claim filed under this section, or arranging for the submission of, factual and medical evidence establishing that he or she experienced another calendar year of qualifying wage-loss, and/or medical evidence establishing that he or she has an increased minimum impairment rating, as appropriate.

§ 30.103 How does a claimant make sure that OWCP has the evidence necessary to process the claim?

(a) Claims and certain required submissions should be made on forms prescribed by OWCP. Persons submitting forms shall not modify these forms or use substitute forms.

Form No.	Title
(1) EE–1	Claim for Benefits Under the Energy Employees Occupational Illness Compensation Program Act.
(2) EE–2	Claim for Survivor Benefits Under the Energy Employees Occupational Illness Compensation Program Act.
(3) EE–3	Employment History for a Claim Under the Energy Employees Occupational Illness Compensation Program Act.
(4) EE–4	Employment History Affidavit for a Claim Under the Energy Employees Occupational Illness Compensation Program Act.

(b) Copies of the forms listed in this section are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. They may also be obtained from OWCP district offices and on the Internet at *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.*

Verification of Alleged Employment

§ 30.105 What must DOE do after an employee or survivor files a claim?

(a) After it receives a claim for benefits described in §§ 30.100 or 30.101, OWCP may request that DOE verify the employment history provided by the claimant. Upon receipt of such a request, DOE will complete Form EE–5 as soon as possible and transmit the completed form to OWCP. On this form, DOE will certify either that it concurs with the employment history provided by the claimant, that it disagrees with such history, or that it can neither concur nor disagree after making a reasonable search of its records and also making a reasonable effort to locate

pertinent records not already in its possession.

(b) Claims for additional impairment or wage-loss benefits under Part E of the Act described in § 30.102 will not require any verification of employment by DOE, since OWCP will have made any required findings on this particular issue when it adjudicated the employee's initial claim for benefits.

§ 30.106 Can OWCP request employment verification from other sources?

(a) For most claims filed under EEOICPA, DOE has access to sufficient factual information to enable it to fulfill its obligations described in § 30.105(a). However, in instances where it lacks such information, DOE may arrange for other entities to provide OWCP with the information necessary to verify an employment history submitted as part of a claim. These other entities may consist of either current or former DOE contractors and subcontractors, atomic weapons employers, beryllium vendors, or other entities with access to relevant employment information.

(b) On its own initiative, OWCP may also arrange for entities other than DOE to perform the employment verification duties described in § 30.105(a).

Evidence and Burden of Proof

§ 30.110 Who is entitled to compensation under the Act?

(a) Under Part B of EEOICPA, compensation is payable to the following covered Part B employees, or their survivors:

(1) A "covered beryllium employee" (as described in § 30.205(a)) with a covered beryllium illness (as defined in § 30.5(o)) who was exposed to beryllium in the performance of duty (in accordance with § 30.206).

(2) A "covered Part B employee with cancer" (as described in § 30.210(a)).

(3) A "covered Part B employee with chronic silicosis" (as described in § 30.220).

(4) A "covered uranium employee" (as defined in § 30.5(s)).

(b) Under Part E of EEOICPA, compensation is payable to a "covered Part E employee" (as defined in § 30.5(p)), or his or her survivors.

(c) Any claim that does not meet all of the criteria for at least one of these categories, as set forth in the regulations in this part, must be denied.

(d) All claims for benefits under the Act must comply with the claims procedures and requirements set forth in subpart B of this part before any payment can be made from the Fund.

§ 30.111 What is the claimant's responsibility with respect to burden of proof, production of documents, presumptions, and affidavits?

(a) Except where otherwise provided in the Act and these regulations, the claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category set forth in § 30.110. Proof by a preponderance of the evidence means that it is more likely than not that the proposition to be proved is true. Subject to the exceptions expressly provided in the Act and the regulations in this part, the claimant also bears the burden of providing to OWCP all written medical documentation, contemporaneous records, or other records and documents necessary to establish any and all criteria for benefits set forth in these regulations.

(b) In the event that the claim lacks required information or supporting documentation, OWCP will notify the claimant of the deficiencies and provide him or her an opportunity for correction of the deficiencies.

(c) Written affidavits or declarations, subject to penalty for perjury, by the employee, survivor or any other person, will be accepted as evidence of employment history and survivor relationship for purposes of establishing eligibility and may be relied on in determining whether a claim meets the requirements of the Act for benefits if, and only if, such person attests that due diligence was used to obtain records in support of the claim, but that no records exist.

(d) A claimant will not be entitled to any presumption otherwise provided for in these regulations if substantial evidence exists that rebuts the existence of the fact that is the subject of the presumption. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. When such evidence exists, the claimant shall be notified and afforded the opportunity to submit additional written medical documentation or records.

§ 30.112 What kind of evidence is needed to establish covered employment and how will that evidence be evaluated?

(a) Evidence of covered employment may include: employment records; pay stubs; tax returns; Social Security records; and written affidavits or declarations, subject to penalty of perjury, by the employee, survivor or any other person. However, no one document is required to establish covered employment and a claimant is not required to submit all of the evidence listed above. A claimant may submit other evidence not listed above to establish covered employment. To be acceptable as evidence, all documents and records must be legible. OWCP will accept photocopies, certified copies, and original documents and records.

(b) Pursuant to §§ 30.105 and/or 30.106, DOE or another entity verifying alleged employment shall certify that it concurs with the employment information provided by the claimant, that it disagrees with the information provided by the claimant, or, after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession, it can neither concur nor disagree with the information provided by the claimant.

(1) If DOE or another entity certifies that it concurs with the employment information provided by the claimant, then the criterion for covered employment will be established.

(2) If DOE or another entity certifies that it disagrees with the information provided by the claimant or that after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession it can neither concur nor disagree with the information provided by the claimant, OWCP will evaluate the evidence submitted by the claimant to determine whether the claimant has established covered employment by a preponderance of the evidence. OWCP may request additional evidence from the claimant to demonstrate that the claimant has met the criterion for covered employment. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(3) If the only evidence of covered employment is a self-serving affidavit and DOE or another entity either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP may reject the claim based upon a lack of evidence of covered employment.

§ 30.113 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?

(a) All written medical documentation, contemporaneous records, and other records or documents submitted by an employee or his or her survivor to prove any criteria provided for in these regulations must be legible. OWCP will accept photocopies, certified copies, and original documents and records.

(b) To establish eligibility, the employee or his or her survivor may be required to provide, where appropriate, additional contemporaneous records to the extent they exist or an authorization to release additional contemporaneous records or a statement by the custodian(s) of the record(s) certifying that the requested record(s) no longer exist. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(c) If a claimant submits a certified statement, by a person with knowledge of the facts, that the medical records containing a diagnosis and date of diagnosis of a covered medical condition no longer exist, then OWCP may consider other evidence to establish a diagnosis and date of diagnosis of a covered medical condition. However, if the certified statement is a self-serving document, OWCP may reject the claim based upon a lack of evidence of a covered medical condition.

§ 30.114 What kind of evidence is needed to establish a compensable medical condition and how will that evidence be evaluated?

(a) Evidence of a compensable medical condition may include: a physician's report, laboratory reports, hospital records, death certificates, x-rays, magnetic resonance images or reports, computer axial tomography or other imaging reports, lymphocyte proliferation testings, beryllium patch tests, pulmonary function or exercise testing results, pathology reports including biopsy results and other medical records. A claimant is not required to submit all of the evidence listed in this paragraph. A claimant may submit other evidence that is not listed in this paragraph to establish a compensable medical condition. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(b) The medical evidence submitted will be used to establish the diagnosis and the date of diagnosis of the compensable medical condition.

(1) For covered beryllium illnesses, additional medical evidence, as set forth in § 30.207, is required to establish a beryllium illness.

(2) For chronic silicosis, additional medical evidence, as set forth in § 30.222, is required to establish chronic silicosis.

(3) For consequential injuries, illnesses, impairments or diseases, the claimant must also submit a physician's fully rationalized medical report showing a causal relationship between the resulting injury, illness, impairment or disease and the compensable medical condition.

(c) OWCP will evaluate the medical evidence in accordance with recognized and accepted diagnostic criteria used by physicians to determine whether the claimant has established the medical condition for which compensation is sought in accordance with the requirements of the Act.

Special Procedures for Certain Radiogenic Cancer Claims

§ 30.115 For those radiogenic cancer claims that do not seek benefits under Part B of the Act pursuant to the Special Exposure Cohort provisions, what will OWCP do once it determines that an employee contracted cancer?

(a) Other than claims for a non-radiogenic cancer listed by HHS at 42 CFR 81.30, or claims seeking benefits under Part E of the Act that have previously been accepted under section 7384u of the Act, or claims previously accepted under Part B pursuant to the Special Exposure Cohort provisions, OWCP will forward the claim package (including, but not limited to, Forms EE–1, EE–2, EE–3, EE–4 and EE–5, as appropriate) to HHS for dose reconstruction. At that point in time, development of the claim by OWCP may be suspended.

(1) This package will include OWCP's initial findings in regard to the diagnosis and date of diagnosis of the employee, as well as any employment history compiled by OWCP (including information such as dates and locations worked, and job titles). The package, however, will not constitute either a recommended or final decision by OWCP on the claim.

(2) HHS will then reconstruct the radiation dose of the employee, after such further development of the employment history as it may deem necessary, and provide OWCP, DOE and the claimant with the final dose reconstruction report. The final dose reconstruction record will be delivered to OWCP with the final dose reconstruction report and to the claimant upon request.

(b) Following its receipt of the reconstructed dose from HHS, OWCP will resume its adjudication of the cancer claim and consider whether the claimant has met the eligibility criteria set forth in subpart C of this part. However, during the period before it receives a reconstructed dose from HHS, OWCP may continue to develop other aspects of a claim, to the extent that it deems such development to be appropriate.

Subpart C—Eligibility Criteria

General Provisions

§ 30.200 What is the scope of this subpart?

The regulations in this subpart describe the criteria for eligibility for benefits for claims under Part B of EEOICPA relating to covered beryllium illness under sections 7384l, 7384n, 7384s and 7384t of the Act; for cancer under sections 7384l, 7384n, 7384q and 7384t of the Act; for chronic silicosis under sections 7384l, 7384r, 7384s and 7384t of the Act; and for claims relating to covered uranium employees under sections 7384t and 7384u of the Act. These regulations also describe the criteria for eligibility for benefits for claims under Part E of EEOICPA relating to covered illnesses under sections 7385s–4 and 7385s–5 of the Act. This subpart describes the type and extent of evidence that will be necessary to establish the criteria for eligibility for compensation for these illnesses.

Eligibility Criteria for Claims Relating to Covered Beryllium Illness Under Part B of EEOICPA

§ 30.205 What are the criteria for eligibility for benefits relating to beryllium illnesses covered under Part B of EEOICPA?

To establish eligibility for benefits under this section, the claimant must establish the criteria set forth in both paragraphs (a) and (b) of this section:

(a) The employee is a covered beryllium employee only if the criteria in paragraphs (a)(1) and (a)(3) of this section, or (a)(2) and (a)(3) of this section, are established:

(1) The employee is a "current or former employee as defined in 5 U.S.C. 8101(1)" (see § 30.5(t) of this part) who may have been exposed to beryllium at a DOE facility or at a facility owned, operated, or occupied by a beryllium vendor; or

(2) The employee is a current or former civilian employee of:

(i) Any entity that contracted with the DOE to provide management and operation, management and integration, or environmental remediation of a DOE facility; or

(ii) Any contractor or subcontractor that provided services, including construction and maintenance, at such a facility; or

(iii) A beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the DOE, including periods during which environmental remediation of a

vendor's facility was undertaken pursuant to a contract between the vendor and DOE; and

(3) The civilian employee was exposed to beryllium in the performance of duty by establishing that he or she was, during a period when beryllium dust, particles, or vapor may have been present at such a facility:

(i) Employed at a DOE facility (as defined in § 30.5(x) of this part); or

(ii) Present at a DOE facility, or at a facility owned, operated, or occupied by a beryllium vendor, because of his or her employment by the United States, a beryllium vendor, a contractor or subcontractor of a beryllium vendor, or a contractor or subcontractor of the DOE. Under this paragraph, exposure to beryllium in the performance of duty can be established whether or not the beryllium that may have been present at such facility was produced or processed for sale to, or use by, DOE.

(b) The employee has one of the following:

(1) Beryllium sensitivity as established by an abnormal beryllium LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease.

(3) Any injury, illness, impairment, or disability sustained as a consequence of the conditions specified in paragraphs (b)(1) and (2) of this section.

§ 30.206 How does a claimant prove that the employee was a "covered beryllium employee" exposed to beryllium dust, particles or vapor in the performance of duty?

(a) Proof of employment at or physical presence at a DOE facility, or a facility owned, operated, or occupied by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of a beryllium vendor during a period when beryllium dust, particles, or vapor may have been present at such a facility, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was employed or present at a covered facility and the time period of such employment or presence.

(b) If the evidence shows that exposure occurred while the employee was employed or present at a facility during a time frame that is outside the relevant time frame indicated for that facility, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) If the evidence shows that exposure occurred while the employee was employed or present at a facility that would have to be designated by DOE as a beryllium vendor under section 7384m of the Act to be a covered facility, and that the facility has not been so designated, OWCP will deny the claim on the ground that the facility is not a covered facility.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created by any vendor, processor, or producer of beryllium or related products designated as a beryllium vendor by the DOE in accordance with section 7384m of the Act.

(3) Records or documents created as a by product of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.207 How does a claimant prove a diagnosis of a beryllium disease covered under Part B?

(a) Written medical documentation is required in all cases to prove that the employee developed a covered beryllium illness. Proof that the employee developed a covered beryllium illness must be made by using the procedures outlined in paragraphs (b), (c), or (d) of this section.

(b) Beryllium sensitivity or sensitization is established with an abnormal LPT performed on either blood or lung lavage cells.

(c) Chronic beryllium disease is established in the following manner:

(1) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (b) of this section), together with lung pathology consistent with chronic beryllium disease, including the following:

(i) A lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) A computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) Pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(2) For diagnoses before January 1, 1993, the presence of the following:

(i) Occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) Any three of the following criteria:

(A) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(B) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(C) Lung pathology consistent with chronic beryllium disease.

(D) Clinical course consistent with a chronic respiratory disorder.

(E) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(d) An injury, illness, impairment or disability sustained as a consequence of beryllium sensitivity or established chronic beryllium disease must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the beryllium sensitivity or established chronic beryllium disease. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of beryllium sensitivity or established chronic beryllium disease, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the beryllium sensitivity or established chronic beryllium disease, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Claims Relating to Radiogenic Cancer Under Parts B and E of EEOICPA

§ 30.210 What are the criteria for eligibility for benefits relating to radiogenic cancer?

(a) To establish eligibility for benefits for radiogenic cancer under Part B of EEOICPA, an employee or his or her survivor must show that:

(1) The employee has been diagnosed with one of the forms of cancer specified in § 30.5(ff) of this part; and

(i) Is a member of the Special Exposure Cohort (as described in § 30.214(a) of this subpart) who, as a civilian DOE employee or civilian DOE contractor employee, contracted the specified cancer after beginning employment at a DOE facility; or

(ii) Is a member of the Special Exposure Cohort (as described in § 30.214(a) of this subpart) who, as a civilian atomic weapons employee, contracted the specified cancer after beginning employment at an atomic weapons employer facility (as defined in § 30.5(e)); or

(2) The employee has been diagnosed with cancer; and

(i)(A) Is/was a civilian DOE employee who contracted that cancer after beginning employment at a DOE facility; or

(B) Is/was a civilian DOE contractor employee who contracted that cancer after beginning employment at a DOE facility; or

(C) Is/was a civilian atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility; and

(ii) The cancer was at least as likely as not related to the employment at the DOE facility or atomic weapons employer facility; or

(3) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted cancer.

(b)(1) To establish eligibility for benefits for radiogenic cancer under Part E of EEOICPA, an employee or his or her survivor must show that:

(i) The employee has been diagnosed with cancer; and

(A) Is/was a civilian DOE contractor employee or a civilian RECA section 5 uranium worker who contracted that cancer after beginning employment at a DOE facility or a RECA section 5 facility; and

(B) The cancer was at least as likely as not related to exposure to a toxic substance of a radioactive nature at a DOE facility or a RECA section 5 facility; and

(C) It is at least as likely as not that the exposure to such toxic substance(s) was related to employment at a DOE facility or a RECA section 5 facility; or

(ii) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted cancer.

(2) Eligibility for benefits for radiogenic cancer under Part E in a claim that has previously been accepted under Part B pursuant to the Special Exposure Cohort provisions is described in § 30.230(a) of these regulations.

§ 30.211 How does a claimant establish that the employee has or had contracted cancer?

A claimant establishes that the employee has or had contracted a specified cancer (as defined in § 30.5(ff)) or other cancer with medical evidence that sets forth an explicit diagnosis of cancer and the date on which that diagnosis was first made.

§ 30.212 How does a claimant establish that the employee contracted cancer after beginning employment at a DOE facility, an atomic weapons employer facility or a RECA section 5 facility?

(a) Proof of employment by the DOE or a DOE contractor at a DOE facility, or by an atomic weapons employer at an atomic weapons employer facility, or at a RECA section 5 facility, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(b)(1) Except as provided in paragraph (b)(2) of this section, if the evidence shows that exposure occurred while the employee was employed at a facility during a time frame that is outside the relevant period indicated for that facility, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant period for that facility.

(2) OWCP may choose not to request that DOE provide additional information on an atomic weapons employer facility that NIOSH reported had a potential for significant residual radiation contamination in its report dated October 2003 and titled "Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities," or any update to that report, if the evidence referred to in paragraph (a) of this section establishes that the employee was employed at that facility during a period when NIOSH reported that it had a potential for significant residual radiation contamination.

(c) If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 7384l(4) of the Act to be a covered employer, and that the employer has not been so designated, OWCP will deny the claim on the ground that the employer is not a covered atomic weapons employer.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.213 How does a claimant establish that the radiogenic cancer was at least as likely as not related to employment at the DOE facility, the atomic weapons employer facility, or the RECA section 5 facility?

(a) HHS, with the advice of the Advisory Board on Radiation and Worker Health, has issued regulatory guidelines at 42 CFR part 81 that OWCP uses to determine whether radiogenic cancers claimed under Parts B and E were at least as likely as not related to employment at a DOE facility, an atomic weapons employer facility, or a RECA section 5 facility, as appropriate. Persons should consult HHS's regulations for information regarding the factual evidence that will be considered by OWCP, in addition to the employee's radiation dose reconstruction that will be provided to OWCP by HHS, in making this particular factual determination.

(b) HHS's regulations satisfy the legal requirements in section 7384n(c) of the Act, which also sets out OWCP's obligation to use them in its adjudication of claims for radiogenic cancer filed under Part B of the Act, and provide the factual basis for OWCP to determine if the "probability of causation" (PoC) that an employee's cancer was sustained in the performance of duty is 50% or greater (*i.e.*, it is "at least as likely as not" causally related to employment), as required under section 7384n(b).

(c) OWCP also uses HHS's regulations when it makes the determination required by section 7385s–4(c)(1)(A) of the Act, since those regulations provide the factual basis for OWCP to determine if "it is at least as likely as not" that exposure to radiation at a DOE facility or RECA section 5 facility, as appropriate, was a significant factor in aggravating, contributing to, or causing the employee's radiogenic cancer claimed under Part E. For cancer claims under Part E, if the PoC is less than 50% and the claimant alleges that the employee was exposed to additional toxic substances, OWCP will determine if the claim is otherwise compensable pursuant to § 30.230(d) of this part.

§ 30.214 How does a claimant establish that the employee is a member of the Special Exposure Cohort?

(a) For purposes of establishing eligibility as a member of the Special Exposure Cohort (SEC) under § 30.210(a)(1), the employee must have been a DOE employee, a DOE contractor employee, or an atomic weapons employee who meets any of the following requirements:

(1) The employee was so employed for a number of workdays aggregating at

least 250 workdays before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee; and during such employment:

(i) Was monitored through the use of dosimetry badges for exposure at the plant of the external parts of the employee's body to radiation; or

(ii) Worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(2) The employee was so employed before January 1, 1974, by DOE or a DOE contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(3) The employee is a member of a group or class of employees subsequently designated as additional members of the SEC by HHS.

(b) For purposes of satisfying the 250 workday requirement of paragraph (a)(1) of this section, the claimant may aggregate the days of service at more than one gaseous diffusion plant.

(c) Proof of employment by the DOE or a DOE contractor, or an atomic weapons employer, for the requisite time periods set forth in paragraph (a) of this section, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment. If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 7384l(4) of the Act to be a covered employer, and that the employer has not been so designated, OWCP will deny the claim on the ground that the employer is not a covered atomic weapons employer.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.215 How does a claimant establish that the employee has sustained an injury, illness, impairment or disease as a consequence of a diagnosed cancer?

An injury, illness, impairment or disease sustained as a consequence of a diagnosed cancer covered by the provisions of § 30.210 must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the cancer. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of a cancer, nor the belief of the claimant that the injury, illness, impairment or disease was caused by the cancer, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Claims Relating to Chronic Silicosis Under Part B of EEOICPA

§ 30.220 What are the criteria for eligibility for benefits relating to chronic silicosis?

To establish eligibility for benefits for chronic silicosis under Part B of EEOICPA, an employee or his or her survivor must show that:

(a) The employee is a civilian DOE employee, or a civilian DOE contractor employee, who was present for a number of workdays aggregating at least 250 workdays during the mining of tunnels at a DOE facility (as defined in § 30.5(x)) located in Nevada or Alaska for tests or experiments related to an atomic weapon, and has been diagnosed with chronic silicosis (as defined in § 30.5(j)); or

(b) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted chronic silicosis.

§ 30.221 How does a claimant prove exposure to silica in the performance of duty?

(a) Proof of the employee's employment and presence for the requisite days during the mining of tunnels at a DOE facility located in Nevada or Alaska for tests or experiments related to an atomic weapon may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and present at these sites and the time period(s) of such employment and presence.

(b) If the evidence shows that exposure occurred while the employee was employed and present at a facility during a time frame that is outside the relevant time frame indicated for that facility, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) Records from the following sources may be considered as evidence for purposes of establishing proof of employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

(d) For purposes of satisfying the 250 workday requirement of § 30.220(a), the claimant may aggregate the days of service at more than one qualifying site.

§ 30.222 How does a claimant establish that the employee has been diagnosed with chronic silicosis or has sustained a consequential injury, illness, impairment or disease?

(a) A written diagnosis of the employee's chronic silicosis (as defined in § 30.5(j)) shall be made by a medical doctor and accompanied by one of the following:

(1) A chest radiograph, interpreted by an individual certified by NIOSH as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher; or

(2) Results from a computer assisted tomograph or other imaging technique that are consistent with silicosis;.or

(3) Lung biopsy findings consistent with silicosis.

(b) An injury, illness, impairment or disease sustained as a consequence of accepted chronic silicosis covered by the provisions of § 30.220(a) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the accepted chronic silicosis. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of accepted chronic silicosis, nor the belief of the claimant that the injury, illness, impairment or disease was caused by the accepted chronic silicosis, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Certain Uranium Employees Under Part B of EEOICPA

§ 30.225 What are the criteria for eligibility for benefits under Part B of EEOICPA for certain uranium employees?

In order to be eligible for benefits under this section, the claimant must establish the criteria set forth in either paragraph (a) or paragraph (b) of this section:

(a) The Attorney General has determined that the claimant is a covered uranium employee who is entitled to payment of $100,000 as compensation due under section 5 of RECA for a claim made under that statute (there is, however, no requirement that the claimant or surviving eligible beneficiary has actually received payment pursuant to RECA). If a deceased employee's survivor(s) has been determined to be entitled to such an award, his or her survivor(s), if any, will only be entitled to EEOICPA compensation in accordance with section 7384u(e) of the Act.

(b) The covered uranium employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the medical condition for which he or she was determined to be entitled to payment of $100,000 as compensation due under section 5 of RECA.

§ 30.226 How does a claimant establish that a covered uranium employee has sustained a consequential injury, illness, impairment or disease?

An injury, illness, impairment or disease sustained as a consequence of a medical condition covered by the provisions of § 30.225(a) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the accepted medical condition. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of a medical condition covered by the provisions of § 30.225(a), nor the belief of the claimant that the injury, illness, impairment or disease was caused by such a condition, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Other Claims Under Part E of EEOICPA

§ 30.230 What are the criteria necessary to establish that an employee contracted a covered illness under Part E of EEOICPA?

To establish that an employee contracted a covered illness under Part E of the Act, the employee, or his or her survivor, must show one of the following:

(a) That OWCP has determined under Part B of EEOICPA that the employee is a Department of Energy contractor employee as defined in § 30.5(w), and that he or she has been awarded compensation under that Part of the Act for an occupational illness;

(b) That the Attorney General has determined that the employee is entitled to payment of $100,000 as compensation due under section 5 of RECA for a claim made under that statute (however, if a deceased employee's survivor has been determined to be entitled to such an award, his or her survivor(s), if any, will only be entitled to benefits under Part E of EEOICPA in accordance with section 7385s–3 of the Act);

(c) That the Secretary of Energy has accepted a positive determination of a Physicians Panel that the employee sustained an illness or died due to exposure to a toxic substance at a DOE facility under former section 7385o of EEOICPA, or that the Secretary of Energy has found significant evidence contrary to a negative determination of a Physicians Panel; or

(d)(1) That the employee is a civilian Department of Energy contractor employee as defined in § 30.5(w), or a civilian who was employed in a uranium mine or mill located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon or Texas at any time during the period from January 1, 1942 through December 31, 1971, or was employed in the transport of uranium ore or vanadium-uranium ore from such a mine or mill during that same period, and that he or she:

(i) Has been diagnosed with an illness; and

(ii) That it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility or at a RECA section 5 facility, as appropriate, was a significant factor in aggravating, contributing to, or causing the illness; and

(iii) That it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility or a RECA section 5 facility, as appropriate.

(2) In making the determination under paragraph (d)(1)(ii) of this section, OWCP will consider:

(i) The nature, frequency and duration of exposure of the covered employee to the substance alleged to be toxic;

(ii) Evidence of the carcinogenic or pathogenic properties of the alleged toxic substance to which the employee was exposed;

(iii) An opinion of a qualified physician with expertise in treating, diagnosing or researching the illness claimed to be caused or aggravated by the alleged exposure; and

(iv) Any other evidence that OWCP determines to have demonstrated relevance to the relation between a particular toxic substance and the claimed illness.

§ 30.231 How does a claimant prove employment-related exposure to a toxic substance at a DOE facility or a RECA section 5 facility?

To establish employment-related exposure to a toxic substance at a Department of Energy facility or RECA section 5 facility as required by § 30.230(d), an employee, or his or her survivor(s), must prove that the employee was employed at such facility and that he or she was exposed to a toxic substance in the course of that employment.

(a) Proof of employment may be established by any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(b) Proof of exposure to a toxic substance may be established by the submission of any appropriate document or information that is evidence that such substance was present at the facility in which the employee was employed and that the employee came into contact with such substance. OWCP site exposure matrices may be used to provide probative factual evidence that a particular substance was present at either a DOE facility or a RECA section 5 facility.

§ 30.232 How does a claimant establish that the employee has been diagnosed with a covered illness, or sustained an injury, illness, impairment or disease as a consequence of a covered illness?

(a) To establish that the employee has been diagnosed with a covered illness as required by § 30.230(d), the employee, or his or her survivor(s), must provide the following:

(1) The name and address of any licensed physician who is the source of a diagnosis based upon documented medical information that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility or a RECA section 5 facility, as appropriate, and, to the extent practicable, a copy of the diagnosis and a summary of the information upon which the diagnosis is based; and

(2) A signed medical release, authorizing the release of any diagnosis,

medical opinion and medical records documenting the diagnosis or opinion that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility or RECA section 5 facility, as appropriate; and

(3) To the extent practicable and appropriate, an occupational history obtained by a physician, an occupational health professional, or a DOE-sponsored Former Worker Program (if such an occupational history is not reasonably available or is inadequate, and such history is deemed by OWCP to be needed for the fair adjudication of the claim, then OWCP may assist the claimant in developing this history); and

(4) Any other information or materials deemed by OWCP to be necessary to provide reasonable evidence that the employee has or had an illness that may have arisen from exposure to a toxic substance while employed at a DOE facility or RECA section 5 facility, as appropriate.

(b) The employee, or his or her survivor(s), may also submit to OWCP other evidence not described in paragraph (a) of this section showing that the employee has or had an illness that resulted from an exposure to a toxic substance during the course of employment at either a DOE facility or a RECA section 5 facility, as appropriate.

(c) An injury, illness, impairment or disease sustained as a consequence of a covered illness (as defined in § 30.5(r)) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the covered illness. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of a covered illness, nor the belief of the claimant that the injury, illness, impairment or disease was caused by the covered illness, is sufficient in itself to prove a causal relationship.

Subpart D—Adjudicatory Process

§ 30.300 What process will OWCP use to decide claims for entitlement and to provide for administrative review of those decisions?

OWCP district offices will issue recommended decisions with respect to claims for entitlement under Part B and/or Part E of EEOICPA that are filed pursuant to the regulations set forth in subpart B of this part. In circumstances where a claim is made for more than one benefit available under Part B and/or Part E of the Act, OWCP may issue a recommended decision on only part of that particular claim in order to adjudicate that portion of the claim as quickly as possible. Should this occur, OWCP will issue one or more recommended decisions on the deferred portions of the claim when the adjudication of those portions is completed. All recommended decisions granting and/or denying benefits under Part B and/or Part E of the Act will be forwarded to the Final Adjudication Branch (FAB). Claimants will be given an opportunity to object to all or part of the recommended decision before the FAB. The FAB will consider objections filed by a claimant and conduct a hearing, if requested to do so by the claimant, before issuing a final decision on the claim for entitlement.

§ 30.301 May subpoenas be issued for witnesses and documents in connection with a claim under Part B of EEOICPA?

(a) In connection with the adjudication of a claim under Part B of EEOICPA, an OWCP district office and/or a FAB reviewer may, at their own initiative, issue subpoenas for the attendance and testimony of witnesses, and for the production of books, electronic records, correspondence, papers or other relevant documents. Subpoenas will only be issued for documents if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(b) A claimant may also request a subpoena in connection with his or her claim under Part B of the Act, but such request may only be made to a FAB reviewer. No subpoenas will be issued at the request of the claimant under any other portion of the claims process. The decision to grant or deny such request is within the discretion of the FAB reviewer. To request a subpoena under this section, the requestor must:

(1) Submit the request in writing and send it to the FAB reviewer as early as possible, but no later than 30 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request;

(2) Explain why the testimony or evidence is directly relevant and material to the issues in the case; and

(3) Establish that a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(c) No subpoena will be issued for attendance of employees or contractors of OWCP or NIOSH acting in their official capacities as decision-makers or policy administrators. For hearings taking the form of a review of the written record, no subpoena for the appearance of witnesses will be considered.

(d) The FAB reviewer will issue the subpoena under his or her own name. It may be served in person or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. A decision to deny a subpoena requested by a claimant can only be challenged as part of a request for reconsideration of any adverse decision of the FAB which results from the hearing.

§ 30.302 Who pays the costs associated with subpoenas?

(a) Witnesses who are not employees or former employees of the federal government shall be paid the same fees and mileage as paid for like services in the District Court of the United States where the subpoena is returnable, except that expert witnesses shall be paid a fee not to exceed the local customary fee for such services.

(b) Where OWCP asked that the witness submit evidence into the case record or asked that the witness attend, OWCP shall pay the fees and mileage. Where the claimant asked for the subpoena, and where the witness submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

§ 30.303 What information may OWCP request in connection with a claim under Part E of EEOICPA?

At any time during the course of development of a claim for benefits under Part E, OWCP may determine that it needs relevant information to adjudicate the claim. When this occurs, and at the request of OWCP, DOE and/or any contractor who employed a Department of Energy contractor employee must provide to OWCP information or documents in response to the request in connection with a claim under Part E of EEOICPA.

(a) The party to whom the request is made must respond to OWCP within 90 days of the request with either:

(1) The requested information or documents; or

(2) A sworn statement that a good faith search for the requested information or documents was conducted, and that the information or documents could not be located.

(b) DOE and/or the DOE contractor who employed a Department of Energy contractor employee must query third parties under its control to acquire the requested information or documents.

(c) In providing the requested information or documents, DOE and/or the DOE contractor who employed a DOE contractor employee must preserve the current organization of the requested information or documents, and must provide such description and indexing of the requested information or documents as OWCP considers appropriate to facilitate their use by OWCP.

(d) Information or document requests may include, but are not limited to, requests for records, files and other data, whether paper, electronic, imaged or otherwise, developed, acquired or maintained by DOE or the DOE contractor who employed a DOE contractor employee. Such information or documents may include records, files and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

Recommended Decisions on Claims

§ 30.305 How does OWCP determine entitlement to EEOICPA compensation?

(a) In reaching a recommended decision with respect to EEOICPA compensation, OWCP considers the claim presented by the claimant, the factual and medical evidence of record, the dose reconstruction report calculated by HHS (if any), any report submitted by DOE and the results of such investigation as OWCP may deem necessary.

(b) The OWCP claims staff applies the law, the regulations and its procedures when it evaluates the medical evidence and the facts as reported or obtained upon investigation.

§ 30.306 What does the recommended decision contain?

The recommended decision shall contain findings of fact and conclusions of law. The recommended decision may accept or reject the claim in its entirety, or it may accept or reject a portion of the claim presented. It is accompanied by a notice of the claimant's right to file objections with, and request a hearing before, the FAB.

§ 30.307 To whom is the recommended decision sent?

(a) A copy of the recommended decision will be mailed to the claimant's last known address and to the claimant's designated representative before OWCP, if any. Notification to either the claimant or the representative will be considered notification to both parties.

(b) At the same time it issues a recommended decision on a claim, the OWCP district office will forward the record of such claim to the FAB. Any new evidence submitted to the district office following the issuance of the recommended decision will also be forwarded to the FAB for consideration.

Hearings and Final Decisions on Claims

§ 30.310 What must the claimant do if he or she objects to the recommended decision or wants to request a hearing?

(a) Within 60 days from the date the recommended decision is issued, the claimant must state, in writing, whether he or she objects to any of the findings of fact and/or conclusions of law contained in such decision, including HHS's reconstruction of the radiation dose to which the employee was exposed (if any), and whether a hearing is desired. This written statement should be filed with the FAB at the address indicated in the notice accompanying the recommended decision.

(b) For purposes of determining whether the written statement referred to in paragraph (a) of this section has been timely filed with the FAB, the statement will be considered to be "filed" on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written statement is actually received by the FAB, whichever is the earliest determinable date.

§ 30.311 What happens if the claimant does not object to the recommended decision or request a hearing within 60 days?

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, the FAB may issue a final decision accepting the recommendation of the district office as provided in § 30.316.

(b) If the recommended decision accepts all or part of a claim for compensation, the FAB may issue a final decision at any time after receiving written notice from the claimant that he or she waives any objection to all or part of the recommended decision.

§ 30.312 What will the FAB do if the claimant objects to the recommended decision but does not request a hearing?

If the claimant files a written statement that objects to the recommended decision within the period of time allotted in § 30.310 but does not request a hearing, the FAB will consider any objections by means of a review of the written record. If the claimant only objects to part of the recommended decision, the FAB may issue a final decision accepting the remaining part of the recommendation of the district office without first reviewing the written record (see § 30.316).

§ 30.313 How is a review of the written record conducted?

(a) The FAB reviewer will consider the written record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

(b) The claimant should submit, with his or her written statement that objects to the recommended decision, all evidence or argument that he or she wants to present to the reviewer. However, evidence or argument may be submitted at any time up to the date specified by the reviewer for the submission of such evidence or argument.

(c) Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

§ 30.314 How is a hearing conducted?

(a) The FAB reviewer retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved. At the discretion of the reviewer, the hearing may be conducted by telephone or teleconference. As part of the hearing process, the FAB reviewer will consider the written record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

(1) The FAB reviewer will try to set the hearing at a place that is within commuting distance of the claimant's residence, but will not be able to do so in all cases. Therefore, for reasons of economy, the claimant may be required to travel a roundtrip distance of up to 200 miles to attend the hearing.

(2) In unusual circumstances, the FAB reviewer may set a place for the hearing that is more than 200 miles roundtrip from the claimant's residence. However, in that situation, OWCP will reimburse the claimant for reasonable and necessary travel expenses incurred to attend the hearing if he or she submits a written reimbursement request that documents such expenses.

(b) Unless otherwise directed in writing by the claimant, the FAB

reviewer will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled hearing date. If the claimant only objects to part of the recommended decision, the FAB reviewer may issue a final decision accepting the remaining part of the recommendation of the district office without first holding a hearing (see § 30.316). Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

(c) The hearing is an informal process, and the reviewer is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The reviewer may conduct the hearing in such manner as to best ascertain the rights of the claimant. During the hearing process, the claimant may state his or her arguments and present new written evidence and/or testimony in support of the claim.

(d) Testimony at hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) The FAB reviewer will furnish a transcript of the hearing to the claimant, who has 20 days from the date it is sent to submit any comments to the reviewer.

(f) The claimant will have 30 days after the hearing is held to submit additional evidence or argument, unless the reviewer, in his or her sole discretion, grants an extension. Only one such extension may be granted.

(g) The reviewer determines the conduct of the hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

§ 30.315 May a claimant postpone a hearing?

(a) The FAB will entertain any reasonable request for scheduling the time and place of the hearing, but such requests should be made at the time that the hearing is requested. Scheduling is at the discretion of the FAB, and is not reviewable. In most instances, once the hearing has been scheduled and appropriate written notice has been mailed, it cannot be postponed at the claimant's request for any reason except those stated in paragraph (b) of this section, unless the FAB reviewer can reschedule the hearing on the same docket (that is, during the same hearing trip). If a request to postpone a scheduled hearing does not meet one of the tests of paragraph (b) of this section and cannot be accommodated on the same docket, no further opportunity for a hearing will be provided. Instead, the FAB will consider the claimant's objections by means of a review of the written record. In the alternative, a teleconference may be substituted for the hearing at the discretion of the reviewer.

(b) Where the claimant or the representative appointed by the claimant in accordance with § 30.600 of this part has a medical reason that prevents attendance at the hearing, or where the death or illness of the claimant's parent , spouse, or child prevents the claimant from attending the hearing as scheduled, a postponement may be granted in the discretion of the FAB if the claimant or the representative provides at least 24 hours notice and a reasonable explanation supporting his or her inability to attend the scheduled hearing.

(c) At any time after requesting a hearing, the claimant can request a change to a review of the written record by making a written request to the FAB. Once such a change is made, no further opportunity for a hearing will be provided.

§ 30.316 How does the FAB issue a final decision on a claim?

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, or if the claimant waives any objections to all or part of the recommended decision, the FAB may issue a final decision accepting the recommendation of the district office, either in whole or in part (see §§ 30.311, 30.312 and 30.314(b)).

(b) If the claimant objects to all or part of the recommended decision, the FAB reviewer will issue a final decision on the claim after either the hearing or the review of the written record, and after completing such further development of the case as he or she may deem necessary.

(c) Any recommended decision (or part thereof) that is pending either a hearing or a review of the written record for more than one year from the date the FAB received the written statement described in § 30.310(a), or the date the Director reopened the claim for issuance of a new final decision pursuant to § 30.320(a), shall be considered a final decision of the FAB on the one-year anniversary of such date. Any recommended decision described in § 30.311 that is pending at the FAB for more than one year from the date that the period of time described in § 30.310 expired shall be considered a final decision of the FAB on the one-year anniversary of such date.

(d) The decision of the FAB, whether issued pursuant to paragraph (a), (b) or (c) of this section, shall be final upon the date of issuance of such decision, unless a timely request for reconsideration under § 30.319 has been filed.

(e) A copy of the final decision of the FAB will be mailed to the claimant's last known address and to the claimant's designated representative before OWCP, if any. Notification to either the claimant or the representative will be considered notification to both parties.

§ 30.317 Can the FAB request a further response from the claimant or return a claim to the district office?

At any time before the issuance of its final decision, the FAB may request that the claimant submit additional evidence or argument, or return the claim to the district office for further development and/or issuance of a newly recommended decision without issuing a final decision, whether or not requested to do so by the claimant.

§ 30.318 Can the FAB consider objections to HHS's reconstruction of a radiation dose or to the guidelines OWCP uses to determine if a claimed cancer was at least as likely as not related to employment?

(a) If the claimant objects to HHS's reconstruction of the radiation dose to which the employee was exposed, the FAB will evaluate the factual findings upon which HHS based its dose reconstruction. If these factual findings do not appear to be supported by substantial evidence, the claim will be returned to the district office for referral to HHS for further consideration.

(b) The methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee, established by regulations issued by HHS at 42 CFR part 82, is binding on the FAB. The FAB reviewer may determine, however, that objections concerning the application of that methodology should be considered by HHS and may return the case to the district office for referral to HHS for such consideration.

(c) The methodology that OWCP uses to determine if a claimed cancer was at least as likely as not related to employment at a DOE facility, an atomic weapons employer facility, or a RECA section 5 facility, established by

regulations issued by HHS at 42 CFR part 81, is also binding on the FAB (see § 30.213). However, since OWCP applies this methodology when it makes these determinations, the FAB reviewer may consider objections to the manner in which OWCP applied HHS's regulatory guidelines.

§ 30.319 May a claimant request reconsideration of a final decision of the FAB?

(a) A claimant may request reconsideration of a final decision of the FAB by filing a written request with the FAB within 30 days from the date of issuance of such decision. If a timely request for reconsideration is made, the decision in question will no longer be considered "final" under § 30.316(d).

(b) For purposes of determining whether the written request referred to in paragraph (a) of this section has been timely filed with the FAB, the request will be considered to be "filed" on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written request is actually received by the FAB, whichever is the earliest determinable date.

(c) A hearing is not available as part of the reconsideration process. If the FAB grants the request for reconsideration, it will consider the written record of the claim again and issue a new final decision on the claim. A new final decision that is issued after the FAB grants a request for reconsideration will be "final" upon the date of issuance of such new decision.

(1) Instead of issuing a new final decision after granting a request for reconsideration, the FAB may return the claim to the district office for further development as provided in § 30.317.

(2) If the FAB denies the request for reconsideration, the FAB decision that formed the basis for the request will be considered "final" upon the date the request is denied, and no further requests for reconsideration of that particular final decision of the FAB will be entertained.

(d) A claimant may not seek judicial review of a decision on his or her claim under EEOICPA until OWCP's decision on the claim is final pursuant to either § 30.316(d) (for claims in which no request for reconsideration was filed with the FAB) or paragraph (c) of this section (for claims in which a request for reconsideration was filed with the FAB).

Reopening Claims

§ 30.320 Can a claim be reopened after the FAB has issued a final decision?

(a) At any time after the FAB has issued a final decision pursuant to § 30.316, and without regard to whether new evidence or information is presented or obtained, the Director for Energy Employees Occupational Illness Compensation may reopen a claim and return it to the FAB for issuance of a new final decision, or to the district office for such further development as may be necessary, to be followed by a new recommended decision. The Director may also vacate any other type of decision issued by the FAB.

(b) At any time after the FAB has issued a final decision pursuant to § 30.316, a claimant may file a written request that the Director for Energy Employees Occupational Illness Compensation reopen his or her claim, provided that the claimant also submits new evidence of either covered employment or exposure to a toxic substance, or identifies either a change in the PoC guidelines, a change in the dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort.

(1) If the Director concludes that the evidence submitted or matter identified in support of the claimant's request is material to the claim, the Director will reopen the claim and return it to the district office for such further development as may be necessary, to be followed by a new recommended decision.

(2) New evidence of a medical condition described in subpart C of these regulations is not sufficient to support a written request to reopen a claim for such a condition under paragraph (b) of this section.

(c) The decision whether or not to reopen a claim under this section is solely within the discretion of the Director for Energy Employees Occupational Illness Compensation and is not reviewable. If the Director reopens a claim pursuant to paragraphs (a) or (b) of this section and returns it to the district office, the resulting new recommended decision will be subject to the adjudicatory process described in this subpart. However, neither the district office nor the FAB can consider any objection concerning the Director's decision to reopen a claim under this section.

Subpart E—Medical and Related Benefits

Medical Treatment and Related Issues

§ 30.400 What are the basic rules for obtaining medical treatment?

(a) A covered Part B employee or a covered Part E employee who fits into at least one of the compensable claim categories described in subpart C of this part is entitled to receive all medical services, appliances or supplies that a qualified physician prescribes or recommends and that OWCP considers necessary to treat his or her occupational illness or covered illness, retroactive to the date the claim for benefits for that occupational illness or covered illness under Part B or Part E of EEOICPA was filed. In situations where the occupational illness or covered illness is a secondary cancer, such treatment may include treatment of the underlying primary cancer when it is medically necessary or related to treatment of the secondary cancer; however, payment for medical treatment of the underlying primary cancer under these circumstances does not constitute a determination by OWCP that the primary cancer is a covered illness under Part E of EEOICPA. The employee need not be disabled to receive such treatment. When a survivor receives payment, OWCP will pay for such treatment if the employee died before the claim was paid. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the occupational illness or covered illness, the employee should consult OWCP prior to obtaining it.

(b) If a claimant disagrees with the decision of OWCP that medical benefits provided under paragraph (a) of this section are not necessary to treat an occupational illness or covered illness, he or she may choose to utilize the adjudicatory process described in subpart D of this part.

(c) Any qualified physician or qualified hospital may provide medical services, appliances and supplies to the covered Part B employee or the covered Part E employee. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness when it decides if appliances and supplies are necessary to treat an occupational illness or covered illness. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

§ 30.401 What are the special rules for the services of chiropractors?

(a) The services of chiropractors that may be reimbursed by OWCP are limited to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) A diagnosis of spinal subluxation as demonstrated by x-ray to exist must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submission of the x-ray, or a report of the x-ray, but the report must be available for submission on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.

§ 30.402 What are the special rules for the services of clinical psychologists?

A clinical psychologist may serve as a physician within the scope of his or her practice as defined by state law. Therefore, a clinical psychologist may not serve as a physician for conditions that include a physical component unless the applicable state law allows clinical psychologists to treat physical conditions. A clinical psychologist may also perform testing, evaluation, and other services under the direction of a qualified physician.

§ 30.403 Will OWCP pay for the services of an attendant?

OWCP will authorize payment for personal care services under section 7384t of the Act, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual. If a claimant disagrees with the decision of OWCP that personal care services are not medically necessary, he or she may utilize the adjudicatory process described in subpart D of this part.

§ 30.404 Will OWCP pay for transportation to obtain medical treatment?

(a) The employee is entitled to reimbursement for reasonable and necessary expenses, including transportation, incident to obtaining authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, a roundtrip distance of up to 200 miles is considered a reasonable distance to travel.

(b) If travel of more than 200 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary, and are incident to obtaining authorized medical services, appliances or supplies. Requests for travel expenses that are often approved include those resulting from referrals to a specialist for further medical treatment, and those involving air transportation of an employee who lives in a remote geographical area with limited local medical services.

(c) If a claimant disagrees with the decision of OWCP that requested travel expenses are either not reasonable or necessary, or are not incident to obtaining authorized medical services, appliances or supplies, he or she may utilize the adjudicatory process described in subpart D of this part.

(d) The standard form designated for medical travel refund requests is Form OWCP–957 and must be used to seek reimbursement under this section. This form can be obtained from OWCP.

§ 30.405 After selecting a treating physician, may an employee choose to be treated by another physician instead?

(a) OWCP will provide the employee with an opportunity to designate a treating physician when it accepts the claim. When the physician originally selected to provide treatment for an occupational illness or a covered illness refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating the occupational illnesses or covered illnesses covered by EEOICPA, or the need for a new physician when an employee has moved.

(c) If a claimant disagrees with the decision of OWCP that insufficient reasons for a change of physician have been submitted, he or she may utilize the adjudicatory process described in subpart D of this part.

§ 30.406 Are there any exceptions to these procedures for obtaining medical care?

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

Directed Medical Examinations

§ 30.410 Can OWCP require an employee to be examined by another physician?

(a) OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician who conforms to the standards regarding conflicts of interest adopted by OWCP as often and at such times and places as OWCP considers reasonably necessary. Also, OWCP may send a case file for second opinion review to a qualified physician who conforms to the standards regarding conflicts of interest adopted by OWCP where an actual examination is not needed, or where the employee is deceased.

(b) If the initial examination is disrupted by someone accompanying the employee, OWCP will schedule another examination with a different qualified physician who conforms to the standards regarding conflicts of interest adopted by OWCP. The employee will not be entitled to have anyone else present at the subsequent examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed.

§ 30.411 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?

(a) If one medical opinion holds more probative value than the other, OWCP will base its determination of coverage on the medical opinion with the greatest probative value. A difference in medical opinion sufficient to be considered a conflict only occurs when two reports of virtually equal weight and rationale reach opposing conclusions.

(b) If a conflict exists between the medical opinion of the employee's physician and the medical opinion of a second opinion physician, an OWCP medical adviser or consultant, or a physician submitting an impairment evaluation that meets the criteria set out in § 30.905 of this part, OWCP shall appoint a third physician who conforms to the standards regarding conflicts of interest adopted by OWCP to make an examination or an impairment evaluation. This is called a referee examination or a referee impairment evaluation. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. Also, a case file may be sent to a physician who conforms to the standards regarding conflicts of interest adopted by OWCP for a referee medical review

where there is no need for an actual examination, or where the employee is deceased.

(c) If the initial referee examination or referee impairment evaluation is disrupted by someone accompanying the employee, OWCP will schedule another examination or impairment evaluation with a different qualified physician who conforms to the standards regarding conflicts of interest adopted by OWCP. The employee will not be entitled to have anyone else present at the subsequent referee examination or referee impairment evaluation unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed.

§ 30.412 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will also reimburse the employee for all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages the employee lost for the time needed to submit to an examination required by OWCP.

Medical Reports

§ 30.415 What are the requirements for medical reports?

In general, medical reports from the employee's attending physician should include the following:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found due to the claimed occupational illness or covered illness;

(h) The treatment given or recommended for the claimed occupational illness or covered illness; and

(i) All other material findings.

§ 30.416 How and when should medical reports be submitted?

(a) The initial medical report (and any subsequent reports) should be made in narrative form on the physician's letterhead stationery. The physician should use the Form EE–7 as a guide for the preparation of his or her initial medical report in support of a claim under Part B and/or Part E of EEOICPA. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician.

§ 30.417 What additional medical information may OWCP require to support continuing payment of benefits?

In all cases requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the occupational illness or covered illness accepted by OWCP, a prognosis, and the physician's opinion as to the continuing causal relationship between the need for additional treatment and the occupational illness or covered illness.

Medical Bills

§ 30.420 How should medical bills and reimbursement requests be submitted?

Usually, medical providers submit their bills directly for processing. The rules for submitting and processing provider bills and reimbursement requests are stated in subpart H of this part. An employee requesting reimbursement for out-of-pocket medical expenses must submit a Form OWCP–915 and meet the requirements described in § 30.702.

§ 30.421 What are the time frames for submitting bills and reimbursement requests?

To be considered for payment, bills and reimbursement requests must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable under subpart D of this part, whichever is later.

§ 30.422 If an employee is only partially reimbursed for a medical expense, must the provider refund the balance of the amount paid to the employee?

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services. The employee may be only partially reimbursed for out-of-pocket medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, the employee will be advised of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid that exceeds the maximum allowable charge. The provider that the employee paid, but not the employee, may request reconsideration of the fee determination as set forth in § 30.712.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge that OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

Subpart F—Survivors; Payments and Offsets; Overpayments

Survivors

§ 30.500 What special statutory definitions apply to survivors under EEOICPA?

(a) For the purposes of paying compensation to survivors under both Parts B and E of EEOICPA, OWCP will use the following definitions:

(1) *Surviving spouse* means the wife or husband of a deceased covered Part B employee or deceased covered Part E employee who was married to that individual for the 365 consecutive days immediately prior to the death of that individual.

(2) *Child* or *children* includes a recognized natural child of a deceased covered Part B employee or deceased covered Part E employee, a stepchild who lived with that individual in a regular parent-child relationship, and an adopted child of that individual. However, to be a "covered" child under Part E only, such child must have been, as of the date of the deceased covered Part E employee's death, either under the age of 18 years, or under the age of 23 years and a full-time student who was continuously enrolled in one or more educational institutions since attaining the age of 18 years, or any age and incapable of self-support.

(b) For the purposes of paying compensation to survivors only under Part B of EEOICPA, OWCP will use the following additional definitions:

(1) *Parent* includes fathers and mothers of a deceased covered Part B employee through adoption.

(2) *Grandchild* means a child of a child of a deceased covered Part B employee.

(3) *Grandparent* means a parent of a parent of a deceased covered Part B employee.

§ 30.501 What order of precedence will OWCP use to determine which survivors are entitled to receive compensation under EEOICPA?

(a) Under Part B of the Act, if OWCP determines that a survivor or survivors are entitled to receive compensation under EEOICPA because a covered Part B employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(gg)(3) of these regulations:

(1) If there is a surviving spouse, the compensation shall be paid to that individual.

(2) If there is no surviving spouse, the compensation shall be paid in equal shares to all children of the deceased covered Part B employee.

(3) If there is no surviving spouse and no children, the compensation shall be paid in equal shares to the parents of the deceased covered Part B employee.

(4) If there is no surviving spouse, no children and no parents, the compensation shall be paid in equal shares to all grandchildren of the deceased covered Part B employee.

(5) If there is no surviving spouse, no children, no parents and no grandchildren, the compensation shall be paid in equal shares to the grandparents of the deceased covered Part B employee.

(6) Notwithstanding paragraphs (a)(1) through (a)(5) of this section, if there is a surviving spouse and at least one child of the deceased covered Part B employee who is a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, half of the compensation shall be paid to the surviving spouse, and the other half of the compensation shall be paid in equal shares to each child of the deceased covered Part B employee who is a minor at the time of payment.

(b) Under Part E of the Act, if OWCP determines that a survivor or survivors are entitled to receive compensation under EEOICPA because a covered Part E employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(gg)(3) of these regulations:

(1) If there is a surviving spouse, the compensation shall be paid to that individual.

(2) If there is no surviving spouse, the compensation shall be paid in equal shares to all "covered" children of the deceased covered Part E employee.

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, if there is a surviving spouse and at least one "covered" child of the deceased covered Part E employee who is living at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each "covered" child of the employee who is living at the time of payment.

§ 30.502 When is entitlement for survivors determined for purposes of EEOICPA?

Entitlement to any lump-sum payment for survivors under EEOICPA, other than for "covered" children under Part E, will be determined as of the time OWCP makes such a payment. As noted in § 30.500(a)(2) of these regulations, a child of a deceased Part E employee will only qualify as a "covered" child of that individual if he or she satisfied one of the additional statutory criteria for a "covered" child as of the date of the deceased Part E employee's death.

Payment of Claims and Offset for Certain Payments

§ 30.505 What procedures will OWCP follow before it pays any compensation?

(a) In cases involving the approval of a claim, whether in whole or in part, OWCP shall take all necessary steps to determine the amount of any offset or coordination of EEOICPA benefits before paying any benefits, and to verify the identity of the covered Part B employee, the covered Part E employee, or the eligible surviving beneficiary or beneficiaries. To perform these tasks, OWCP may conduct any investigation, require any claimant to provide or execute any affidavit, record or document, or authorize the release of any information as OWCP deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person or persons. OWCP shall also require every claimant under Part B of the Act to execute and provide any necessary affidavit described in § 30.620 of these regulations. Should a claimant fail or refuse to execute an affidavit or release of information, or fail or refuse to provide a requested document or record or to provide access to information, such failure or refusal may be deemed to be a rejection of the payment, unless the claimant does not have and cannot obtain the legal authority to provide, release, or authorize access to the required information, records, or documents.

(b) To determine the amount of any offset, OWCP shall require the covered Part B employee, covered Part E employee or each eligible surviving beneficiary filing a claim under this part to execute and provide an affidavit (or declaration made under oath on Form EE–1 or EE–2) reporting the amount of any payment made pursuant to a final judgment or settlement in litigation seeking damages. Even if someone other than the covered Part B employee or the covered Part E employee receives a payment pursuant to a final judgment or settlement in litigation seeking damages (*e.g.*, the surviving spouse of a deceased covered Part B employee or a deceased covered Part E employee), the receipt of any such payment must be reported.

(1) For the purposes of this paragraph (b) only, "litigation seeking damages" refers to any request or demand for money (other than for workers' compensation) by the covered Part B employee or the covered Part E employee, or by another individual if the covered Part B employee or the covered Part E employee is deceased, made or sought in a civil action or in anticipation of the filing of a civil action, for injuries incurred on account of an exposure for which compensation is payable under EEOICPA. This term does not also include any request or demand for money made or sought pursuant to a life insurance or health insurance contract, or any request or demand for money made or sought by an individual other than the covered Part B employee or the covered Part E employee in that individual's own right (*e.g.*, a spouse's claim for loss of consortium), or any request or demand for money made or sought by the covered Part B employee or the covered Part E employee (or the estate of a deceased covered Part B employee or deceased covered Part E employee) not for injuries incurred on account of an exposure for which compensation is payable under the EEOICPA (*e.g.*, a covered Part B employee's or a covered Part E employee's claim for damage to real or personal property).

(2) If a payment has been made pursuant to a final judgment or settlement in litigation seeking damages, OWCP shall subtract a portion of the dollar amount of such payment from the benefit payments to be made under EEOICPA. OWCP will calculate the amount to be subtracted from the benefit payments in the following manner:

(i) OWCP will first determine the value of the payment made pursuant to either a final judgment or settlement in litigation seeking damages by adding the dollar amount of any monetary damages (excluding contingent awards) and any medical expenses for treatment provided on or after the date the covered Part B employee or the covered

Part E employee filed a claim for EEOICPA benefits that were paid for under the final judgment or settlement. In the event that these payments include a "structured" settlement (where a party makes an initial cash payment and also arranges, usually through the purchase of an annuity, for payments in the future), OWCP will usually accept the cost of the annuity to the purchaser as the dollar amount of the right to receive the future payments.

(ii) OWCP will then make certain deductions from the above dollar amount to arrive at the dollar amount to be subtracted from any unpaid EEOICPA benefits. Allowable deductions consist of attorney's fees OWCP deems reasonable, and itemized costs of suit (out-of-pocket expenditures not part of the normal overhead of a law firm's operation like filing fees, travel expenses, witness fees, and court reporter costs for transcripts) provided that adequate supporting documentation is submitted to OWCP.

(iii) The EEOICPA benefits that will be reduced will consist of any unpaid lump-sum payments payable in the future and medical benefits payable in the future. In those cases where it has not yet paid EEOICPA benefits, OWCP will reduce such benefits on a dollar-for-dollar basis, beginning with the lump-sum payments first. If the amount to be subtracted exceeds the lump-sum payments, OWCP will reduce ongoing EEOICPA medical benefits payable in the future by the amount of any remaining surplus. This means that OWCP will apply the amount it would otherwise pay to reimburse the covered Part B employee or the covered Part E employee for any ongoing EEOICPA medical treatment to the remaining surplus until it is absorbed. In addition to this reduction of ongoing EEOICPA medical benefits, OWCP will not be the first payer for any medical expenses that are the responsibility of another party (who will instead be the first payer) as part of a final judgment or settlement in litigation seeking damages.

(3) The above reduction of EEOICPA benefits will not occur if an EEOICPA claimant had his or her award under section 5 of RECA reduced by the full amount of the payment made pursuant to a final judgment or settlement in litigation seeking damages. It will also not occur if an EEOICPA claimant's prior payment of EEOICPA benefits, or his or her workers' compensation benefits, were offset to reflect the full amount of the payment made pursuant to a final judgment or settlement in litigation seeking damages. However, if the prior reduction or offset of the above benefits did not reflect the full amount of the payment made pursuant to a final judgment or settlement in litigation seeking damages, OWCP will reduce currently payable EEOICPA benefits by the amount of any surplus final judgment or settlement payment that remains.

(c) Except as provided in § 30.506(b) of these regulations, when OWCP has verified the identity of every claimant who is entitled to the compensation payment, or to a share of the compensation payment, and has determined the correct amount of the payment or the share of the payment, OWCP shall notify every claimant, every duly appointed guardian or conservator of a claimant, or every person with power of attorney for a claimant, and require such person or persons to complete a Form EN–20 providing payment information. Such form shall be signed and returned to OWCP within sixty days of the date of the form or within such greater period as may be allowed by OWCP. Failure to sign and return the form within the required time may be deemed to be a rejection of the payment. If the claimant dies before the payment is received, the person who receives the payment shall return it to OWCP for redetermination of the correct disbursement of the payment. No payment shall be made until OWCP has made a determination concerning the survivors related to a respective claim for benefits.

(d) The total amount of compensation (other than medical benefits) under Part E that can be paid to all claimants as a result of the exposure of a covered Part E employee shall not be more than $250,000 in any circumstances.

§ 30.506 To whom and in what manner will OWCP pay compensation?

(a) Except with respect to claims under Part B of the Act for beryllium sensitivity, payment shall be made to the covered Part B employee or the covered Part E employee, to the duly appointed guardian or conservator of that individual, or to the person with power of attorney for that individual, unless the covered Part B employee or covered Part E employee is deceased at the time of the payment. In all cases involving a deceased covered Part B employee or deceased covered Part E employee, payment shall be made to the eligible surviving beneficiary or beneficiaries, to the duly appointed guardian or conservator of the eligible surviving beneficiary or beneficiaries, or to every person with power of attorney for an eligible surviving beneficiary, in accordance with the terms and conditions specified in sections 7384s(e), 7384u(e), and 7385s–3(c) and (d) of EEOICPA.

(b) Under Part B of the Act, compensation for any consequential injury, illness, impairment or disease is limited to payment of medical benefits for that injury, illness, impairment or disease. Under Part E of the Act, compensation for any consequential injury, illness, impairment or disease consists of medical benefits for that injury, illness, impairment or disease, as well as any additional monetary benefits that are consistent with the terms of § 30.505(d).

(c) Rejected compensation payments, or shares of compensation payments, shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Fund.

(d) No covered Part B employee may receive more than one lump-sum payment under Part B of EEOICPA for any occupational illnesses he or she contracted. However, any individual, including a covered Part B employee who has received a lump-sum payment for his or her own occupational illness or illnesses, may receive one lump-sum payment for each deceased covered Part B employee for whom he or she qualifies as an eligible surviving beneficiary under Part B of the Act.

§ 30.507 What compensation will be provided to covered Part B employees who only establish beryllium sensitivity under Part B of EEOICPA?

The establishment of beryllium sensitivity does not entitle a covered Part B employee, or the eligible surviving beneficiary or beneficiaries of a deceased covered Part B employee, to any lump-sum payment provided for under Part B. Instead, a covered Part B employee whose sole accepted occupational illness is beryllium sensitivity shall receive beryllium sensitivity monitoring, as well as medical benefits for the treatment of this occupational illness in accordance with § 30.400 of these regulations.

§ 30.508 What is beryllium sensitivity monitoring?

Beryllium sensitivity monitoring shall consist of medical examinations to confirm and monitor the extent and nature of a covered Part B employee's beryllium sensitivity. Monitoring shall also include regular medical examinations, with diagnostic testing, to determine if the covered Part B employee has established chronic beryllium disease.

§ 30.509 Under what circumstances may a survivor claiming under Part E of the Act choose to receive the benefits that would otherwise be payable to a covered Part E employee who is deceased?

(a) If a covered Part E employee dies after filing a claim but before monetary benefits are paid under Part E of the Act, and his or her death is from a cause other than a covered illness, his or her survivor can choose to receive either the survivor benefits payable on account of the death of that covered Part E employee, or the monetary benefits that would otherwise have been payable to the covered Part E employee.

(b) For the purposes of this section only, a death "from a cause other than a covered illness" refers only to a death that was *solely* caused by a non-covered illness or illnesses. Therefore, the choice referred to in paragraph (a) of this section will not be available if a covered illness contributed to the death of the covered Part E employee in any manner. In those instances, survivor benefits will still be payable to the claimant, but he or she cannot choose to receive the monetary benefits that would have otherwise been payable to the deceased covered Part E employee in lieu of survivor benefits.

(c) OWCP only makes impairment determinations based on rationalized medical evidence in the case file that is sufficiently detailed and meets the various requirements for the many different types of impairment determinations possible under the AMA's *Guides*. Therefore, OWCP will only make an impairment determination for a deceased covered Part E employee pursuant to this section if the medical evidence of record is sufficient to satisfy the pertinent requirements in the AMA's *Guides* and subpart J of this part.

Overpayments

§ 30.510 How does OWCP notify an individual of a payment made on a claim?

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each check a clear indication of the reason the payment is being made. For payments sent by electronic funds transfer, a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the recipient will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

§ 30.511 What is an "overpayment" for purposes of EEOICPA?

An "overpayment" is any amount of compensation paid under sections 7384s, 7384t, 7384u, 7385s–2 or 7385s–3 of the EEOICPA to a recipient that constitutes, as of the time OWCP makes such payment:

(a) Payment where no amount is payable under this part; or

(b) Payment in excess of the correct amount determined by OWCP.

§ 30.512 What does OWCP do when an overpayment is identified?

Before seeking to recover an overpayment or adjust benefits, OWCP will advise the recipient of the overpayment in writing that:

(a) The overpayment exists, and the amount of overpayment;

(b) A preliminary finding shows either that the recipient was or was not at fault in the creation of the overpayment;

(c) He or she has the right to inspect and copy OWCP records relating to the overpayment; and

(d) He or she has the right to present written evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived. Any submission of evidence or request that recovery of the overpayment be waived must be presented to OWCP within 30 days of the date of the written notice of overpayment.

§ 30.513 Under what circumstances may OWCP waive recovery of an overpayment?

(a) OWCP may consider waiving recovery of an overpayment only if the recipient was not at fault in accepting or creating the overpayment. Recipients of benefits paid under EEOICPA are responsible for taking all reasonable measures to ensure that payments received from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

(2) Failed to provide information which he or she knew or should have known to be material; or

(3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that a recipient was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the recipient's capacity to realize that he or she is being overpaid.

§ 30.514 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the Act (see § 30.516); or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (see § 30.517).

§ 30.515 Is a recipient responsible for an overpayment that resulted from an error made by OWCP?

(a) The fact that OWCP may have erred in making the overpayment does not by itself relieve the recipient of the overpayment from liability for repayment if the recipient also was at fault in accepting the overpayment.

(b) However, OWCP may find that the recipient was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The recipient relied on misinformation given in writing by OWCP regarding the interpretation of a pertinent provision or EEOICPA of this part; or

(2) OWCP erred in calculating either the percentage of impairment or wage-loss under Part E of EEOICPA.

§ 30.516 Under what circumstances would recovery of an overpayment defeat the purpose of the Act?

Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to the recipient because:

(a) The recipient from whom OWCP seeks recovery needs substantially all of his or her current income to meet current ordinary and necessary living expenses; and

(b) The recipient's assets do not exceed two months' expenditures as determined by OWCP using the Bureau of Labor Statistics Consumer Expenditure Survey tables.

§ 30.517 Under what circumstances would recovery of an overpayment be against equity and good conscience?

(a) Recovery of an overpayment is considered to be against equity and good conscience when the recipient would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when the recipient, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, OWCP does not consider the recipient's current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that a recipient's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss.

§ 30.518 Can OWCP require the recipient of the overpayment to submit additional financial information?

(a) The recipient of the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act, or would be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit this requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

§ 30.519 How does OWCP communicate its final decision concerning recovery of an overpayment?

(a) After considering any written documentation or argument submitted to OWCP within the 30-day period set out in § 30.512(d), OWCP will issue a final decision on the overpayment. OWCP will send a copy of the final decision to the individual from whom recovery is sought and his or her representative, if any.

(b) The provisions of subpart D of this part do not apply to any decision regarding the recovery of an overpayment.

§ 30.520 How are overpayments collected?

(a) When an overpayment has been made to a recipient who is entitled to further payments, the recipient shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall recover the overpayment by reducing any further lump-sum payments due currently or in the future, taking into account the financial circumstances of the recipient, and any other relevant factors, so as to minimize any hardship. Should the recipient die before collection has been completed, further collection shall be made by decreasing later payments, if any, payable under EEOICPA with respect to the underlying occupational illness or covered illness.

(b) When an overpayment has been made to a recipient and OWCP is unable to recover the overpayment by reducing compensation due currently, the recipient shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), and may be reported to the Internal Revenue Service as income. If the recipient fails to make such refund, OWCP may recover the overpayment through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart G—Special Provisions

Representation

§ 30.600 May a claimant designate a representative?

(a) The claims process under this part is informal, and OWCP acts as an impartial evaluator of the evidence. A claimant need not be represented to file a claim or receive a payment. Nevertheless, a claimant may appoint one individual to represent his or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as a representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 30.601). For the purposes of paragraph (b) of this section, a "representative" does not include a person who only has a power of attorney to act on behalf of a claimant.

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant.

(1) Any notice requirement contained in this part or EEOICPA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

(2) A representative does not have authority to sign the Form EN–20, described in § 30.505(c) of these regulations, which collects information necessary for issuance of a compensation payment.

§ 30.601 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under EEOICPA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, and no fee or gratuity is charged.

§ 30.602 Who is responsible for paying the representative's fee?

A representative may charge the claimant a fee for services and for costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other costs. OWCP will not reimburse the claimant, nor is it in any way liable for the amount of the fee and costs.

§ 30.603 Are there any limitations on what the representative may charge the claimant for his or her services?

(a) Notwithstanding any contract, the representative may not receive, for services rendered in connection with a claim pending before OWCP, more than the percentages of the lump-sum

payment made to the claimant set out in paragraph (b) of this section.

(b) The percentages referred to in paragraph (a) of this section are:

(1) 2 percent for the filing of an initial claim with OWCP, provided that the representative was retained prior to the filing of the initial claim; plus

(2) 10 percent of the difference between the lump-sum payment made to the claimant and the amount proposed in the recommended decision with respect to objections to a recommended decision.

(c)(1) Any representative who violates this section shall be fined not more than $5,000.

(2) The authority to prosecute violations of this limitation lies with the Department of Justice.

(d) The fee limitations described in this section shall not apply with respect to representative services that are rendered in connection with a petition filed with a U.S. District Court seeking review of an OWCP decision that is final pursuant to § 30.316(d), or with respect to any subsequent appeal in such a proceeding.

Third Party Liability

§ 30.605 What rights does the United States have upon payment of compensation under EEOICPA?

If an occupational illness or covered illness for which compensation is payable under EEOICPA is caused, wholly or partially, by someone other than a federal employee acting within the scope of his or her employment, a DOE contractor or subcontractor, a beryllium vendor, an atomic weapons employer or a RECA section 5 mine or mill, the United States is subrogated for the full amount of any payment of compensation under EEOICPA to any right or claim that the individual to whom the payment was made may have against any person or entity on account of such occupational illness or covered illness.

§ 30.606 Under what circumstances must a recovery of money or other property in connection with an illness for which benefits are payable under EEOICPA be reported to OWCP?

Any person who has filed an EEOICPA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received EEOICPA benefits in connection with a claim filed by another, is required to notify OWCP of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim.

§ 30.607 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the recovery?

In this situation, the recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

§ 30.608 How does the United States calculate the amount to which it is subrogated?

The subrogated amount of a specific claim consists of the total money paid by OWCP from the Energy Employees Occupational Illness Compensation Fund with respect to that claim to or on behalf of a covered Part B employee, a covered Part E employee or an eligible surviving beneficiary, less charges for any medical file review (*i.e.*, the physician did not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the covered Part B employee, covered Part E employee or an eligible surviving beneficiary establishes that the examinations were required to be made available to the covered Part B employee or covered Part E employee under a statute other than EEOICPA.

§ 30.609 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an illness covered by EEOICPA a recovery that must be reported to OWCP?

Since an injury caused by medical malpractice in treating an occupational illness or covered illness compensable under EEOICPA is also covered under EEOICPA, any recovery in a suit alleging such an injury is treated as a recovery that must be reported to OWCP.

§ 30.610 Are payments to a covered Part B employee, a covered Part E employee or an eligible surviving beneficiary as a result of an insurance policy which the employee or eligible surviving beneficiary has purchased a recovery that must be reported to OWCP?

Since payments received by a covered Part B employee, a covered Part E employee or an eligible surviving beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an occupational illness or covered illness compensable under the Act, they are not considered a recovery that must be reported to OWCP.

§ 30.611 If a settlement or judgment is received for more than one medical condition, can the amount paid on a single EEOICPA claim be attributed to different conditions for purposes of calculating the amount to which the United States is subrogated?

(a) All medical conditions accepted by OWCP in connection with a single claim are treated as the same illness for the purpose of computing the amount which the United States is entitled to offset in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an illness covered under EEOICPA will be treated as a separate injury.

(b) If an illness covered under EEOICPA is caused under circumstances creating a legal liability in more than one person, other than the United States, a DOE contractor or subcontractor, a beryllium vendor or an atomic weapons employer, to pay damages, OWCP will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single EEOICPA claim. If such an attribution is both practicable and equitable, as determined by OWCP, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the amount to which the United States is subrogated.

Effect of Tort Suits Against Beryllium Vendors and Atomic Weapons Employers

§ 30.615 What type of tort suits filed against beryllium vendors or atomic weapons employers may disqualify certain claimants from receiving benefits under Part B of EEOICPA?

(a) A tort suit (other than an administrative or judicial proceeding for workers' compensation) that includes a claim arising out of a covered Part B employee's employment-related exposure to beryllium or radiation, filed against a beryllium vendor or an atomic weapons employer, by a covered Part B employee or an eligible surviving beneficiary or beneficiaries of a deceased covered Part B employee, will disqualify that otherwise eligible individual or individuals from receiving benefits under Part B of EEOICPA unless such claim is terminated in accordance with the requirements of §§ 30.616 through 30.619 of these regulations.

(b) The term "claim arising out of a covered Part B employee's employment-related exposure to beryllium or radiation" used in paragraph (a) of this section includes a claim that is

derivative of a covered Part B employee's employment-related exposure to beryllium or radiation, such as a claim for loss of consortium raised by a covered Part B employee's spouse.

(c) If all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation are terminated in accordance with the requirements of §§ 30.616 through 30.619 of these regulations, proceeding with the remaining portion of the tort suit filed against a beryllium vendor or an atomic weapons employer will not disqualify an otherwise eligible individual or individuals from receiving benefits under Part B of EEOICPA.

§ 30.616 What happens if this type of tort suit was filed prior to October 30, 2000?

(a) If a tort suit described in § 30.615 was filed prior to October 30, 2000, the claimant or claimants will not be disqualified from receiving any EEOICPA benefits to which they may be found entitled if the tort suit was terminated in any manner prior to December 28, 2001.

(b) If a tort suit described in § 30.615 was filed prior to October 30, 2000 and was pending as of December 28, 2001, the claimant or claimants will be disqualified from receiving any benefits under Part B of EEOICPA unless they dismissed all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation that were included in the tort suit prior to December 31, 2003.

§ 30.617 What happens if this type of tort suit was filed during the period from October 30, 2000 through December 28, 2001?

(a) If a tort suit described in § 30.615 was filed during the period from October 30, 2000 through December 28, 2001, the claimant or claimants will be disqualified from receiving any benefits under Part B of EEOICPA unless they dismiss all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation that are included in the tort suit on or before the last permissible date described in paragraph (b) of this section.

(b) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered Part B employee may be connected to his or her exposure to beryllium or radiation covered by EEOICPA. For purposes of determining when this 30-month period begins, "the date the claimant or claimants first became aware" will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

§ 30.618 What happens if this type of tort suit was filed after December 28, 2001?

(a) If a tort suit described in § 30.615 was filed after December 28, 2001, the claimant or claimants will be disqualified from receiving any benefits under Part B of EEOICPA if a judgment is entered against them.

(b) If a tort suit described in § 30.615 was filed after December 28, 2001 and a judgment has not yet been entered against the claimant or claimants, they will also be disqualified from receiving any benefits under Part B of EEOICPA unless, prior to entry of any judgment, they dismiss all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation that are included in the tort suit on or before the last permissible date described in paragraph (c) of this section.

(c) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered Part B employee may be connected to his or her exposure to beryllium or radiation covered by EEOICPA. For purposes of determining when this 30-month period begins, "the date the claimant or claimants first became aware" will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

§ 30.619 Do all the parties to this type of tort suit have to take these actions?

The type of tort suits described in § 30.615 may be filed by more than one individual, each with a different cause of action. For example, a tort suit may be filed against a beryllium vendor by both a covered Part B employee and his or her spouse, with the covered Part B employee claiming for chronic beryllium disease and the spouse claiming for loss of consortium due to the covered Part B employee's exposure to beryllium. However, since the spouse of a living covered Part B employee could not be an eligible surviving beneficiary under Part B of EEOICPA, the spouse would not have to comply with the termination requirements of §§ 30.616 through 30.618. A similar result would occur if a tort suit were filed by both the spouse of a deceased covered Part B employee and other family members (such as children of the deceased covered part B employee). In this case, the spouse would be the only eligible surviving beneficiary of the deceased covered Part B employee under Part B of the EEOICPA because the other family members could not be eligible for benefits while he or she was alive. As a result, the spouse would be the only party to the tort suit who would have to comply with the termination requirements of §§ 30.616 through 30.618.

§ 30.620 How will OWCP ascertain whether a claimant filed this type of tort suit and if he or she has been disqualified from receiving any benefits under Part B of EEOICPA?

Prior to authorizing payment on a claim under Part B of EEOICPA, OWCP will require each claimant to execute and provide an affidavit stating if he or she filed a tort suit (other than an administrative or judicial proceeding for workers' compensation) against either a beryllium vendor or an atomic weapons employer that included a claim arising out of a covered Part B employee's employment-related exposure to beryllium or radiation, and if so, the current status of such tort suit. OWCP may also require the submission of any supporting evidence necessary to confirm the particulars of any affidavit provided under this section.

Coordination of Part E Benefits With State Workers' Compensation Benefits

§ 30.625 What does "coordination of benefits" mean under Part E of EEOICPA?

In general, "coordination of benefits" under Part E of the Act occurs when compensation to be received under Part E is reduced by OWCP, pursuant to section 7385s–11 of EEOICPA, to reflect certain benefits the beneficiary receives under a state workers' compensation program for the same covered illness.

§ 30.626 How will OWCP coordinate compensation payable under Part E of EEOICPA with benefits from state workers' compensation programs?

(a) OWCP will reduce the compensation payable under Part E by the amount of benefits the claimant receives from a state workers' compensation program by reason of the same covered illness, after deducting the reasonable costs to the claimant of obtaining those benefits.

(b) To determine the amount of any reduction of EEOICPA compensation, OWCP shall require the covered Part E employee or each eligible surviving beneficiary filing a claim under Part E to execute and provide affidavits reporting the amount of any benefit received pursuant to a claim filed in a state workers' compensation program for the same covered illness.

(c) If a covered Part E employee or a survivor of such employee receives benefits through a state workers' compensation program pursuant to a claim for the same covered illness, OWCP shall reduce a portion of the dollar amount of such state workers' benefit from the compensation payable under Part E. OWCP will calculate the net amount of the state workers' compensation benefit amount to be subtracted from the compensation payment under Part E in the following manner:

(1) OWCP will first determine the dollar value of the benefits received by that individual from a state workers' compensation program by including all benefits, other than medical and vocational rehabilitation benefits, received for the same covered illness or injury sustained as a consequence of a covered illness.

(2) OWCP will then make certain deductions from the above dollar benefit received under a state workers' compensation program to arrive at the dollar amount that will be subtracted from any compensation payable under Part E of EEOICPA.

(i) Allowable deductions consist of reasonable costs in obtaining state workers' compensation benefits incurred by that individual, including but not limited to attorney's fees OWCP deems reasonable and itemized costs of suit (out-of-pocket expenditures not part of the normal overhead of a law firm's operation like filing, travel expenses, witness fees, and court reporter costs for transcripts), provided that adequate supporting documentation is submitted to OWCP for its consideration.

(ii) The EEOICPA benefits that will be reduced will consist of any unpaid monetary payments payable in the future and medical benefits payable in the future. In those cases where it has not yet paid EEOICPA benefits under Part E, OWCP will reduce such benefits on a dollar-for-dollar basis, beginning with the current monetary payments first. If the amount to be subtracted exceeds the monetary payments currently payable, OWCP will reduce ongoing EEOICPA medical benefits payable in the future by the amount of any remaining surplus. This means that OWCP will apply the amount it would otherwise pay to reimburse the covered Part E employee for any ongoing EEOICPA medical treatment to the remaining surplus until it is absorbed (or until further monetary benefits become payable that are sufficient to absorb the surplus).

(3) The above coordination of benefits will not occur if the beneficiary under a state workers' compensation program receives state workers' compensation benefits for both a covered and a non-covered illness arising out of and in the course of the same work-related incident.

§ 30.627 Under what circumstances will OWCP waive the statutory requirement to coordinate these benefits?

A waiver to the requirement to coordinate Part E benefits with benefits paid under a state workers' compensation program may be granted if OWCP determines that the administrative costs and burdens of coordinating benefits in a particular case or class of cases justifies the waiver. This decision is exclusively within the discretion of OWCP.

Subpart H—Information for Medical Providers

Medical Records and Bills

§ 30.700 What kinds of medical records must providers keep?

Federal Government medical officers, private physicians and hospitals are required to keep records of all cases treated by them under EEOICPA so they can supply OWCP with a history of the claimed occupational illness or covered illness, a description of the nature and extent of the claimed occupational illness or covered illness, the results of any diagnostic studies performed, and the nature of the treatment rendered. This requirement terminates after a provider has supplied OWCP with the above-noted information, and otherwise terminates ten years after the record was created.

§ 30.701 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 30.700. The physician or provider shall itemize the charges on Form OWCP–1500 or CMS–1500 (for professional charges), Form OWCP–04 or UB–04 (for hospitals), an electronic or paper-based bill that includes required data elements (for pharmacies), or other form as warranted, and submit the form or bill promptly for processing.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC) number, or the Revenue Center Code (RCC), with a brief narrative description. Where no code is applicable, a detailed description of services performed should be provided.

(c) For professional charges billed on Form OWCP–1500 or CMS–1500, the provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Disease, 9th Edition, Clinical Modification" (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the occupational illness is necessary for more than 30 days.

(1)(i) Hospitals shall submit charges for medical and surgical treatment or supplies promptly on Form OWCP–04 or UB–04. The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear on the form.

(ii) Other outpatient hospital services for which HCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this section. Services for which there are no HCPCS/CPT codes available can be presented using the RCCs described in the "National Uniform Billing Data Elements Specifications," current edition. The provider shall also furnish the diagnostic code using the ICD–9–CM. If the outpatient hospital services include surgical and/or invasive procedures, the provider shall code each procedure using the proper HCPCS/CPT codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on electronic or paper-based bills and submit them promptly for processing. Bills for prescription medications must include all required data elements, including the NDC number assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly for processing.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which payment is sought was performed as described and was necessary. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking

payment for medical services, including the limitation imposed on the amount to be paid for such services.

(e) In summary, bills submitted by providers must: Be itemized on Form OWCP–1500 or CMS–1500 (for physicians), Form OWCP–04 or UB–04 (for hospitals), or an electronic or paper-based bill that includes required data elements (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using HCPCS/CPT codes, RCCs, or NDC numbers. Otherwise, the bill may be returned to the provider for correction and resubmission. The decision of OWCP whether to pay a provider's bill is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

§ 30.702 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or other services, supplies or appliances provided by a professional due to an occupational illness or a covered illness, he or she must submit a request for reimbursement on Form OWCP–915, together with an itemized bill on Form OWCP–1500 or CMS–1500 prepared by the provider and a medical report as provided in § 30.700, for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service.

(2) The reimbursement request must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt.

(b) If a hospital, pharmacy or nursing home provided services for which the employee paid, the employee must also use Form OWCP–915 to request reimbursement and should submit the request in accordance with the provisions of § 30.701(a). Any such request for reimbursement must be accompanied by evidence, as described in paragraph (a)(2) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) The requirements of paragraphs (a) and (b) of this section may be waived if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) Copies of bills submitted for reimbursement will not be accepted unless they bear the original signature of the provider and evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by OWCP, as set forth in § 30.705. The decision of OWCP whether to reimburse an employee for out-of-pocket medical expenses, and the amount of any reimbursement, is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by OWCP's schedule. If this happens, the employee will be advised of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider that the employee paid, but not the employee, may request reconsideration of the fee determination as set forth in § 30.712.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the employee requests a refund of any excess amount, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the disputed amount, OWCP will initiate exclusion procedures as provided by § 30.715.

(g) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the allowed charge, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

§ 30.703 What are the time limitations on OWCP's payment of bills?

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

Medical Fee Schedule

§ 30.705 What services are covered by the OWCP fee schedule?

(a) Payment for medical and other health services furnished by physicians, hospitals and other providers for occupational illnesses or covered illnesses shall not exceed a maximum allowable charge for such service as determined by OWCP, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

§ 30.706 How are the maximum fees defined?

For professional medical services, OWCP shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: An assignment of a value to procedures identified by HCPCS/CPT code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs; and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service.

§ 30.707 How are payments for particular services calculated?

Payment for a procedure identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service.

(a) The "locality" which serves as a basis for the determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. OWCP

shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Centers for Medicare and Medicaid Services (CMS).

(b) OWCP shall assign the relative value units (RVUs) published by CMS to all services for which CMS has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, OWCP may develop and assign any RVUs considered appropriate. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for CMS and as updated or revised by CMS from time to time. OWCP will devise conversion factors for each category of service, and in doing so may adapt CMS conversion factors as appropriate using OWCP's processing experience and internal data.

(c) For example, if the unit values for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the dollar value assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding geographical indices for the locality times the conversion factor. If the geographic indices for the locality are 0.988(W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] × $61.20
[2.45 + 3.44 + .56] × $61.20
6.45 × $61.20 = $394.74

§ 30.708 Does the fee schedule apply to every kind of procedure?

Where the time, effort and skill required to perform a particular procedure vary widely from one occasion to the next, OWCP may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for directed medical examinations, and for other specially authorized services.

§ 30.709 How are payments for medicinal drugs determined?

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee.

(a) All prescription medications identified by NDC number will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. OWCP will establish the dispensing fee.

(b) The NDC numbers, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

§ 30.710 How are payments for inpatient medical services determined?

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Prospective Payment System (PPS) devised by CMS (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All hospital discharges will be classified according to the DRGs prescribed by CMS in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by CMS in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by CMS to determine the specific rate for a hospital discharge under their PPS. OWCP may devise price adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from CMS's PPS on consideration of detailed medical reports and other evidence.

(4) OWCP shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when OWCP deems it necessary or appropriate.

(b) OWCP shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when OWCP deems it necessary or appropriate.

§ 30.711 When and how are fees reduced?

(a) OWCP shall accept a provider's designation of the code to identify a billed procedure or service if the code is consistent with medical reports and other evidence. Where no code is supplied, OWCP may determine the code based on the narrative description of the procedure on the billing form and in associated medical reports. OWCP will pay no more than the maximum allowable fee for that procedure.

(b) If the charge submitted for a service supplied to an employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge. The decision of OWCP to pay less than the charged amount is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

§ 30.712 If OWCP reduces a fee, may a provider request reconsideration of the reduction?

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by OWCP may, within 30 days, request reconsideration of the fee determination.

(1) Any such request will be considered by the district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was either incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board certification in a specialty is not sufficient evidence of unusual qualifications to justify a charge in excess of the maximum allowable amount set by OWCP. These are the only three circumstances that will justify reevaluation of the paid amount.

(2) A list of district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210, or on the Internet at *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm*. Within 30 days of receiving the request for reconsideration, the district office shall respond in writing stating whether or not an additional amount will be

allowed as reasonable, considering the evidence submitted.

(b) If the district office issues a decision that continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

§ 30.713 If OWCP reduces a fee, may a provider bill the employee for the balance?

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this part shall not request payment from the employee for the unpaid amount of the provider's bill.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge "substantially in excess of such provider's customary charges" for the purposes of § 30.715(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 30.715(h).

Exclusion of Providers

§ 30.715 What are the grounds for excluding a provider from payment under this part?

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under this part if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any federal or state program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under this part, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a 12-month period under this subpart containing charges which OWCP finds to be substantially in excess of such provider's customary charges, unless OWCP finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart and paid for by OWCP;

(f) Failed, neglected or refused on three or more occasions during a 12-month period to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by § 30.700 of this part;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

§ 30.716 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who:

(1) Has been convicted of a crime described in § 30.715(a); or

(2) Has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies.

(b) The exclusion applies to participating in the program and to seeking payment under this part for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may consist of a copy thereof authenticated by the seal of the court or agency concerned.

§ 30.717 When are OWCP's exclusion procedures initiated?

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 30.715, the Regional Director, after completion of inquiries he or she deems appropriate, may initiate procedures to exclude the provider from participation in the EEOICPA program. For the purposes of these procedures, "Regional Director" may include any officer designated to act on his or her behalf.

§ 30.718 How is a provider notified of OWCP's intent to exclude him or her?

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the EEOICPA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to furnish;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 30.719) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

§ 30.719 What requirements must the provider's reply and OWCP's decision meet?

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the OWCP representative, the provider may inspect or request copies of information in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 30.720. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 30.720 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the OWCP representative named pursuant to § 30.718(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or federal, state or local regulatory body.

§ 30.721 How are hearings assigned and scheduled?

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite statements and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate "all issues" for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses or request the certification of questions for an advisory opinion.

§ 30.722 How are subpoenas or advisory opinions obtained?

(a) In exclusion proceedings involving medical services provided under Part B of the Act only, the provider may apply to the administrative law judge for the issuance of subpoenas upon a showing of good cause therefore.

(b) A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or federal, state or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

§ 30.723 How will the administrative law judge conduct the hearing and issue the recommended decision?

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) In conjunction with the hearing, the administrative law judge may:

(1) Administer oaths; and

(2) Examine witnesses.

(e) At the conclusion of the hearing, the administrative law judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and OWCP.

§ 30.724 How can a party request review by OWCP of the administrative law judge's recommended decision?

(a) Any party adversely affected or aggrieved by the decision of the administrative law judge may file a petition for discretionary review with the Director for Energy Employees Occupational Illness Compensation within 30 days after issuance of such decision. The administrative law judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) Review by the Director for Energy Employees Occupational Illness Compensation shall not be a matter of right but of the sound discretion of the Director.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of OWCP;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) If a petition is granted, review shall be limited to the questions raised by the petition.

(g) A petition not granted within 20 days after receipt of the petition is deemed denied.

§ 30.725 What are the effects of non-automatic exclusion?

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) CMS; and

(3) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to know of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

§ 30.726 How can an excluded provider be reinstated?

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 30.716, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Energy Employees Occupational Illness Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Energy Employees Occupational Illness Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the EEOICPA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

Subpart I—Wage-Loss Determinations Under Part E of EEOICPA

General Provisions

§ 30.800 What types of wage-loss are compensable under Part E of EEOICPA?

Years of wage-loss occurring prior to normal retirement age that are the result of a covered illness contracted by a covered Part E employee through work-related exposure to a toxic substance at a Department of Energy facility or a RECA section 5 facility, as appropriate, may be compensable under Part E of the Act. Whether years of wage-loss are compensable depends on determinations with respect to:

(a) The average annual wage of the employee as determined by OWCP in accordance with § 30.810;

(b) The percentage of his or her average annual wage that the employee was able to earn during the calendar year(s) in question as determined by OWCP in accordance with § 30.811; and

(c) Whether the employee's inability to earn at least as much as his or her average annual wage was due to a covered illness as defined in § 30.5(r).

§ 30.801 What special definitions does OWCP use in connection with Part E wage-loss determinations?

For the purposes of paying compensation based on wage-loss under Part E of the Act, OWCP will apply the following definitions:

(a) *Average annual wage* means four times the average quarterly wages of a covered Part E employee for the 12 quarters preceding the quarter during which he or she first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility, excluding any quarters during which the employee was unemployed. Because being "retired" is not equivalent to being "unemployed," quarters during which an employee had no wages because he or she was retired will not be excluded from this calculation.

(b) *Normal retirement age* means the age at which a covered Part E employee first became eligible for unreduced retirement benefits under the Old-Age, Survivors and Disability Insurance (OASDI) provisions of the Social Security Act. In general, persons born during or before 1937 are eligible for unreduced OASDI retirement benefits at age 65, and that age increases in monthly increments until it reaches 67, which is the age at which persons born during or after 1960 become eligible for unreduced OASDI retirement benefits.

(c) *Quarter* means the three-month period January through March, April through June, July through September, or October through December.

(d) *Quarter during which the employee was unemployed* means any quarter during which the covered Part E employee had $700 (in constant 2005 dollars) or less in wages unless the quarter is one during which the employee was retired.

(e) *Year of wage-loss* means a calendar year during which the covered Part E employee's earnings were less than his or her average annual wage, after such earnings have been adjusted using the Consumer Price Index for All Urban Consumers (CPI–U), as produced by the Bureau of Labor Statistics, to reflect their value in the year during which the employee first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility.

Evidence of Wage-Loss

§ 30.805 What evidence does OWCP use to determine a covered Part E employee's average annual wage and whether he or she experienced compensable wage-loss under Part E of EEOICPA?

(a) OWCP may rely on quarterly wages information reported to the Social

Security Administration to establish a covered Part E employee's presumed average annual wage (see § 30.810) and the duration and extent of any years of wage-loss that are compensable under Part E of the Act (see § 30.811). OWCP may also rely on other probative evidence of a covered Part E employee's wages, and may ask the claimant for additional evidence necessary to make this determination, if necessary. For the purposes of making these two types of determinations, OWCP will consider all monetary payments that the covered Part E employee received in a quarter from employment or services, except for monetary payments that were not taxable as income during that quarter under the Internal Revenue Code, to be "wages."

(b) OWCP also requires the submission of rationalized medical evidence of sufficient probative value to establish that the period of wage-loss at issue is causally related to the covered Part E employee's covered illness.

§ 30.806 May a claimant submit factual evidence in support of a different determination of average annual wage and/or wage-loss than that found by OWCP?

A claimant who disagrees with the evidence OWCP has obtained under § 30.805(a) and alleges a different average annual wage for the covered Part E employee, or that there was a greater duration or extent of wage-loss, may submit records that were produced in the ordinary course of business due to the employee's employment to rebut that evidence, to the extent that such records are determined to be authentic by OWCP by a preponderance of the evidence. The average annual wage and/or wage-loss of the covered Part E employee will then be determined by OWCP in the exercise of its discretion.

Determinations of Average Annual Wage and Percentages of Loss

§ 30.810 How will OWCP calculate the average annual wage of a covered Part E employee?

To calculate the average annual wage of a covered Part E employee as defined in § 30.801(a), OWCP will:

(a) Aggregate the wages for the twelve quarters that preceded the quarter during which the covered Part E employee first experienced wage-loss due to exposure to a toxic substance at a DOE facility or a RECA section 5 facility, excluding any quarter during which the employee was unemployed;

(b) Add any additional wages earned by the employee during those same quarters as evidenced by records described in §§ 30.805(a) and 30.806;

(c) Divide the sum of paragraphs (a) and (b) of this section by 12 less the number of quarters during which the employee was unemployed; and

(d) Multiply this figure by four to calculate the covered Part E employee's average annual wage.

§ 30.811 How will OWCP calculate the duration and extent of a covered Part E employee's initial period of compensable wage-loss?

(a) To determine the initial calendar years of wage-loss, OWCP will use the evidence it receives under §§ 30.805 and 30.806 to determine the quarter in which a covered Part E employee first sustained wage-loss due to exposure to a toxic substance while engaged in employment at a DOE facility or a RECA section 5 facility, as appropriate.

(b) OWCP will then compare the calendar-year wages for that employee, as adjusted, with the average annual wage determined under § 30.810 for each calendar year beginning with the calendar year that includes the quarter in which the wage-loss commenced, and concluding with the last calendar year of wage-loss prior to the submission of the claim or the calendar year in which the employee reached normal retirement age (as defined in § 30.801(b)), whichever occurred first.

(c) OWCP will then aggregate separately the number of calendar years of wage-loss in which the employee's wages, as adjusted, did not exceed 50 percent of the average annual wage determined under § 30.810, and the number of calendar years of wage-loss in which the employee's wages, as adjusted, exceeded 50 percent of such average annual wage, but did not exceed 75 percent of such average annual wage.

(d) For each calendar year of wage-loss determined under paragraph (c) of this section during which the employee's wages did not exceed 50 percent of his or her average annual wage, OWCP will pay the employee $15,000 as compensation for wage-loss. For each calendar year of wage-loss determined under paragraph (c) of this section during which the employee's calendar-year wages exceeded 50 percent of his or her average annual wage but did not exceed 75 percent of such average annual wage, OWCP will pay the employee $10,000 as compensation for wage-loss.

§ 30.812 May a covered Part E employee claim for subsequent periods of compensable wage-loss?

A covered Part E employee previously awarded compensation for wage-loss under § 30.811 may file for additional compensation for wage-loss suffered by the employee during periods subsequent to a period for which a wage-loss claim for the employee has already been adjudicated by OWCP. However, no compensation for wage-loss shall be awarded for any period following the year during which the covered Part E employee attained normal retirement age for purposes of the Social Security Act as described in § 30.801(b).

Special Rules for Certain Survivor Claims Under Part E of EEOICPA

§ 30.815 Are there special rules that OWCP will use to determine the extent of a deceased covered Part E employee's compensable wage-loss?

(a) For purposes of adjudicating a claim of a survivor of a deceased covered Part E employee only, OWCP will presume that such employee experienced wage-loss for each calendar year subsequent to the calendar year of his or her death through and including the calendar year in which the employee would have reached normal retirement age under the Social Security Act. During these particular calendar years, OWCP will also presume that the deceased covered Part E employee's subsequent calendar-year wages did not exceed 50 percent of his or her average annual wage as determined under § 30.810.

(b) Except as provided in paragraph (a) of this section, OWCP will calculate the wage-loss of a deceased covered Part E employee in conformance with the provisions of §§ 30.800 through 30.811.

(c) If OWCP determines that a deceased covered Part E employee had an aggregate of not less than ten calendar years of adjusted earnings that did not exceed 50 percent of his or her average annual earnings, it will pay the eligible surviving beneficiary(s) additional compensation (the basic survivor award payable under section 7385s–3(a)(1) is $125,000) in the amount of $25,000 pursuant to section 7385s–3(a)(2) of the Act. In the alternative, if OWCP determines that the aggregate number of such years is not less than 20 years, it will pay the eligible surviving beneficiary(s) additional compensation in the amount of $50,000 pursuant to section 7385s–3(a)(3).

Subpart J—Impairment Benefits Under Part E of EEOICPA

General Provisions

§ 30.900 Who can receive impairment benefits under Part E?

In order to receive impairment benefits under Part E, the employee must show that:

(a) He or she is a covered Part E employee who has been determined to

have contracted a covered illness through exposure to a toxic substance at a DOE facility or a RECA section 5 facility, as appropriate, pursuant to either §§ 30.210 through 30.215 or §§ 30.230 through 30.232 of these regulations; and

(b) He or she has been determined to have an impairment, pursuant to the regulations set out in this subpart, that is the result of the covered illness referred to in paragraph (a) of this section.

§ 30.901 How does OWCP determine the extent of an employee's impairment that is due to a covered illness contracted through exposure to a toxic substance at a DOE facility or a RECA section 5 facility, as appropriate?

(a) OWCP will determine the amount of impairment benefits to which an employee is entitled based on one or more impairment evaluations submitted by physicians. An impairment evaluation shall contain the physician's opinion on the extent of whole person impairment of all organs and body functions of the employee that are compromised or otherwise affected by the employee's covered illness or illnesses, which shall be referred to as a "minimum impairment rating."

(b) The minimum impairment rating shall be determined in accordance with the current edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA's *Guides*). In making impairment benefit determinations, OWCP will only consider medical reports from physicians who are certified by the relevant medical board and who satisfy any additional criteria determined by OWCP to be necessary to qualify to perform impairment evaluations under Part E, including any specific training in use of the AMA's *Guides*, specific training and experience related to particular conditions and other objective factors.

(c) OWCP will establish criteria based upon objective factors such as training and certification that must be met by physicians preparing impairment evaluations in order for an impairment evaluation to be considered in determining an impairment award. Such criteria shall be made available to claimants and the public by OWCP.

§ 30.902 How will OWCP calculate the amount of the award of impairment benefits that is payable under Part E?

OWCP will multiply the percentage points of the minimum impairment rating by $2,500 to calculate the amount of the award.

Medical Evidence of Impairment

§ 30.905 How may an impairment evaluation be obtained?

(a) Except as provided in paragraph (b) of this section, OWCP may request that an employee undergo an evaluation of his or her permanent impairment that specifies the percentage points that are the result of the employee's covered illness or illnesses. To be of any probative value, such evaluation must be performed by a physician who meets the criteria OWCP has identified for physicians performing impairment evaluations for the pertinent covered illness or illnesses in accordance with the AMA's *Guides*.

(b) In lieu of submitting an evaluation requested by OWCP under paragraph (a) of this section, an employee may obtain an impairment evaluation at his own initiative and submit it to OWCP for consideration. Such an evaluation will be deemed to have sufficient probative value to be considered in the adjudication of impairment benefits by OWCP only if:

(1) The evaluation was performed by a physician who meets the criteria identified by OWCP for the covered illness or illnesses in question;

(2) The evaluation was performed no more than one year before the date that it was received by OWCP; and

(3) The evaluation conforms to all applicable requirements set out in this part.

§ 30.906 Who will pay for an impairment evaluation?

(a) OWCP will pay for one impairment evaluation obtained by an employee if it meets the criteria set out in § 30.905(b), unless it was performed by a physician prior to the date that the claim for Part E benefits is filed, or obtained for a claim in which OWCP finds that the employee did not contract a covered illness. At its discretion, OWCP may direct that the employee undergo additional evaluations. OWCP will pay for any such additional evaluations and will reimburse the employee for any reasonable and necessary costs incident to the evaluations, as described in §§ 30.404 and 30.412 of this part.

(b) Except for one impairment evaluation obtained pursuant to § 30.905(b) and meeting the criteria set out in § 30.905(b)(1), (2) and (3), the employee must pay for any impairment evaluations not directed by OWCP.

§ 30.907 Can an impairment evaluation obtained by OWCP be challenged prior to issuance of the recommended decision?

(a) An employee may submit arguments challenging an impairment evaluation, and/or additional medical evidence of impairment, before the district office issues a recommended decision on his or her claim. However, the district office will not consider an additional impairment evaluation, even if it differs from the impairment evaluation obtained under §§ 30.905 or 30.906, if it does not meet the criteria listed in § 30.905(b)(1), (2) and (3).

(b) If the district office obtains an additional impairment evaluation that differs from the impairment evaluation obtained under §§ 30.905 or 30.906, the district office will base its recommended determinations regarding impairment upon the evidence it considers to have the greatest probative value, after evaluating all relevant evidence of impairment in the record, including evidence from directed impairment evaluations and referee impairment evaluations, if any, that it deems necessary pursuant to §§ 30.410 and 30.411 of this part.

§ 30.908 How will the FAB evaluate new medical evidence submitted to challenge the impairment determination in the recommended decision?

(a) If an employee submits an additional impairment evaluation that differs from the impairment evaluation relied upon by the district office, the FAB will not consider the additional impairment evaluation if it does not meet the criteria listed in § 30.905(b)(1), (2) and (3).

(b) The employee shall bear the burden of proving that the additional impairment evaluation submitted is more probative than the evaluation relied upon by the district office to determine the employee's recommended minimum impairment rating.

(c) If an employee submits an additional impairment evaluation that differs from the impairment evaluation relied upon by the district office, the FAB will review all relevant evidence of impairment in the record, and will base its determinations regarding impairment upon the evidence it considers to be most probative. The FAB will determine the minimum impairment rating after it has evaluated all relevant evidence and argument in the record.

Ratable Impairments

§ 30.910 Will an impairment that cannot be assigned a numerical percentage using the AMA's Guides be included in the impairment rating?

(a) An impairment of an organ or body function that cannot be assigned a numerical impairment percentage using the AMA's *Guides* will not be included in the employee's impairment rating.

(b) A mental impairment that does not originate from a documented physical dysfunction of the nervous system, and cannot be assigned a numerical percentage using the AMA's *Guides*, will not be included in the impairment rating for the employee. Mental impairments that are due to documented physical dysfunctions of the nervous system can be assigned numerical percentages using the AMA's *Guides* and will be included in the rating.

§ 30.911 Does maximum medical improvement always have to be reached for an impairment to be included in the impairment rating?

(a) An impairment that is the result of a covered illness will be included in the employee's impairment rating determined by OWCP under § 30.901 only if OWCP concludes that the impairment has reached maximum medical improvement, which means that it is well-stabilized and unlikely to improve substantially with or without medical treatment.

(b) Notwithstanding paragraph (a) of this section, if OWCP finds that an employee's covered illness is in the terminal stages, based upon probative medical evidence, an impairment that results from such covered illness will be included in the impairment rating for the employee even if it has not reached maximum medical improvement.

§ 30.912 Can a covered Part E employee receive benefits for additional impairment following an award of such benefits by OWCP?

A covered Part E employee previously awarded impairment benefits by OWCP may file a claim for additional impairment benefits. Such claim must be based on an increase in the impairment rating that is the result of the covered illness or illnesses from the impairment rating that formed the basis for the last award of such benefits by OWCP. OWCP will only adjudicate claims for such an increased rating that are filed at least two years from the date of the last award of impairment benefits. However, OWCP will not wait two years before it will adjudicate a claim for additional impairment that is based on an allegation that the employee sustained a new covered illness.

Signed at Washington, DC, this 15th day of December, 2006.

Victoria A. Lipnic,

Assistant Secretary of Labor for Employment Standards.

Signed at Washington, DC, this 15th day of December, 2006.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration.

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Federal Register

Friday,
December 29, 2006

Part III

Susquehanna River Basin Commission

18 CFR Parts 803, 804, 805 et al.
Review and Approval of Projects; Special Regulations and Standards; Hearings and Enforcement Actions; Final Rule

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 803, 804, 805, 806, 807 and 808

Review and Approval of Projects; Special Regulations and Standards; Hearings and Enforcement Actions

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Final rule.

SUMMARY: This document contains amendments to the SRBC's project review regulations currently published at 18 CFR Parts 803, 804 and 805. The regulations provide the procedural and substantive rules for SRBC review and approval of water resources projects and the procedures governing hearings and enforcement actions. These amendments include additional due process safeguards, add new standards for projects, improve organizational structure, incorporate recently adopted policies and clarify language. The amendments were first proposed on July 7, 2006 in the **Federal Register**, Vol. 71, No. 130, p. 38692. Comments received on the proposed rule making are summarized with accompanying responses in the "**SUPPLEMENTARY INFORMATION**" section below. Changes were made to the proposed rules in the final rule making in response to these comments, including the "removal and reservation" of Parts 803, 804 and 805 and the substitution therefore in this final rule making action of Parts 806, 807 and 808, respectively.

DATES: These rules shall be effective January 1, 2007.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, 717–238–0423; Fax: 717–238–2436; e-mail: *rcairo@srbc.net*. Also, for further information on the final rule making action, visit the Commission's Web site at *http://www.srbc.net*.

SUPPLEMENTARY INFORMATION:

Background

The SRBC proposed rules amending its "Regulations and Procedures for the Review of Projects" presently found at 18 CFR Parts 803, 804 and 805, which were published on July 7, 2006 in the FR, Vol. 71, No. 130, p. 38692. Those rules establish: (1) The scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Pub. L. 91–575; 83 Stat. 1509 *et seq.* (the compact); (2) special standards under Section 3.4(2) of the compact governing water withdrawals and consumptive use of water; and (3) procedures for hearings and enforcement actions. The SRBC received numerous comments on the proposed rule making action, which are summarized below with an accompanying response to each. The SRBC made a number of adjustments and changes to the proposed rules in this final rule making action in response to those comments. One change that should be noted is the removal and reservation of 18 CFR Parts 803, 804 and 805, and the substitution therefore in this final rule making action of Parts 806, 807 and 808 respectively. The contents that appeared in Parts 803, 804 and 805 of the proposed rule making now appear in Parts 806, 807 and 808 respectively; hence, this is not an enlargement of the purposes of the proposed rule making, but simply an editorial change in response to a comment that SRBC received pointing to the possible confusion of retaining the same numbering system for the revised regulations. Comments received on the proposed rule making referred to the numbering system as published, namely Parts 803, 804 and 805, and comments and responses set forth below follow that same construction, even though now superseded by Parts 806, 807 and 808, respectively.

General Comments

Comment: Revisions will strengthen and streamline SRBC project review regulations.

Response: The Commission agrees that the revisions will strengthen and streamline its regulatory program.

Comment: SRBC proposed regulations should more strongly emphasize the importance of economic development in its statement of purposes and in the criteria on which an approval will be granted or denied. SRBC should attempt to more carefully balance the economic benefits of a project versus other interests such as the environment. Tools should be developed for analyzing the "harms" of a project versus its "benefits." If there are only minor environmental impacts and great economic benefits, projects should be approved.

Response: The Commission believes that there are already sufficient references to the purposes of economic development in both the Susquehanna River Basin Compact (the "compact") and the project review regulations. The Commission, in its review process, does take into consideration the economic development aspects of a project and works with project sponsors to help them use water resources in a way that will enhance economic growth while avoiding conflicts with other users..

Comment: SRBC should explore the use of free market tools such as credits and trading for compliance with its regulations.

Response: The Commission considers that tools such as credits and trading for compliance with regulations are probably more applicable to water quality regulations than to water quantity regulations of the type administered by the Commission. Nevertheless, an element of free market tools is already incorporated in the proposed regulation Section 803.22 ("Standards for consumptive uses of water"), in that project sponsors are allowed a wide choice of mitigation methods, including the free market acquisition of water for flow augmentation.

Comment: In several instances, the Commission is writing authority into the regulations that does not exist under the compact. For example, Article 11 of the compact pertaining to protected areas is the only section that mentions any authority for approval of withdrawals. Also, there is no compact authority for other items in the regulations such as cease and desist orders and the issuance of subpoenas. Many other examples are cited.

Response: This comment reads the terms of the compact far too narrowly and fails to consider other broad grants of power given to the Commission to manage the river basin's water resources. For example, Section 3.5(4) of the compact states that the Commission "shall assume jurisdiction in any matter affecting water resources whenever it determines * * * that the effectuation of the comprehensive plan or the implementation of the compact so requires." Also, Section 3.4(9) states that the Commission "may have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied therefrom." Finally, Section 3.10(2) of the compact makes it clear that the Commission's power to approve projects is not limited.

Comment: SRBC has seemingly unlimited authority to arbitrarily impose enforcement action and prescribe remedies, and is not responsible or accountable to its basin-constituent population or economic interests.

Response: Like any other government agency, the Commission does not operate without limits imposed by the compact, the Constitution, and laws of the United States. Also, the Commission is directly responsible to its member

jurisdictions, each of which is represented on the Commission.

Comment: The proposed regulations should have been presented in a redline/black-line format that shows changes along side of current regulations. Old regulation sections from which regulations were moved or deleted should have been "reserved" instead of reused with new regulatory material because existing policies that refer to these same sections will no longer be accurate and could lead to confusion among those persons reviewing those policies.

Response: These revised regulations represent a complex overhaul of the current Commission regulations that involved the wholesale reorganization of the existing sections, the extensive revision of existing sections, and the addition of whole new sections. Such changes cannot be effectively placed in redline/black-line, side-by-side format without creating even more confusion for a reviewer attempting to review the disjointed mixture of moving text, additions, and deletions. It was therefore decided that the proposed revisions would be presented as an entirely new package of regulations and that the major changes would be described section by section in the preamble of the proposed rulemaking action. Most policies were incorporated into the body of the regulations, which will provide clarity for the regulated community and others. References to sections of the regulations that are no longer accurate will be revised accordingly. Also, with regard to "reserving" old sections of the regulations, the Commission has decided that, as part of its final rulemaking action, it will "remove and reserve" Parts 803, 804 and 805 and replace those Parts respectively with new Parts 806, 807 and 808. This is being done in accordance with **Federal Register** guidelines. All references in this Comment and Response document will reference section numbers as originally proposed (i.e., Parts 803, 804, and 805).

Comment: The new policies, procedures, and regulations implemented by the Commission over the last six years have already imposed significant administrative burdens on the regulated community. Some in the regulated community are now concerned that these new regulations will impose even more burdens that will adversely affect the economic vitality of the basin and drive investors to basins with a friendlier regulatory environment.

Response: The Commission acknowledges that compliance with Commission regulations does place certain short-term administrative and financial obligations upon the regulated community. However, the long-term benefits of Commission management and protection of a critical resource must also be considered. Project sponsors and other water users receive certain protections related to their water use that extend far beyond the protections afforded by the common law. Furthermore, the incorporation of policies and overall refinement of the regulations are intended to foster sustainable use of the resource over the term of an approval, even through times of drought. As such, some of the rigor complained about affords protection to existing uses, including economic uses, and allows for responsible economic development in the basin.

Comment: SRBC should establish a more integrated project approval process that directly considers the impacts of a project in terms of both water quantity and quality, and facilitates implementation of statewide water quality programs and mandates, including the Chesapeake Bay Tributary Strategies program, the anti-degradation program and the TMDL program.

Response: The member jurisdictions continue to maintain primary jurisdiction for regulating water quality pursuant to federal regulations under the Clean Water Act. In order to avoid duplication, the Commission focuses its review on water quantity while considering the impacts of a project on water quality, primarily through integrated, extensive coordination with agencies of its member jurisdictions.

Comment: SRBC should encourage "smart growth" communities that cluster development and have less impact on the environment. SRBC, by increasing regulatory thresholds, eliminating transferability of approvals, shortening amortization times and generally creating uncertainty about future water rights, would seem to promote sprawl by encouraging large lot development with individual wells to avoid SRBC regulation.

Response: The Commission rejects the notion that this set of revised regulations will somehow discourage clustered development and create uncertainty about future water rights. If anything, these strengthened regulations improve the Commission's ability to effectively manage the water resources of the basin, and will reinforce certainty about future water supplies by assuring users that they are drawing on reliable sources of water that will not be subject to conflict or interference with other users. It also acknowledges that land use decisions are made at the local level in all of its member jurisdictions.

Comments by Section, Part 803

Section 803.1 Scope

Comment: Decisions made by the Commission should reference the section of the comprehensive plan that is relied upon.

Response: Docket approvals presently do reference the project's compliance with the terms of the comprehensive plan, but a reference to a single section of the comprehensive plan would be too limiting in most cases.

Section 803.2 Purposes

Comment: The reference to economic development should be strengthened by stating that it is a purpose of the regulations to promote economic development and financial investment. It was further suggested that the purposes section should acknowledge the water-related dependency of many large and small commercial, industrial, and mining industries in the basin. Finally, the words "and control" should be deleted from Section 803.2(a)(2).

Response: Again, the Commission feels that the existing reference to economic development in this section is sufficient. The Commission also promotes economic stability and certainty by protecting the sources of water that all such activities depend on for their use and development. The Commission protects more than just the environment; the Commission heads off conflicts between users and helps users maintain reliable sources of water. The word "control" comes directly from the purposes section of the Susquehanna River Basin Compact and cannot be removed or deleted.

Section 803.3 Definitions

Comment: Revise the "groundwater" definition to indicate that "groundwater * * * includes that water contained in quarries, pits and underground mines not originating directly from surface water inflow (runoff)." Also add that the term groundwater * * * "includes water derived from a spring by pumping or other means of drainage which reduces or eliminates the surface flow."

Response: The definition has been modified to include "or other means of drainage." The Commission does not consider the addition of the other suggested wording to be necessary.

Comment: The last sentence in the "groundwater" definition is confusing and, when read in conjunction with the "surface water" definition, may exclude ground or surface water that is intended to be included.

Response: Agreed. Additional language contained in the current definition has been reinserted to clarify the definition.

Comment: The "surface water" definition uses the term "surface of the earth," while the "groundwater" definition uses the term "surface of the ground."

Response: Agreed. The term has been changed to "surface of the ground."

Comment: There is a need to define the term "undertake" to make clear what constitutes the commencement of a project requiring approval under Section 803.4, and, to insure that mere site preparation such as clearing and grubbing are not included under the definition, a definition of "construction" should also be included.

Response: Agreed. New definitions have been included for the term "undertake" and for the term "construction." The definition of construction insures that mere site preparation activity will not be included under the definition of "undertake". Combined, these definitions clarify what activity is subject to prior review and approval.

Comment: Revise the "project" definition because it is confusing and ambiguous.

Response: This definition utilizes wording taken directly from the Susquehanna River Basin Compact.

Comment: Revise the "pre-compact consumptive use" definition by adding the following words after the date "January 23, 1971": "established on the basis of credible documentation."

Response: The Commission does not consider the suggested language to be necessary. All such determinations are already made on the basis of credible documentation evaluated by Commission staff.

Comment: Revise the "water resources" definition to remove the term "and related natural resources" because it is unclear what these "related natural resources" are.

Response: This definition utilizes wording taken directly from the Susquehanna River Basin Compact.

Comment: Restore the use of the words "for use" in the "withdrawal" definition.

Response: The Commission agrees to restore the words "for use in the basin."

Section 803.4 Projects Requiring Review and Approval

Comment: The proposal to require a new review and approval by the Commission after a change of ownership of a project will substantially complicate and hinder the transfer of projects and therefore reduce the attractiveness of investments in projects in the basin. Frequent corporate changes, reorganizations, and mergers are common in the energy industry today. Requiring a new docket application for each such event would be administratively unwieldy, reduce predictability, and will add unnecessary risk for anyone willing to sponsor a project.

Comment: Requiring approvals upon change of ownership of a project may also discourage water companies from taking over smaller, inadequate systems due to the uncertainties created regarding the new quantities of water that will be available under a reissued approval. Furthermore, there does not appear to be a need to require that full project reviews be performed when there is a change of ownership of a project unless there is a change in conditions that really warrants such a full review.

Comment: The Commission should consider some way of preliminarily evaluating whether there has been such a change before requiring submission of a new application by transferees or simply reopening the docket under its reopening authority. Also, the Commission may want to focus on the ability of a transferee to comply with the existing approval. Yet another suggestion is for the Commission to require the submission of a notice of a change of ownership prior to the transfer, together with a transfer fee. This would enable the Commission to stay fully informed about which entities hold approvals, facilitate enforcement of any limitations or conditions, and offset the Commission's processing and administrative costs.

Response: The Commission has added new paragraph (b) that lists categories of projects that are exempt from the requirement for Commission approval upon a change of ownership. These exemptions were originally contained in the "change of ownership" definition and have been relocated to this section. The Commission has also added new paragraph (c) that allows projects not otherwise exempt under paragraph (b), to be undertaken by a new project sponsor (the transferee) upon a change of ownership pending action by the Commission on an application submitted by such new project sponsor requesting review and approval of the project. Both paragraphs (b) and (c) relate to projects that did not require Commission approval prior to January 1, 2007.

Comment: New owners should be required to seek approval of their water consumption and have full accountability for compliance with the terms for approval.

Response: Subject to the exceptions noted in our response above, the Commission agrees.

Comment: The Commission should not end the grandfathering of consumptive uses existing prior to January 23, 1971. The Commission has not provided a good reason to end this practice that has been a part of the Commission's regulations since their inception, and which project sponsors have come to rely on.

Comment: The intention of grandfathering is to protect the expectations of the person, but not the project. The proposed limitation on grandfathering does not affect the reasonable expectations of any person who is the current owner. Ending grandfathering assures fair implementation of the regulations. Exemptions provided to ag and family transfers should be continued indefinitely.

Response: The rationale for gradually retiring grandfathered benefits upon the transfer of ownership of a project is that, with few exceptions, such portions of the basin's water resources should not be allowed to continue indefinitely into the future unmanaged. Under the compact, the Commission is responsible for the comprehensive management of all of the basin's resources. While it was reasonable to allow those who possess grandfathered benefits to continue their use of them, the unfettered transfer of them to subsequent purchasers effectively creates a situation of prior appropriation.

Comment: The federal reservations to the Susquehanna River Basin Compact specifically prohibit the Commission from charging for pre-compact uses of water under Section 3.9 of the compact. Section 3.9 only allows the Commission to charge for use of its facilities or its services. Waters consumptively used are not a product of the Commission facilities or services, but are produced by the streams and rivers owned by the individual states. There is no basis for charging these projects a fee. Finally, grandfathered amounts encourage water conservation.

Response: The fees paid by consumptive users are not made under the authority of Section 3.9 of the compact and are therefore not subject to the federal reservations regarding charges under Section 3.9 of the compact. Instead, these fees are just one of several means of compliance with the consumptive use regulation that a project sponsor can employ. The Commission places the proceeds of such charges into a special water

management fund where they are used to purchase storage for release during low flow and to implement other measures to mitigate the effects of consumptive water use. Project sponsors are free to propose other means of mitigation.

Comment: Section 803.4(a)(4) requiring approval of any consumptive use that adversely affects purposes outlined in Section 803.2 is overly broad and too vague to effectuate compliance because it provides no quantitative or qualitative benchmarks.

Response: Agreed that this paragraph may be overly broad in scope. This paragraph has therefore been stricken.

Comment: In (a) Consumptive use of water, and (b) Withdrawals, change the reference to Section 803.12 to Section 803.13.

Response: Agreed. This cross-reference was incorrect and has been changed.

Comment: The proposal to regulate combined surface and groundwater withdrawals of 100,000 gpd or greater brings more withdrawals under review and approval, and better enables the Commission to ensure that substantial withdrawals do not compromise basin water resources.

Response: The Commission strongly agrees.

Comment: Combining groundwater and surface water to reach the withdrawal threshold of 100,000 gpd opens the regulatory process to include both when only one may be increased. Approval thresholds should remain separate.

Response: The Commission strongly believes that the hydrologic link between surface and groundwater justifies combining surface and groundwater withdrawals under one regulation that can consider and manage their mutual impacts. This conforms to the comprehensive management principles set forth in the compact.

Comment: The combined surface and groundwater requirement will force applicants to file two applications and pay two application fees.

Response: The proposed regulation does not have the effect referenced in the comment. If finally adopted, the Commission intends to institute a new application system for withdrawals and intends to modify its fee schedule to accommodate combined withdrawals.

Comment: The Commission should exempt the first 20,000 gallons per day (gpd) of an into-basin diversion as it has exempted the first 20,000 gpd of an out-of-basin diversion.

Response: The Commission does not agree that into-basin diversions should also be exempted up to 20,000 gpd. Regardless of quantity, the Commission wishes to insure that only water of good quality or properly treated water is being diverted into the Susquehanna River Basin. Rather than grant a blank exemption, the Commission will consider the possibility of a future "administrative agreement" or other informal arrangement with member states to accept their review and approval of a discharge into the basin (diversion) as an approval by the Commission.

Comment: Diversions should only be approved when the applicant demonstrates the clear need and a lack of alternatives.

Response: The Commission feels that the new regulation, which incorporates the Commission's out-of-basin diversion policy, adequately covers these criteria with respect to out-of-basin diversions.

Comment: There are no substantive criteria in 803.4(g) to establish a threshold as to when "other projects" may be required to submit an application.

Response: This paragraph is in conformance with Section 3.10(3) of the compact that grants the Commission and the member jurisdictions the broad authority to identify other projects that require Commission approval.

Section 803.5 Projects That May Require Review and Approval

Comment: With respect to (a), terms used such as "affect interstate water quality or interstate waters" and "significant effect" are too vague and do not sufficiently establish a quantitative standard. There is no requirement to identify which part of the comprehensive plan is adversely affected and therefore there is no way for an applicant to determine this.

Response: This is language that simply restates and is consistent with the language of the compact, Section 3.10. A project sponsor whose project affects the comprehensive plan would be informed about which part of the plan is so affected when it is notified in writing by the Executive Director under Section 803.4 (g).

Comment: With respect to (b), there should be a "pre-determination notice" procedure that would afford a project sponsor the opportunity to supplement information, discussion, and technical interaction before a determination is made by the Executive Director.

Response: If the Executive Director is called upon to make a determination, he/she will notify the project sponsor to submit such information prior to a determination. This will be part of the due process automatically afforded a project sponsor and there is no need to provide for it separately in the regulation.

Section 803.6 Transferability of Project Approvals

Comment: Support expressed for limited classes of transfers.

Comment: The proposed language should be eliminated for the same reasons given under the comments submitted on Section 803.4. regarding "change of ownership" and the existing rule regarding transfers should be retained. Essentially, restrictions on the transfer of Commission approvals create the same burdens on the regulated community as described in the comments on Section 803.4 above.

Response: This section has been extensively revised to now generally permit the transfer of project approvals. All transfers would require advance notification and certification to comply with all terms and conditions of the transferred approval. Transfers qualifying under new paragraph (b) can be made automatically without further Commission action. Transfers qualifying under new paragraph (c) can be made conditionally with a subsequent application to the Commission within 90 days from the transfer requesting review and approval of previously unapproved aspect of the project. Transfers qualifying under new paragraph (d) can also be made conditionally with a subsequent application to the Commission within 90 days from the transfer requesting review and approval of the entire project.

Section 803.7 Concurrent Project Review by Member Jurisdictions

Comment: Insert the words "to avoid delays" after the words "to avoid duplication of work." All reviews should be carried on in parallel with other agencies so as to avoid any delays in the review process.

Response: The suggested language is seen as unnecessary since it is the express purpose of the section.

Comment: Substitute the words "appropriate administrative agreements" or "informal arrangements" for "agreements of understanding" and "agreements" to be consistent with Section 804.3.

Response: Agreed.

Section 803.8 Waiver/Modification

Comment: The "modify" portion of this section gives the Commission too much discretion to actually change the requirements of a regulation that has already been promulgated. Therefore, the references to "modification" and

"modify" in this section should be deleted.

Response: This section has been a part of the Commission's regulations since the first omnibus rulemaking package was adopted in 1995. It is generally used to relieve project sponsors of unnecessary requirements, rather than to place additional requirements upon a project sponsor. The Commission expects that this type of use of the "waiver" section will continue, although it reserves the right to use such discretion in appropriate circumstances.

Section 803.12 Constant-Rate Aquifer Testing

Comment: There should be an introductory paragraph that includes a statement of purpose.

Response: The Commission has added additional wording that explains the purpose of constant-rate aquifer testing.

Comment: This section should state that constant-rate aquifer testing plans shall be prepared by a qualified and licensed professional geologist.

Response: The Commission defers to state law on this matter. Geologists are not formally licensed in New York or Maryland.

Comment: This section should state that constant-rate aquifer testing plans shall follow published Commission guidelines which shall be consistent with current industrial standards.

Comment: Once testing is complete, the Commission should not be able to require additional testing or monitoring unless the purposes of the first testing have not been met. The specific circumstances requiring additional testing should be set forth.

Response: These comments are addressed in the Commission's revised Aquifer Testing Guidance. Testing is conducted to provide a sound scientific basis for the Commission's decision regarding a project. Additional testing and monitoring is required to confirm assumptions in the interpretation of data or to verify system performance.

Comment: Paragraph (d) allows the Commission to impose arbitrary demands for additional testing.

Response: As is the case with every governmental agency, the Commission may not constitutionally impose arbitrary requirements.

Comment: This section deserves support.

Response: Agreed.

Section 803.13 Submission of Application

Comment: Add a new subsection that describes the deadlines to which the Commission would be obliged with respect to: (1) Administrative completeness; (2) technical reviews of applications; (3) review of supplemental submissions required by the Commission; and (4) actions to be taken by the Commission.

Response: The Commission feels that it would be more appropriate to address this comment in a set of accompanying guidelines rather than in the regulation itself.

Comment: In paragraph (b), how will a transferee of a project know that it is to comply with all of the requirements to certify an intention to comply and assume all associated obligations?

Response: This provision has been relocated to Sec. 806.6. The Commission will make available appropriate notification and certification forms to assist transferees in complying with the requirements.

Comment: In paragraph (c), the Commission should impose a time limit on itself to determine the completeness of an application.

Response: The provision has been deleted.

Section 803.14 Contents of Application

Comment: Applications by project sponsors should demonstrate the consistency of projects with locally adopted comprehensive plans and with state water plans.

Response: The notice of application procedure, which covers notification to local municipalities and county planning agencies, provides an ample opportunity for those entities to submit comments to the Commission on the consistency of the projects with local plans. The Commission coordinates with state agencies on each project application, providing the states with an opportunity to comment on the consistency of the projects with any of their water plans.

Comment: Some items that are now required to be provided in project applications are made discretionary on the part of the Commission in the new regulations. Many of these items provide information relevant to whether a proposed project impacts water resources of the basin. These should continue to be mandated.

Response: The regulation has been restructured to mandate certain information that is uniformly applicable to all projects. The informational requirements listed as discretionary are also important, but not all are necessary for all projects. The Commission believes some discretion is needed to tailor informational needs on a case-by-case basis.

Comment: Applications should not be deemed incomplete if they lack a plan for avoiding or mitigating consumptive use because large volume consumptive use may be a legitimate purpose. Instead preface with statement "As may be appropriate, depending upon the nature of the project, plans for avoiding * * * (etc)".

Response: Mitigation is one of the fundamental purposes of the consumptive use regulation. It is essential that a project sponsor develop a plan for mitigating its consumptive use. Development of a plan does not in any way imply that the use is not legitimate.

Comment: Two additional subsections should be added to allow the applicant to provide information regarding: (1) The benefits of the project; and (2) plans to mitigate adverse impacts of potential adverse effects.

Response: The project sponsor may, as it chooses, submit this information to the Commission. There is no need to make it a required submission.

Comment: Add a new item (xi) Evidence of compliance with all registration requirements of the Commission and the appropriate member jurisdictions.

Response: Agreed.

Comment: In (a)(2)(i), the project location should be determined by gps accurate to 10 meters.

Response: Agreed.

Comment: Paragraph (a)(2)(v) would seem to allow a requirement for a constant-rate aquifer test even if the application is for surface water, and it is the surface water application that causes the combined request to exceed 100,000 gpd.

Response: Commission staff will take into account such situations and, as appropriate, recommend a waiver of the constant-rate aquifer test.

Comment: With respect to paragraph (a)(3)(ii), is a PNDI being required?

Response: The Commission currently conducts a review for threatened or endangered species and their habitats. Under the new regulations, the project sponsor will submit this information with the application.

Comment: With respect to (b)(1)(ii), under what authority can the Commission require information on the ability of a project sponsor to fund a project?

Response: This is a necessary and convenient power under Section 3.4 (8) to reasonably ascertain the financial ability of the project sponsor to carry out a project in a manner to be approved by the Commission, including any conditions that the Commission may impose. This authority is only exercised in very limited situations.

Comment: With respect to (b)(1)(iii), relating to the identification of alternatives, what is a reasonable alternative? Will there be any guidance in this regard?

Response: Reasonable in this context refers to alternatives that may be appropriate for a particular situation. Commission staff will provide guidance and consultation as needed.

Comment: With respect to (b)(1)(iv), will the Commission maintain an inventory of anticipated uses?

Response: It is not necessary for the Commission to maintain such an inventory. Existing and anticipated uses should be identifiable by project sponsors or their consultants in each situation. For example, if the project is proposed for an area that has experienced rapid growth, anticipated uses should be evident, or reasonably discernable.

Comment: With respect to paragraph (3), it is much too open ended, allowing the Commission to ask for anything it deems necessary without limit.

Response: Again, as in any action it takes as a government agency, the Commission must act reasonably. Under constitutional law principles, there must be a rational relationship between what regulatory actions the Commission takes and a legitimate regulatory objective.

Comment: The regulations should continue the requirement for submission of comprehensive information about potential impacts of withdrawals and availability of alternatives, rather than allow its submission to be discretionary on the part of the Commission.

Response: Again, the regulation has been restructured to mandate certain information that is uniformly applicable to all projects. The informational requirements listed as discretionary are also important, but not all are necessary for all projects. The Commission believes some discretion is needed to tailor informational needs on a case-by-case basis.

Comment: There should be compatibility with regional and state Act 220 plans.

Response: The Commission routinely coordinates its approvals with its member jurisdictions. The project sponsor is required to give notice to the municipality and county planning agency of its application for approval, thereby providing an opportunity for local and regional interests to comment on the compatibility of projects.

Section 803.16 Completeness of Application

Comment: Add a statement providing that the Commission will provide the project sponsor with either a formal notice of administrative completeness, or a deficiency notice within a prescribed time.

Response: The Commission currently provides deficiency notices, when appropriate, as reviews are undertaken.

Section 803.21 General Standards

Comment: Omit the sentence containing the subjective terms "detrimental" and "proper."

Response: The wording comes directly from the compact.

Comment: The words "modify and approve as modified" should be rephrased to "With the applicant's consent, the Commission may modify * * *" Only the applicant should have the right to modify a project, not the Commission.

Response: Again, the wording comes directly from the compact. Also, this sentence is not meant to imply that the Commission would unilaterally modify a project without prior notice. It may condition its approval on the project sponsor making a modification or incorporating a condition that would help meet a Commission regulatory objective, but the Commission would not unilaterally modify a project without prior notice and an opportunity to be heard.

Comment: Add a new subsection that requires that Commission staff provide a draft docket to project sponsors at least 10 days in advance of Commission action on that docket. If the staff is recommending modifications, they should be required to provide the reasons for the recommended modifications in writing with quantitative analysis.

Response: The Commission strives to provide project sponsors with a draft docket as far in advance of final Commission action as possible. However, due to fluctuations in the number and complexity of dockets before the Commission at any particular meeting, a guarantee of ten (10) days advance review is not possible in all cases.

Comment: The Commission should not suspend review or revoke approval due to the disapproval of another government agency, especially when what some other agency is deciding has little or nothing to do with the water resources of the project. Furthermore, this provision seems to limit the Commission's power to preempt municipal regulations that, at least under Pennsylvania Law, illegally attempts to regulate water withdrawals. Instead of suspending review, the Commission should proceed expeditiously with its review and approval process and simply condition its approval on the applicant obtaining and retaining all other applicable approvals.

Response: The Commission will not suspend its review or approval of a project in response to the illegal exercise of authority by another governmental jurisdiction. However, it makes sense to coordinate Commission review and approval actions with other governmental jurisdictions. By the same token, it makes little sense for the Commission to expend staff resources on the review of projects that have been rejected by other governmental jurisdictions and cannot, therefore, be implemented.

Comment: This section should be supported because it allows the Commission to streamline its decision making with other government entities involved in project review.

Response: Agreed. See response to prior comment.

Comment: Should include language acknowledging the importance of economic interests of the applicant, community, region, etc.

Response: See above responses regarding purposes of the regulations.

Section 803.22 Standards for Consumptive Uses of Water

Comment: Eliminating the Q7–10 trigger flow for providing makeup during periods of low flow leaves too much discretion to SRBC and leaves no guidance to project sponsors to determine risk and costs.

Response: The elimination of the Q7–10 trigger flow criterion effectively changes little because few consumptive use projects approved by the Commission are now tied to this criterion. Most project sponsors opt for payment of the consumptive use fee as a means of compliance rather than release storage or shut down during low flow periods. When the Commission does set a low flow criterion, it does so on a case-by-case basis using modern assessment techniques that allow the Commission to more accurately assess the particular needs of the affected stream. The Commission establishes passby flow requirements the same way. In cases involving a consumptive use as well as a withdrawal, the established passby flow serves as the low flow criterion for a project. In the rare event that a flow criterion is set for a particular project, it will be done only after the project sponsor is given the

opportunity at a public hearing to submit information and make relevant arguments regarding the establishment of a flow criterion for its project. The criterion will not be established arbitrarily and without notice and opportunity for response.

Comment: "Sole Discretion" language too open ended and must incorporate reasonableness.

Response: See responses above to allegation that the Commission may act arbitrarily under these proposed regulations.

Comment: Support expressed for the approval by rule procedures as a means of streamlining the approval process.

Response: The Commission agrees.

Comment: Section 803.22 (b)(4) is inconsistent with the other alternatives provided under (b).

Response: Agreed. It has been made a separate item.

Comment: With respect to (b)(1)(ii), an explanation should be included as to why a project may be required to reduce its withdrawal to an amount greater than its consumptive use.

Response: Agreed. The words "or greater than" have been removed.

Comment: Eliminate mitigation requirement.

Response: Mitigation of consumptive use is a fundamental purpose of the consumptive use regulation and an element of the regulation that comes directly from the Commission's comprehensive plan. Eliminating mitigation requirements essentially would ignore the provisions of the comprehensive plan.

Comment: On the approval by rule provision, the Commission should provide for a 30- to 60-day notification instead of 90 days.

Response: The Commission feels that the 90-day notification is appropriate for qualified projects.

Section 803.23 Standards for Water Withdrawals

Comment: SRBC withdrawal regulations relating to the protection of existing users should make clear that inefficient existing sources of water may not necessarily be protected.

Response: The Commission does not wish to imply that it will protect existing users under all circumstances, thus in effect granting a prior appropriation of water, which is prohibited under the compact.

Comment: Section 803.23(b)—Add the word "significant" before the words adverse impacts.

Response: Agreed. This will remove the implication that a *de minimis* adverse impact will form the basis for some limitation or condition.

Comment: Section 803.23(b)(2)—Add "Commission may consider and balance."

Response: As it has always done, the Commission will carefully weigh the necessity of any requirement or limitation that it imposes versus the benefit to be achieved.

Comment: Section 803.23(b), that allows the Commission to deny, limit or condition an approval to insure no adverse impact, incorrectly suggests that lowering of groundwater levels and stream flow levels is an adverse impact. These may be perfectly legitimate occurrences in connection with use of an aquifer.

Response: The Commission has added "significant" before the words "adverse impact" to remove the implication that a *de minimis* adverse impact will form the basis for some limitation or condition.

Comment: In Section 803.23(b), the Commission should not accord protection status to intermittent streams, as such protection would unduly restrict the use and potential of aquifers that can be used as groundwater reservoirs to provide economically important water supplies.

Response: The Commission believes that headwaters must be carefully managed to insure a proper balance of sustainable development, responsible use, and conservation. Intermittent streams are not afforded special protection; however, Commission staff does evaluate for potential adverse impacts. The withdrawal of large quantities of groundwater from small headwater basins can dewater springs and wetlands, and reduce the groundwater contribution (base flow) to headwater streams. This can change the previous intermittent reaches to ephemeral reaches and the uppermost perennial reaches to intermittent reaches. While the loss of perennial stream length is generally a small fraction of the entire stream, it often represents the most pristine portion of the watershed with respect to water quality and habitat.

Comment: The Commission needs to define the term "low flow." The most logical definition is the Q7–10 low flow. To protect stream flows at any higher level would unduly restrict the use and potential of aquifers that can be used as reservoirs for economically important activities.

Response: The Commission sets low flow criteria on a case-by-case basis using modern assessment techniques to accurately assess the particular needs of the affected stream. The Commission will carefully weigh any limitation it imposes versus the benefit to be achieved.

Comment: The Commission should provide its regulatory requirements concerning the establishment of passby standards in Section 803.23. The current practice of setting a passby standard at 20 percent of average daily flow is not a fair, reasonable and appropriate approach to balancing the need to allow a beneficial stream withdrawal with the need to protect the stream ecology.

Response: The Commission has incorporated passby standards in guidelines that it makes available to all applicants. The Commission sets a low flow criterion based on the particular needs of the stream, the best available science, and on a case-by-case basis. Instream needs are assessed using standard methodologies and can always be refined by local studies. Incorporating the standards in guidance enables the Commission to periodically update those standards as new science emerges.

Comment: The Commission should define terms such as "adverse impact, aquatic habitat and water quality degradation."

Response: The latter two items, as used in Section 803.23, are listed only as possible indicators of adverse impacts that the Commission may consider in each individual case or circumstance. It is not necessary or desirable to place specific weight or limiting criteria on factors that are merely indicators of possible adverse impacts. The term "adverse impacts" or "adverse effect" comes directly from the language of Section 3.10 of the Susquehanna River Basin Compact granting authority to the Commission to review and approve projects that may cause an adverse effect.

Comment: In 803.23(b)(3), make it clear that the applicant shall have the right to propose mitigation measures to offset potential adverse impacts of the proposed project.

Response: The Commission encourages a project sponsor to propose mitigation for any potential adverse impacts in its application(s). Further, the Commission carries on an active dialogue with project sponsors during the review process, and the project sponsor is free at that time to propose any reasonable form of mitigation.

Comment: A decision to deny, modify or conditionally approve a withdrawal project should be accompanied by a technical evaluation that is provided to the project sponsor in a timely manner to allow sponsor to rebut the conclusions or revise its application to address concerns raised by the Commission.

Response: As stated above, the Commission carries on an active dialogue with the project sponsor during the review process that allows for an exchange of information on staff conclusions and concerns, and how such concerns may be resolved.

Comment: The Commission should consider a new MOU with DEP Mining to avoid the "double jeopardy" concern.

Response: The proposed Section 803.7 provides for administrative agreements or other cooperative arrangements with agencies of the member jurisdictions. The Commission anticipates that existing agreements will be reconsidered following adoption of the new regulations.

Section 803.24 Standards for Diversions

Comment: This section should be supported or even strengthened to explicitly state that an applicant for a diversion must demonstrate "by clear and convincing evidence" a need for the diversion.

Response: The Commission believes that the language proposed ensures that the project sponsor will be required to adequately demonstrate a need for the diversion without the formal inclusion of an evidentiary standard that may be subject to further construction or interpretation.

Section 803.25 Water Conservation Standards

Comment: AWWA standards should be used for customer meter testing under Section 803.25(a)(2). Is the definition for "flow control device" correct?

Response: The water conservation standards were taken directly from the current regulations. The Commission intends to revisit this section in the future and will evaluate the published standards at that time.

Section 803.30 Monitoring

Comment: The Commission should accept testing and monitoring done in accordance with member state standards when the state has a parallel or equally stringent procedure.

Response: The water conservation standards were taken directly from the current regulations. The Commission intends to revisit this section in the future and will evaluate the published standards at that time.

Comment: The Commission should consider whether PWS source meters should be certified annually, rather than every five years, with a possible exception for agriculture.

Response: The regulations set the minimum standard for all projects. The Commission can specify certification more frequently than once every five (5) years for source meters of public water suppliers if warranted, or as required in other permits.

Comment: In Section 803.30 (b)(2)(ii), a monitoring loss should be reported within five days of such loss, regardless of the length of time the loss continues.

Response: Agreed.

Comment: The Commission should continue to mandate that project sponsors monitor the water quality impacts of their withdrawals to help the Commission fulfill the compact purposes of "stream quality control" and the "abatement of pollution."

Response: The requirement to collect water quality data was burdensome for the project sponsor, burdensome for Commission staff to review and maintain, and it is generally not used by Commission programs because similar data are available from other sources, particularly from its member jurisdictions, each of which administers a comprehensive water quality program. The Commission reserves the right on any given application to require water quality sampling, if water quality is an issue.

Section 803.31 Duration of Approvals and Renewals

Comment: The Commission should not be reducing the duration of approvals from 25 years to 15 years. Many water resources projects involve large investments of money and many years of planning that are not well accommodated by an approval of 15 years. Instead, the Commission should rely on its authority to reopen a docket if there is a potential problem. The Commission should not have deleted the language that appears in the existing regulations allowing the Commission "to modify this duration in consideration of such factors as the time needed to amortize a project investment, the time needed to secure project financing, the potential risks of interference with an existing project, and other equitable factors."

Response: The Commission has found that both projects and the water resources that serve them are subject to many changes over 25 years and, therefore, it is appropriate to review these applications on a more frequent basis. The Commission agrees to reinsert the deleted language allowing the Commission to modify the standard duration, when appropriate, in consideration of the factors enumerated in this comment.

Comment: The time for commencement of a project after approval should take into account that some large projects require longer permitting periods and longer construction times. Opponents sometimes attempt to delay projects using administrative appeals and other devices that can prevent a large project from commencement.

Response: The Commission agrees that there may be circumstances in which a longer time frame is needed for undertaking a project. The Commission is inserting language that will allow adjustments to this time limit on a case-by-case basis.

Comment: The submission of an application one year in advance for the renewal of an approval is too long and unneeded.

Response: The time was set to afford both the project sponsor and Commission staff sufficient time to evaluate changes to the project and changes to the resource, and is reasonable considering current review times. Having said that, the Commission is nonetheless willing to modify the period to six (6) months. As modified, a project sponsor who submits a complete application six (6) months in advance, is given the benefit of having an existing approval automatically extended until such time as the Commission renders a decision on the new application. This eliminates the risk of having an approval expire before the Commission has an opportunity to act.

Comment: In (a), the reduction of the duration of approvals to 15 years is appropriate. In fact, 10 years would be more appropriate.

Response: The Commission agrees that the reduction of the term to 15 years is appropriate so that commitment of water to a particular use can be reviewed more frequently and any changes in conditions can be addressed sooner.

Comment: In (c), there should be a notification to the state agency with jurisdiction over the project, at the time a waiver is applied for.

Response: The Commission routinely coordinates with member jurisdictions on such project-related matters.

Comment: How will the Commission fund the increased workload resulting from shorter duration periods?

Response: The Commission has no special plans for funding any increase in workload resulting from a shorter approval term. The member jurisdictions who approve the Commission's budget will need to consider any such increased workload associated with the completion of the Commission's responsibilities under the compact.

Comment: With respect to paragraph (d), abandonment should have to be proven by the Commission and not inferred. Notice should be provided to the project sponsor.

Response: Under general legal principles, any inference of abandonment acted upon by the Commission will have to be supported by substantial evidence and appropriate notice and opportunity to be heard. There is no need for the wording suggested by this comment.

Comment: Application fees should be adjusted downward to account for shorter durations.

Response: The main purpose of shortening the term of approvals is not to realize more revenues from project review fees. In fact, these fees cover no more that half the cost of conducting a review. Project reviews conducted on a more frequent basis will actually involve increased costs that will more than offset any increased revenues from application fees.

Section 803.32 Reopening/ Modification

Comment: In (a), the word "significant" should be substituted for the word "substantial" before the words "adverse impact."

Response: Agreed.

Comment: In (c), the Commission should retain the discretion to require a project sponsor to provide a temporary source of potable water at the project sponsor's expense, if interference should occur during a pumping test of a source under development.

Response: Agreed.

Comment: The language of 803.32(b) is too strong in that it does not spell out how to remedy situations where a project sponsor fails to comply with a term or condition of its docket approval.

Response: The remedy will be worked out administratively between the Commission and the project sponsor without providing for a specific remedy in the regulation.

Section 803.33 Interest on Fees

Comment: Rate should be established and equally imposed.

Response: Interest rates change as they are affected by market forces and therefore should not be set permanently by regulation. Whatever rate is established will be uniformly imposed.

Section 803.34 Emergencies

Comment: In (b), at the end of the paragraph, delete the word "information" before the colon. Also, in (b)(2), delete the word "information" following the word "application."

Response: Agreed.

Comment: In (b)(1), replace "an emergency" with "a completed emergency" before the words "application form."

Response: Agreed.

Comment: In (b)(2)(x), because of the immediate inclusion of an application fee may delay submittal of an emergency application, provision should be made in the regulation for reduction, waiver, or later submittal of an "appropriate" fee.

Response: Agreed; however, this is a change that can be made in the SRBC Project Fee Schedule, rather than these regulations.

Comments by Section, Part 804

Section 804.2 Time Limits

Comment: Registration language strongly supported.

Response: Agreed.

Section 804.3 Administrative Agreements

Comment: Add the following: "In conjunction with such agreements or arrangements, the Commission will require submission of all necessary registration forms to the member jurisdiction as part of a complete application for renewal of an existing project or new or expanded agricultural project or as a condition of approval of any other new or expanded project."

Response: Although not using this suggested language, the Commission has revised this section and renamed it "Administrative coordination" to address this comment.

Comments by Section, Part 805

Section 805.1 Public Hearings

Comment: Participants to a hearing should be limited to interested parties.

Response: Who is able to participate in a hearing will depend on the circumstances and will be controlled by a decision of the presiding officer.

Comment: Notice of hearings should continue to be posted at Commission offices.

Response: Agreed.

Comment: Why does the Commission need three days notice?

Response: This is not mandated by the regulation but is more in the form of a request to participants. Three days allows the Commission to assemble a list of participants and establish an order of call for those wishing to provide testimony.

Section 805.2 Administrative Appeals

Comment: Administrative hearings should be held in the state where the project or controversy is located. Also, the Commission should appoint an "impartial" hearing officer who shall not be a member of the Commission or an officer of the Commission. The Commission should absorb all hearing costs.

Response: Wherever practicable, the Commission will conduct such hearings in the general vicinity where the project or controversy is located. The Commission will also take steps to insure the impartiality of the hearing officer. Such steps do not require, however, that the Commission automatically disqualify members of the Commission or officers of the Commission. Hearing officers only make findings of fact and law that serve as recommendations to the Commission. The ultimate decision in any matter rests with the Commission. With respect to costs, they should be distributed equitably and not assigned automatically to any single party. The Commission has included an in *forma pauperis* procedure in Section 805.3 for parties who genuinely cannot pay hearing costs and have acted in good faith.

Comment: Parties should have at least 60 days to file an administrative appeal, rather than the 30 days given in proposed Section 805.2. Sometimes there is delay in a party learning of a Commission decision, effectively reducing the time for appeals.

Response: The Commission feels that thirty (30) days strikes the appropriate balance for having its action open for appeal.

Section 805.3 Hearing on Administrative Appeal

Comment: Cost of expert consultants should be paid by the Commission.

Response: Again, the presiding officer should be able to weigh the equities of assigning costs for a hearing without being bound by a specific rule, some of which may be assigned to the Commission.

Section 805.10 Scope of Subpart

Comment: Regulated entities should be legally obligated to meet the terms and conditions for their approvals and SRBC must have the authority to ensure that they do.

Response: The Commission strongly agrees and that is why the compliance and enforcement provisions of these regulations have been strengthened.

Section 805.12 Investigative Powers

Comment: The Commission does not have authority from the compact to provide for warrantless searches.

Response: Agreed. This provision will be stricken. The Commission will acquire an administrative search

warrant whenever it is legally required to do so.

Comment: Strongly supported as necessary for the Commission to effectively enforce its regulations.

Response: The Commission strongly agrees.

Section 805.14 Orders

Comment: The Commission does not have authority from the compact to issue orders.

Response: As noted in the Commission's response to the general comments, the Commission strongly disagrees with this contention. The Susquehanna River Basin Compact, P.L. 91–575 provides broad and sweeping powers to the Commission to carry out its purposes, including under Section 3.4 the power to have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied therefrom. Also, that same section empowers the Commission to adopt, amend, and repeal rules and regulations to implement the compact.

Comment: Strongly supported as necessary for the Commission to effectively enforce its regulations.

Response: The Commission strongly agrees.

Final Rule

List of Subjects in 18 CFR Parts 803, 804, 805, 806, 807 and 808

Administrative practice and procedure, Water resources.

■ Accordingly, for the reasons set forth in the preamble, under the authority of secs. 3.4, 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*, Chapter VIII of the Code of Federal Regulations is amended as follows:

PARTS 803, 804, AND 805—[REMOVED AND RESERVED]

■ 1. Parts 803, 804, and 805 are removed and reserved.

■ 2. Part 806 is added to read as follows.

PART 806—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Authority: Secs. 3.4, 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91–575, 84 Stat. 1509, *et seq.*

Subpart A—General Provisions

§ 806.1 Scope.

(a) This part establishes the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91–575, 84 Stat. 1509 *et seq.*, (the compact) and establishes special standards under Section 3.4(2) of the compact governing water withdrawals and the consumptive use of water. The special standards established pursuant to Section 3.4(2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under Section 3.10. This part, and every other part of 18 CFR Chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

(b) When projects subject to Commission review and approval are sponsored by governmental authorities, the Commission shall submit recommendations and findings to the sponsoring agency, which shall be included in any report submitted by such agency to its respective legislative body or to any committee thereof in connection with any request for authorization or appropriation therefor. The Commission review will ascertain the project's compatibility with the objectives, goals, guidelines and criteria set forth in the comprehensive plan. If determined compatible, the said project will also be incorporated into the comprehensive plan, if so required by the compact. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the member jurisdictions, no expenditure or commitment shall be made by any governmental authority for or on account of the construction, acquisition or operation of any project or facility unless it first has been included by the Commission in the comprehensive plan.

(c) If any portion of this part, or any other part of 18 CFR Chapter VIII, shall, for any reason, be declared invalid by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

(d) Except as otherwise stated in this part, this part shall be effective on January 1, 2007.

(e) When any period of time is referred to in this part, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the law of the United States, such day shall be omitted from the computation.

(f) Any Commission forms or documents referenced in this part may be obtained from the Commission at 1721 North Front Street, Harrisburg, PA 17102–2391, or from the Commission's Web site at *http://www.srbc.net.*

§ 806.2 Purposes.

(a) The general purposes of this part are to advance the purposes of the compact and include, but are not limited to:

(1) The promotion of interstate comity;

(2) The conservation, utilization, development, management and control of water resources under comprehensive, multiple purpose planning; and

(3) The direction, supervision and coordination of water resources efforts and programs of federal, state and local governments and of private enterprise.

(b) In addition, §§ 806.22, 806.23 and 806.24 of this part contain the following specific purposes: Protection of public health, safety and welfare; stream quality control; economic development; protection of fisheries and aquatic habitat; recreation; dilution and abatement of pollution; the regulation of flows and supplies of ground and surface waters; the avoidance of conflicts among water users; the prevention of undue salinity; and protection of the Chesapeake Bay.

(c) The objective of all interpretation and construction of this part and all

subsequent parts is to ascertain and effectuate the purposes and the intention of the Commission set out in this section. These regulations shall not be construed in such a way as to limit the authority of the Commission, the enforcement actions it may take, or the remedies it may prescribe.

§ 806.3 Definitions.

For purposes of parts 806, 807 and 808, unless the context indicates otherwise, the words listed in this section are defined as follows:

Agricultural water use. A water use associated primarily with the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock and poultry. The term shall include aquaculture.

Application. A written request for action by the Commission including without limitation thereto a letter, referral by any agency of a member jurisdiction, or an official form prescribed by the Commission.

Basin. The area of drainage of the Susquehanna River and its tributaries into the Chesapeake Bay to the southern edge of the Pennsylvania Railroad bridge between Havre de Grace and Perryville, Maryland.

Change of Ownership. A change in ownership shall mean any transfer by sale or conveyance of the real or personal property comprising a project.

Commission. The Susquehanna River Basin Commission, as established in Article 2 of the compact, including its commissioners, officers, employees, or duly appointed agents or representatives.

Commissioner. Member or Alternate Member of the Susquehanna River Basin Commission as prescribed by Article 2 of the compact.

Compact. The Susquehanna River Basin Compact, Pub. L. 91–575; 84 Stat. 1509 *et seq.*

Comprehensive plan. The comprehensive plan prepared and adopted by the Commission pursuant to Articles 3 and 14 of the compact.

Construction. To physically initiate assemblage, installation, erection or fabrication of any facility involving or intended for the withdrawal, conveyance, storage or consumptive use of waters of the basin.

Consumptive use. The loss of water transferred through a manmade conveyance system or any integral part thereof (including such water that is purveyed through a public water supply or wastewater system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, injection of water or wastewater into a subsurface formation from which it would not reasonably be available for future use in the basin, diversion from the basin, or any other process by which the water is not returned to the waters of the basin undiminished in quantity.

Diversion. The transfer of water into or out of the basin.

Executive Director. The chief executive officer of the Commission appointed pursuant to Article 15, Section 15.5, of the compact.

Facility. Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

Governmental authority. A federal or state government, or any political subdivision, public corporation, public authority, special purpose district, or agency thereof.

Groundwater. Water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels or percolating through underground geologic formations, and regardless of whether the result of natural or artificial recharge. The term includes water contained in quarries, pits and underground mines having no significant surface water inflow, aquifers, underground water courses and other bodies of water below the surface of the earth. The term also includes a spring in which the water level is sufficiently lowered by pumping or other means of drainage to eliminate the surface flow. All other springs are considered to be surface water.

Member jurisdiction. The signatory parties as defined in the compact, comprised of the States of Maryland and New York, the Commonwealth of Pennsylvania, and the United States of America.

Member state. The States of Maryland and New York, and the Commonwealth of Pennsylvania.

Person. An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural. The term shall include a governmental authority and any other entity which is recognized by law as the subject of rights and obligations.

Pre-compact consumptive use. The maximum average daily quantity or volume of water consumptively used over any consecutive 30-day period prior to January 23, 1971.

Project. Any work, service, activity, or facility undertaken which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

Project sponsor. Any person who owns, operates or proposes to undertake a project. The singular shall include the plural.

Public water supply. A system, including facilities for collection, treatment, storage and distribution, that provides water to the public for human consumption, that:

(1) Serves at least 15 service connections used by year-round residents of the area served by the system; or

(2) Regularly serves at least 25 year-round residents.

Surface water. Water on the surface of the ground, including water in a perennial or intermittent watercourse, lake, reservoir, pond, spring, wetland, estuary, swamp or marsh, or diffused surface water, whether such body of water is natural or artificial.

Undertake. Except for activities related to site evaluation, the initiation of construction or operation of a new or expanded project, or the operation of an existing project, that is subject to Commission review and approval.

Water or waters of the basin. Groundwater or surface water, or both, within the basin either before or after withdrawal.

Water resources. Includes all waters and related natural resources within the basin.

Withdrawal. A taking or removal of water from any source within the basin for use within the basin.

§ 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation or those authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

(1) Consumptive use of water. Any consumptive water use project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.22, and, to the extent that it involves a withdrawal from groundwater or surface water, shall also be subject to the standards set forth in § 806.23. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section.

(i) Any project initiated on or after January 23, 1971, involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(ii) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(iii) With respect to projects that existed prior to January 23, 1971, any project that increases its consumptive use by an average of 20,000 gpd or more in any consecutive 30-day period above its pre-compact consumptive use.

(iv) Any project, regardless of when initiated, involving a consumptive use of an average of 20,000 gpd or more in any 30-day period, and undergoing a change of ownership, unless such project satisfies the requirements of paragraphs (b) or (c) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(2) Withdrawals. Any project described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or 18 CFR part 801.

(i) Any project initiated on or after the applicable dates specified in paragraph (a)(2)(iv) below, withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water source, or a combination of such sources.

(ii) With respect to projects previously approved by the Commission, any project that increases a withdrawal above that amount which was previously approved and any project that will add a source or increase withdrawals from an existing source which did not require approval prior to January 1, 2007.

(iii) Any project which involves a withdrawal from a groundwater or surface water source and which is subject to the requirements of paragraph (a) of this section regarding consumptive use.

(iv) With respect to groundwater projects in existence prior to July 13, 1978, and surface water projects in existence prior to November 11, 1995, any project that will increase its withdrawal from any source or combination of sources, by a consecutive 30-day average of 100,000 gpd or more, above that maximum consecutive 30-day amount which the project was withdrawing prior to the said applicable date.

(v) Any project, regardless of when initiated, involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more, from either groundwater or surface water sources, or in combination from both, and undergoing a change of ownership, unless such project satisfies the requirements of paragraphs (b) or (c) of this section or the existing Commission approval for such project is transferred pursuant to § 806.6.

(3) Diversions. The projects described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals.

(i) Any project initiated on or after January 23, 1971, involving the diversion of water into the basin, or involving a diversion of water out of the basin of an average of 20,000 gallons of water per day or more in any consecutive 30-day period.

(ii) With respect to diversions previously approved by the Commission, any project that will increase a diversion above the amount previously approved.

(iii) With respect to diversions initiated prior to January 23, 1971, any project that will increase a diversion into the basin by any amount, or increase the diversion of water out of the basin by an average of 20,000 gpd or more in any consecutive 30-day period.

(iv) Any project, regardless of when initiated, involving the diversion of water into the basin or involving a diversion of an average of 20,000 gallons of water per day or more in any consecutive 30-day period out of the basin, and undergoing a change of ownership, unless such project satisfies the requirements of paragraphs (b) or (c) of this section or the Commission approval for such project is transferred pursuant to § 806.6.

(4) Any project on or crossing the boundary between two member states.

(5) Any project in a member state having a significant effect on water resources in another member state.

(6) Any project which has been or is required to be included by the Commission in its comprehensive plan, or will have a significant effect upon the comprehensive plan.

(7) Any other project so determined by the commissioners or Executive Director pursuant to § 806.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

(b) Any project that did not require Commission approval prior to January 1, 2007, and undergoing a change of ownership, shall be exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v) or (a)(3)(iv) of this section if it satisfies any of the following categories:

(1) A corporate reorganization of the following types:

(i) Where property is transferred to a corporation by one or more corporations solely in exchange for stock or securities of the transferee corporation, provided that immediately after the exchange the transferor corporation(s) own 80 percent of the voting stock and 80 percent of all other stock of the transferee corporation.

(ii) Where the corporate reorganization is merely a result of a change of the name, identity, internal corporate structure or place of organization and does not affect ownership or control.

(2) Transfer of a project to the transferor's spouse or one or more lineal descendents, or any spouse of such lineal descendents, or to a corporation owned or controlled by the transferor, or

the transferor's spouse or lineal descendents, or any spouse of such lineal descendents, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendent(s) and their spouses, continues to be 51 percent or greater.

(3) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock, or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

(c) Any project that did not require Commission approval prior to January 1, 2007, and not otherwise exempt from the requirements of paragraph (a)(1)(iv), (a)(2)(v) or (a)(3)(iv) pursuant to paragraph (b) of this section, may be undertaken by a new project sponsor upon a change of ownership pending action by the Commission on an application submitted by such project sponsor requesting review and approval of the project, provided such application is submitted to the Commission in accordance with this part on or before the date change of ownership occurs and the project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project do not change pending review of the application. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the quantity withdrawn, diverted or consumptively used prior to the change of ownership.

§ 806.5 Projects that may require review and approval.

(a) The following projects, if not otherwise requiring review and approval under § 806.4, and provided that the project sponsor is notified in writing by the Executive Director, may be subject to Commission review and approval as determined by the Commission or the Executive Director:

(1) Projects that may affect interstate water quality.

(2) Projects within a member state that have the potential to affect waters within another member state. This includes, but is not limited to, projects which have the potential to alter the physical, biological, chemical or hydrological characteristics of water resources of interstate streams designated by the Commission under separate resolution.

(3) Projects that may have a significant effect upon the comprehensive plan.

(4) Projects not included in paragraphs (a)(1) through (a)(3) of this section, but which could have an adverse, adverse cumulative, or interstate effect on the water resources of the basin.

(b) Determinations by the Executive Director may be appealed to the Commission within 30 days after receipt of notice of such determination as set forth in § 808.2.

§ 806.6 Transfer of approvals.

(a) An existing Commission project approval may be transferred, or conditionally transferred, without prior Commission review and approval, to a new project sponsor upon a change of ownership of the project, subject to the provisions of paragraphs (b), (c) and (d) below, provided the new project sponsor notifies the Commission in advance of the date of the change of ownership, which notice shall be on a form and in a manner prescribed by the Commission and under which the new project sponsor certifies its intention to comply with all terms and conditions of the transferred approval and assume all other associated obligations.

(b) An existing Commission project approval for any of the following categories of projects may be transferred, without Commission review or approval, upon a change of ownership and the new project sponsor may operate such project under the terms and conditions of the transferred approval:

(1) A project undergoing a change of ownership as a result of a corporate reorganization of the following types:

(i) Where property is transferred to a corporation by one or more corporations solely in exchange for stock or securities of the transferee corporation, provided that immediately after the exchange the transferor corporation(s) own 80 percent of the voting stock and 80 percent of all other stock of the transferee corporation.

(ii) Where the corporation reorganization is merely a result of a change of the name, identity, internal corporate structure or place of organization and does not affect ownership or control.

(2) A project being transferred to the transferor's spouse or one or more lineal descendents, or any spouse of such lineal descendents, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendents, or any spouse of such lineal descendents, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendent(s) and their spouses, continues to be 51 percent or greater.

(3) A project involving the transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock or poultry, or for aquaculture, to the extent that, and for so long as, the project's water use continues to be for such agricultural water use purposes.

(4) A project that satisfies all of the following conditions:

(i) The existing Commission approval is less than ten (10) years old.

(ii) The project has no associated pre-compact consumptive water use.

(iii) The project has no associated diversion that was initiated prior to January 23, 1971.

(iv) The project has no associated groundwater withdrawal that was initiated prior to July 13, 1978, unless such withdrawal has otherwise been approved by the Commission.

(v) The project has no associated surface water withdrawal that was initiated prior to November 11, 1995, unless such withdrawal has otherwise been approved by the Commission.

(vi) The project is not the subject of a pending compliance or enforcement matter before the Commission.

(vii) The project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or use associated with the project, as identified in the existing Commission approval, have not changed or will not change upon its transfer. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the approved quantity. If the project involves both a consumptive water use and an associated withdrawal, then the withdrawal must have been approved by the Commission.

(c) An existing Commission approval of a project that satisfies the following conditions may be conditionally transferred and the project sponsor may operate such project under the terms and conditions of the conditionally transferred approval, pending action by the Commission on the application submitted in accordance with paragraph (c)(3) below:

(1) The project satisfies all of the following conditions:

(i) The existing approval is less than ten (10) years old.

(ii) The project is not the subject of a pending compliance or enforcement matter before the Commission.

(iii) The project features related to the source, withdrawal, diversion or

consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project, as identified in the existing Commission approval, have not changed or will not change upon its transfer. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the approved quantity.

(2) The project satisfies one or more of the following conditions:

(i) The project has an associated pre-compact consumptive water use.

(ii) The project has an associated diversion that was initiated prior to January 23, 1971.

(iii) The project has an associated groundwater withdrawal that was initiated prior to July 13, 1978 and that has not been approved by the Commission.

(iv) The project has an associated surface water withdrawal that was initiated prior to November 11, 1995 and that has not been approved by the Commission. The project has a consumptive water use approval and has an associated withdrawal that has not been approved by the Commission.

(3) The project sponsor submits an application to the Commission, in accordance with this part, within ninety (90) days from the date of the change of ownership, requesting review and approval of the applicable consumptive use, diversion or withdrawals, identified in paragraph (c)(2) above, as a modification to the conditionally transferred approval.

(d) An existing Commission project approval for any project not satisfying the requirements of paragraphs (b) or (c) above may be conditionally transferred and the project sponsor may operate such project under the terms and conditions of the conditionally transferred approval, pending action by the Commission on an application the project sponsor shall submit to the Commission, provided that:

(1) The new project sponsor submits an application to the Commission, in accordance with this part, within ninety (90) days from the date of the change of ownership, requesting review and approval of the project; and

(2) The project features related to the source, withdrawal, diversion or consumptive use of water, or the nature or quantity of water withdrawal, diversion or consumptive use associated with the project do not change pending review of the application. For purposes of this paragraph, changes in the quantity of water withdrawal, diversion or consumptive use shall only relate to increases in quantity in excess of the quantity withdrawn, diverted or consumptively used prior to the change of ownership.

§ 806.7 Concurrent project review by member jurisdictions.

(a) The Commission recognizes that agencies of the member jurisdictions will exercise their review authority and evaluate many proposed projects in the basin. The Commission will adopt procedures to assure compatibility between jurisdictional review and Commission review.

(b) To avoid duplication of work and to cooperate with other government agencies, the Commission may develop administrative agreements or other cooperative arrangements, in accordance with the procedures outlined in this part, with appropriate agencies of the member jurisdictions regarding joint review of projects. These agreements or arrangements may provide for joint efforts by staff, delegation of authority by an agency or the Commission, or any other matter to support cooperative review activities. Permits issued by a member jurisdiction agency shall be considered Commission approved if issued pursuant to an administrative agreement or other cooperative arrangement with the Commission specifically providing therefor.

§ 806.8 Waiver/modification.

The Commission may, in its discretion, waive or modify any of the requirements of this or any other part of its regulations if the essential purposes set forth in § 806.2 continue to be served.

Subpart B—Application Procedure

§ 806.10 Purpose of this subpart.

The purpose of this subpart is to set forth procedures governing applications required by §§ 806.4, 806.5, 806.6 and 18 CFR part 801.

§ 806.11 Preliminary consultations.

(a) Any project sponsor of a project that is or may be subject to the Commission's jurisdiction is encouraged, prior to making application for Commission review, to request a preliminary consultation with the Commission staff for an informal discussion of preliminary plans for the proposed project. To facilitate preliminary consultations, it is suggested that the project sponsor provide a general description of the proposed project, a map showing its location and, to the extent available, data concerning dimensions of any proposed structures, anticipated water needs, and the environmental impacts.

(b) Preliminary consultation is optional for the project sponsor (except with respect to aquifer test plans, see § 806.12 but shall not relieve the sponsor from complying with the requirements of the compact or with this part.

§ 806.12 Constant-rate aquifer testing.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval to withdraw or increase a withdrawal of groundwater shall perform a constant-rate aquifer test in accordance with this section.

(b) The project sponsor shall prepare a constant-rate aquifer test plan for prior review and approval by Commission staff before testing is undertaken. Such plan shall include a groundwater availability analysis to determine the availability of water during a 1-in-10-year recurrence interval.

(c) Unless otherwise specified, approval of a test plan is valid for two years from the date of approval.

(d) Approval of a test plan shall not be construed to limit the authority of the Commission to require additional testing or monitoring.

(e) The project sponsor may be required, at its expense, to provide temporary water supply if an aquifer test results in interference with an existing water use.

§ 806.13 Submission of application.

Project sponsors of projects subject to the review and approval of the Commission under § 806.4, 806.5 or 806.6 shall submit an application and applicable fee to the Commission, in accordance with this Subpart.

§ 806.14 Contents of application.

(a) Applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of project and site in terms of:

(i) Project location, including global positioning system (gps) coordinates accurate to within 10 meters.

(ii) Project purpose.

(iii) Proposed quantity of water to be withdrawn.

(iv) Proposed quantity of water to be consumed, if applicable.

(v) Constant-rate aquifer tests. The project sponsor shall provide the results of a constant-rate aquifer test with any application which includes a request for a groundwater withdrawal. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(vi) Water use and availability.

(vii) All water sources and the date of initiation of each source.

(viii) Supporting studies, reports, and other information upon which assumptions and assertions have been based.

(ix) Plans for avoiding or mitigating for consumptive use.

(x) Copies of any correspondence with member jurisdiction agencies.

(xi) Evidence of compliance with applicable water registration requirements of the member jurisdiction in which the project is located.

(3) Anticipated impact of the proposed project on:

(i) Surface water characteristics (quality, quantity, flow regimen, other hydrologic characteristics).

(ii) Threatened or endangered species and their habitats.

(iii) Existing water withdrawals.

(4) Project estimated completion date and estimated construction schedule.

(b) The Commission may also require the project sponsor to submit the following information related to the project, in addition to the information required in paragraph (a) of this section, as deemed necessary.

(1) Description of project and site in terms of:

(i) Engineering feasibility.

(ii) Ability of project sponsor to fund the project or action.

(iii) Identification and description of reasonable alternatives, the extent of their economic and technical investigation, and an assessment of their potential environmental impact. In the case of a proposed diversion, the project sponsor should include information that may be required by § 806.25 or any policy of the Commission relating to diversions.

(iv) Compatibility of proposed project with existing and anticipated uses.

(v) Anticipated impact of the proposed project on:

(A) Flood damage potential considering the location of the project with respect to the flood plain and flood hazard zones.

(B) Recreation potential.

(C) Fish and wildlife (habitat quality, kind and number of species).

(D) Natural environment uses (scenic vistas, natural and manmade travel corridors, wild and wilderness areas, wild, scenic and recreation rivers).

(E) Site development considerations (geology, topography, soil characteristics, adjoining and nearby land uses, adequacy of site facilities).

(F) Historical, cultural and archaeological impacts.

(2) Governmental considerations:

(i) Need for governmental services or finances.

(ii) Commitment of government to provide services or finances.

(iii) Status of application with other governmental regulatory bodies.

(3) Any other information deemed necessary by the Commission.

(c) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

§ 806.15 Notice of application.

(a) The project sponsor shall, no later than 10 days after submission of an application to the Commission, notify each municipality in which the project is located, the county planning agency of each county in which the project is located, and each contiguous property owner that an application has been submitted to the Commission. The project sponsor shall also publish at least once in a newspaper of general circulation serving the area in which the project is located, a notice of the submission of the application no later than 10 days after the date of submission. All notices required under this section shall contain a description of the project, its purpose, requested water withdrawal and consumptive use amounts, location and address, electronic mail address, and phone number of the Commission.

(b) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the municipal notification under (a) and a proof of publication for the newspaper notice required under (a). The project sponsor shall also provide certification on a form provided by the Commission that it has made such other notifications as required under paragraph (a) of this section, including a list of contiguous property owners notified under paragraph (a). Until these items are provided to the Commission, processing of the application will not proceed.

§ 806.16 Completeness of application.

(a) The Commission's staff shall review the application, and if necessary, request the project sponsor to provide any additional information that is deemed pertinent for proper evaluation of the project.

(b) An application deemed administratively incomplete will be returned to the project sponsor, who shall have 30 days to cure the administrative deficiencies. An application deemed technically deficient may be returned to the project sponsor, who shall have a period of time prescribed by Commission staff to cure the technical deficiencies. Failure to cure either administrative or technical deficiencies within the prescribed time may result in termination of the application process and forfeiture of any fees submitted.

(c) The project sponsor has a duty to provide information reasonably necessary for the Commission's review of the application. If the project sponsor fails to respond to the Commission's request for additional information, the Commission may terminate the application process, close the file and so notify the project sponsor. The project sponsor may reapply without prejudice by submitting a new application and fee.

Subpart C—Standards for Review and Approval

§ 806.20 Purpose of this subpart.

The purpose of this subpart is to set forth general standards that shall be used by the Commission to evaluate all projects subject to review and approval by the Commission pursuant to §§ 806.4, 806.5 and 806.6, and to establish special standards applicable to certain water withdrawals, consumptive uses and diversions. This subpart shall not be construed to limit the Commission's authority and scope of review. These standards are authorized under Sections 3.4(2), 3.4(8), 3.4(9), and 3.10 of the compact and are based upon, but not limited to, the goals, objectives, guidelines and criteria of the comprehensive plan.

§ 806.21 General standards.

(a) A project shall not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

(b) The Commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

(c) Disapprovals—other governmental jurisdictions.

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated docket by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

(2) The Commission may modify, suspend or revoke a previously granted approval if the project sponsor fails to obtain or maintain the approval of a member jurisdiction or political subdivision thereof having lawful jurisdiction over the project.

§ 806.22 Standards for consumptive uses of water.

(a) The project sponsors of all consumptive water uses subject to review and approval under § 806.4, 806.5 or 806.6 of this part shall comply with this section.

(b) Mitigation. All project sponsors whose consumptive use of water is subject to review and approval under § 806.4, 806.5 or 806.6 of this part shall mitigate such consumptive use. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Mitigation may be provided by one, or a combination of the following:

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to the project's total consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 90 days without impact to surface water flows.

(ii) Release water for flow augmentation, in an amount equal to the project's total consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 90 days without impact to surface water flows.

(iii) Discontinue the project's consumptive use, except that reduction of project sponsor's consumptive use to less than 20,000 gpd during periods of low flow shall not constitute discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such project shall provide mitigation in accordance with paragraph (3), below, for the calendar year in which such failure occurs, and the Commission will reevaluate the continued acceptability of the conservation release.

(3) Provide monetary payment to the Commission, for annual consumptive use, in an amount and manner prescribed by the Commission.

(4) Implement other alternatives approved by the Commission.

(c) Determination of manner of mitigation. The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in § 806.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) Quality of water released for mitigation. The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in § 806.2, as applicable.

(e) Approval by rule for consumptive uses.

(1) Any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved under this paragraph (e) in accordance with the following, unless the Commission determines that the project cannot be adequately regulated under this approval by rule:

(i) Notification of Intent: No fewer than 90 days prior to construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall:

(A) Submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application fee, along with any required attachments.

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located.

(ii) Within 10 days after submittal of an NOI under (i), the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this permit by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(2) Metering, daily use monitoring and quarterly reporting. The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30.

(3) Standard conditions. The standard conditions set forth in § 806.21 above shall apply to projects approved by rule.

(4) Mitigation. The project sponsor shall comply with mitigation in accordance with § 806.22 (b)(2) or (b)(3).

(5) Compliance with other laws. The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(6) The Commission will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(7) Approval by rule shall be effective upon written notification from the Commission to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

§ 806.23 Standards for water withdrawals.

(a) The project sponsors of all withdrawals subject to review and approval under §§ 806.4, 806.5 or 806.6

of this part shall comply with the following standards, in addition to those required pursuant to § 806.21.

(b) Limitations on withdrawals.

(1) The Commission may limit withdrawals to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor.

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause significant adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; rendering competing supplies unreliable; affecting other water uses; causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; or affecting low flow of perennial or intermittent streams.

(3) The Commission may impose limitations or conditions to mitigate impacts, including without limitation:

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown.

(ii) Require the project sponsor to provide, at its own expense, an alternate water supply or other mitigating measures.

(iii) Require the project sponsor to implement and properly maintain special monitoring measures.

(iv) Require the project sponsor to implement and properly maintain stream flow protection measures.

(v) Require the project sponsor to develop and implement an operations plan acceptable to the Commission.

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, and support existing and proposed future withdrawals.

§ 806.24 Standards for diversions.

(a) The project sponsors of all diversions subject to review and approval under §§ 806.4, 806.5 or 806.6 of this part shall comply with the following standards.

(b) For projects involving out-of-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Demonstrate that they have made good faith efforts to develop and conserve sources of water within the importing basin, and have considered other reasonable alternatives to the diversion.

(ii) Comply with the general standards set forth in §§ 801.3, 806.21, and 806.22, and the applicable requirements of this part relating to consumptive uses and withdrawals.

(2) In deciding whether to approve a proposed diversion out of the basin, the Commission shall also consider and the project sponsor shall provide information related to the following factors:

(i) Any adverse effects and cumulative adverse effects the project may have on the ability of the Susquehanna River Basin, or any portion thereof, to meet its own present and future water needs.

(ii) The location, amount, timing, purpose and duration of the proposed diversion and how the project will individually and cumulatively affect the flow of any impacted stream or river, and the freshwater inflow of the Chesapeake Bay, including the extent to which any diverted water is being returned to the basin or the bay.

(iii) Whether there is a reasonably foreseeable need for the quantity of water requested by the project sponsor and how that need is measured against reasonably foreseeable needs in the Susquehanna River Basin.

(iv) The amount and location of water being diverted to the Susquehanna River Basin from the importing basin.

(v) The proximity of the project to the Susquehanna River Basin.

(vi) The project sponsor's pre-compact member jurisdiction approvals to withdraw or divert the waters of the basin.

(vii) Historic reliance on sources within the Susquehanna River Basin.

(3) In deciding whether to approve a proposed diversion out of the basin, the Commission may also consider, but is not limited to, the factors set forth in paragraphs (i) through (v) of this paragraph (b)(3). The decision whether to consider the factors in this paragraph (b) and the amount of information required for such consideration, if undertaken, will depend upon the potential for the proposed diversion to have an adverse impact on the ability of the Susquehanna River Basin, or any portion thereof, to meet its own present and future needs.

(i) The impact of the diversion on economic development within the Susquehanna River Basin, the member states or the United States of America.

(ii) The cost and reliability of the diversion versus other alternatives, including certain external costs, such as impacts on the environment or water resources.

(iii) Any policy of the member jurisdictions relating to water resources, growth and development.

(iv) How the project will individually and cumulatively affect other environmental, social and recreational values.

(v) Any land use and natural resource planning being carried out in the importing basin.

(c) For projects involving into-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Provide information on the source, amount, and location of the water being diverted to the Susquehanna River Basin from the importing basin.

(ii) Provide information on the water quality classification, if any, of the Susquehanna River Basin stream to which diverted water is being discharged and the discharge location or locations.

(iii) Demonstrate that they have applied for or received all applicable withdrawal or discharge permits or approvals related to the diversion, and demonstrate that the diversion will not result in water quality degradation that may be injurious to any existing or potential ground or surface water use.

§ 806.25 Water conservation standards.

Any project sponsor whose project is subject to Commission approval under this part proposing to withdraw water either directly or indirectly (through another user) from groundwater or surface water sources, or both, shall comply with the following requirements:

(a) Public water supply. As circumstances warrant, a project sponsor of a public water supply shall:

(1) Reduce distribution system losses to a level not exceeding 20 percent of the gross withdrawal.

(2) Install meters for all users.

(3) Establish a program of water conservation that will:

(i) Require installation of water conservation devices, as applicable, by all classes of users.

(ii) Prepare and distribute literature to customers describing available water conservation techniques.

(iii) Implement a water pricing structure which encourages conservation.

(iv) Encourage water reuse.

(b) Industrial. Project sponsors who use water for industrial purposes shall:

(1) Designate a company representative to manage plant water use.

(2) Install meters or other suitable devices or utilize acceptable flow measuring methods for accurate determination of water use by various parts of the company operation.

(3) Install flow control devices which match the needs of the equipment being used for production.

(4) Evaluate and utilize applicable recirculation and reuse practices.

(c) Irrigation. Project sponsors who use water for irrigation purposes shall utilize irrigation systems properly designed for the sponsor's respective soil characteristics, topography and vegetation.

(d) Effective date. Notwithstanding the effective date for other portions of this part, this section shall apply to all groundwater and surface water withdrawals initiated on or after January 11, 1979.

Subpart D—Terms and Conditions of Approval

§ 806.30 Monitoring.

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, be accurate to within 5 percent, and shall be subject to inspection by the Commission at any time.

(a) Project sponsors of projects that are approved under this part shall:

(1) Measure and record on a daily basis, or such other frequency as may be approved by the Commission, the quantity of all withdrawals, using meters or other methods approved by the Commission.

(2) Certify, at the time of installation and no less frequently than once every 5 years, the accuracy of all measuring devices and methods to within 5 percent of actual flow, unless specified otherwise by the Commission.

(3) Maintain metering or other approved methods so as to provide a continuous, accurate record of the withdrawal or consumptive use.

(4) Measure groundwater levels in all approved production wells, as specified by the Commission.

(5) Measure groundwater levels at additional monitoring locations, as specified by the Commission.

(6) Measure water levels in surface storage facilities, as specified by the Commission.

(7) Measure stream flows, passby flows or conservation releases, as specified by the Commission, using methods and at frequencies approved by the Commission.

(b) Reporting.

(1) Project sponsors whose projects are approved under this section shall report to the Commission on a quarterly basis on forms and in a manner prescribed by the Commission all information recorded under paragraph (a) of this section, unless otherwise specified by the Commission.

(2) Project sponsors whose projects are approved under this section shall report to the Commission:

(i) Violations of withdrawal limits and any conditions of approvals, within 5 days of such violation.

(ii) Loss of measuring or recording capabilities required under paragraph (a)(1) of this section, within 5 days after any such loss.

§ 806.31 Term of approvals.

(a) Approvals issued under this part shall have a term equal to the term of any accompanying member jurisdiction approval regulating the same subject matter, but not longer than 15 years, unless an alternate period is provided for in the Commission approval. If there is no such accompanying member jurisdiction approval, or if no term is specified in such accompanying member jurisdiction approval, the term of a Commission approval issued under this part shall be no longer than 15 years or the anticipated life of the project, whichever is less, unless an alternate period is provided for in the Commission approval.

(b) Commission approval of a project shall expire three years from the date of such approval if the withdrawal, diversion or consumptive use has not been commenced, unless an alternate period is provided for in the docket approval or such 3-year period is extended in writing by the Commission upon written request from the project sponsor submitted no later than 120 days prior to such expiration. The Commission may grant an extension, for a period not to exceed two years, only upon a determination that the delay is due to circumstances beyond the project sponsor's control and that there is a likelihood of project implementation within a reasonable period of time. The Commission may also attach conditions to the granting of such extensions, including modification of any terms of approval that the Commission may deem appropriate.

(c) If a withdrawal, diversion or consumptive use approved by the Commission for a project is discontinued for a period of five consecutive years, the approval shall be null and void, unless a waiver is granted in writing by the Commission, upon written request by the project sponsor demonstrating due cause and with notification thereof to the member jurisdiction in which the project is located, prior to the expiration of such period.

(d) If the Commission determines that a project has been abandoned, by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may rescind the approval for such withdrawal, diversion or consumptive use.

(e) If a project sponsor submits an application to the Commission no later than six months prior to the expiration of its existing Commission approval, the existing approval will be deemed extended until such time as the Commission renders a decision on the application, unless the existing approval or a notification in writing from the Commission provide otherwise.

§ 806.32 Reopening/modification.

(a) Once a project is approved, the Commission, upon its own motion, or upon application of the project sponsor or any interested party, may at any time reopen any project approval and make additional orders that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever an application for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a significant adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket.

(b) If the project sponsor fails to comply with any term or condition of a Commission approval, the Commission may issue an order suspending, modifying or revoking its approval of the project. The Commission may also, in its discretion, suspend, modify or revoke its approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) For any previously approved project where interference occurs, the Commission may require a project sponsor to provide a temporary source of potable water at the project sponsor's

expense, pending a final determination of causation by the Commission.

(d) The Commission, upon its own motion, may at any time reopen any project approval and make additional corrective modifications that may be necessary.

§ 806.33 Interest on fees.

The Executive Director may establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the Commission.

§ 806.34 Emergencies.

(a) Emergency certificates. The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part.

(b) Notification and application. A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, or other form of written communication. This notification must be followed within one (1) business day by submission of the following:

(1) A completed emergency application form or copy of the State or Federal emergency water use application if the project sponsor also is requesting emergency approval from either a state or federal agency.

(2) As a minimum, the application shall contain:

(i) Contact information.

(ii) Justification for emergency action (purpose).

(iii) Location map and schematic of proposed project.

(iv) Desired term of emergency use.

(v) Source(s) of the water.

(vi) Quantity of water.

(vii) Flow measurement system (such as metering).

(viii) Use restrictions in effect (or planned).

(ix) Description of potential adverse impacts and mitigating measures.

(x) Appropriate fee, unless reduced, waived or delayed with the approval of the Executive Director.

(c) Emergency certificate issuance. The Executive Director shall:

(1) Review and act on the emergency request as expeditiously as possible upon receipt of all necessary information stipulated in paragraph (b)(2) of this section.

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the next regular business meeting of the Commission.

(3) Include conditions in the emergency certificate which may include, without limitation, monitoring of withdrawal and/or consumptive use amounts, measurement devices, public notification, and reporting, to assure minimal adverse impacts to the environment and other users.

(d) Post approval. Actions following issuance of emergency certificates may include, but are not limited to, the following:

(1) The Commission may, by resolution, extend the term of the emergency certificate, upon presentation of a request from the project sponsor accompanied by appropriate evidence that the conditions causing the emergency persist.

(2) If the condition is expected to persist longer than the specified extended term, the project sponsor must submit an application to the Commission for applicable water withdrawal or consumptive use, or the emergency certificate will terminate as specified. If the project sponsor has a prior Commission approval for the project, the project sponsor must submit an application to modify the existing docket accordingly.

(e) Early termination. With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, the Executive Director may terminate an emergency certificate earlier than the specified duration if it is determined that an emergency no longer exists and/or the certificate holder has not complied with one or more special conditions for the emergency withdrawal or consumptive water use.

(f) Restoration or mitigation. Project sponsors are responsible for any necessary restoration or mitigation of environmental damage or interference with another user that may occur as a result of the emergency action.

§ 806.35 Fees.

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission.

■ 3. Part 807 is added to read as follows.

PART 807—WATER WITHDRAWAL REGISTRATION

Sec.

807.1 Requirement.
807.2 Time limits.
807.3 Administrative agreements.
807.4 Effective date.
807.5 Definitions.

Authority: Secs. 3.4(2) and (9), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

§ 807.1 Requirement.

In addition to any other requirements of Commission regulations, and subject to the consent of the affected member state to this requirement, any person withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive 30-day period, from ground or surface water sources, as defined in part 806 of this chapter, shall register the amount of this withdrawal with the Commission and provide such other information as requested on forms prescribed by the Commission.

§ 807.2 Time limits.

(a) Except for agricultural water use projects, all registration forms shall be submitted within one year after May 11, 1995, or within six months of initiation of the water withdrawal or diversion, whichever is later; provided, however, that nothing in this section shall limit the responsibility of a project sponsor to apply for and obtain an approval as may be required under part 806 of this chapter. All registered withdrawals shall re-register with the Commission within five years of their initial registration, and at five-year intervals thereafter, unless the withdrawal is sooner discontinued. Upon notice by the Executive Director, compliance with a registration or reporting requirement, or both, of a member state that is substantially equivalent to this requirement shall be considered compliance with this requirement.

(b) Project sponsors whose existing agricultural water use projects i.e., projects coming into existence prior to March 31, 1997) withdraw or divert in excess of an average of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall register their use no later than March 31, 1997. Thereafter, project sponsors of new projects proposing to withdraw or

divert in excess of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall be registered prior to project initiation.

§ 807.3 Administrative agreements.

The Commission may complete appropriate administrative agreements or arrangements to carry out this registration requirement through the offices of member jurisdictions. Forms developed by the Commission shall apprise registrants of any such agreements or arrangements, and provide appropriate instructions to complete and submit the form.

§ 807.4 Effective date.

This part shall be effective on January 1, 2007.

§ 807.5 Definitions.

Terms used in this part shall be defined as set forth in § 806.3 of this chapter.

■ 4. Part 808 is added to read as follows.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

Subpart A—Hearings

Subpart B—Compliance and Enforcement

Authority: Secs. 3.5 (9), 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Conduct of Hearings

§ 808.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by Section 14.1 of the compact.

(2) Rulemaking, except for corrective amendments.

(3) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(4) Hearing requested by a member jurisdiction.

(5) As otherwise required by the compact or Commission regulations.

(b) A public hearing may be conducted by the Commission in any form or style chosen by the Commission when in the opinion of the Commission, a hearing is either appropriate or necessary to give adequate consideration to issues relating to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information, or to decide factual disputes in connection with matters pending before the Commission.

(c) Notice of public hearing. At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper or newspapers of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission Web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. In the case of hearings held in connection with rulemaking, notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register, and the **Federal Register**, and it is sufficient that this notice appear only in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) Standard public hearing procedure.

(1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the Commission staff. Participants may also be any person wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal, or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than 10 days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the Commission staff) are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) Representative capacity. Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority. Any individual intending to appear before the Commission in a representative capacity on behalf of a participant shall give the Commission written notice of the nature and extent of his/her authorization to represent the person on whose behalf he/she intends to appear.

(f) Description of project. When notice of a public hearing is issued, there shall be available for inspection at the Commission offices all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) Presiding officer. A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) Transcript. Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the Executive Director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

§ 808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director, may file a written appeal requesting a hearing. Such appeal shall be filed with the Commission within 30 days of that action or decision.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing, and a summary statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request filed more than 30 days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless upon due cause shown the Commission, by unanimous vote, otherwise directs. Receipt of requests for hearings, pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner or an intervener may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected jurisdiction.

(2) The request for a stay shall include affidavits setting forth facts upon which issuance of the stay may depend and the citations of applicable legal authority, if any.

(3) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner or intervener.

(ii) The likelihood that the petitioner or intervener will prevail on the merits.

(iii) The likelihood of injury to the public or other parties.

(e) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, the case involves a determination by the Executive Director or staff which requires further action by the Commission, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule.

(f) If administrative review is granted, the Commission shall refer the matter for hearing, to be held in accordance with § 808.3, and appoint a hearing officer.

(g) Intervention.

(1) If a hearing is scheduled, a notice of intervention may be filed with the Commission by persons other than the petitioner no later than 10 days before the date of the hearing. The notice of intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance.

(2) Any person filing a notice of intervention whose legal rights may be affected by the decision rendered hereunder shall be deemed an interested party. Interested parties shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning the subject matter of any hearing scheduled hereunder for inclusion in the record may submit a verified written statement to the Commission. Any interested party may submit a request to examine or cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all verified written statements submitted shall be included with the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

(h) Notice of any hearing to be conducted pursuant to this section shall comply with the provisions of Section 15.4 (b) of the compact relating to public notice unless otherwise directed by the Commission. In addition, both the petitioner and any interveners shall provide notice of their filings under this section to the list of additional interested parties compiled by the Commission under § 806.14 (a).

(i) Where a request for an appeal is made, the 90-day appeal period set forth in Section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

(j) Where the request for appeal relates to an action taken on a project, any hearing conducted pursuant to this section shall be convened in the general vicinity of the project location.

§ 808.3 Hearings on administrative appeal.

(a) Unless otherwise agreed to by the Commission and the party requesting an administrative appeal under § 808.2 of this part, the following procedures shall govern the conduct of hearing on an administrative appeal.

(b) Hearing procedure.

(1) The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearing, to set the location or venue of the hearing, to hold conferences for the settlement or simplification of issues and the stipulation of facts, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, to delineate the hearing issues to be adjudicated, and to take notice of judicially cognizable facts and general, technical, or scientific facts. The hearing officer may, with the consent of the parties, conduct all or part of the hearing or related proceedings by telephone conference call or other electronic means.

(2) The hearing officer shall cause each witness to be sworn or to make affirmation.

(3) Any party to a hearing shall have the right to present evidence, to examine and cross-examine witnesses, submit rebuttal evidence, and to present summation and argument.

(4) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(5) The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received provided it shall be founded upon competent, material evidence which is substantial in view of the entire record.

(6) Any party may appear and be heard in person or be represented by an attorney at law who shall file an appearance with the Commission.

(7) Briefs and oral argument may be required by the hearing officer and may be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the presiding officer.

(8) The hearing officer may, as he/she deems appropriate, issue subpoenas in the name of the Commission requiring the appearance of witnesses or the production of books, papers, and other documentary evidence for such hearings.

(9) A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the petitioner, or any other person who is a party to the appeal proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The petitioner or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

(c) Staff and other expert testimony. The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he/she may deem necessary or desirable, to be incorporated in the record to support the administrative action, determination or decision which is the subject of the hearing.

(d) Written testimony. If the direct testimony of an expert witness is expected to be lengthy or of a complex, technical nature, the presiding officer may order that such direct testimony be submitted to the Commission in sworn, written form. Copies of said testimony shall be served upon all parties appearing at the hearing at least 10 days prior to said hearing. Such written testimony, however, shall not be admitted whenever the witness is not present and available for cross-examination at the hearing unless all parties have waived the right of cross-examination.

(e) Assessment of costs.

(1) Whenever a hearing is conducted, the costs thereof, as herein defined, shall be assessed by the presiding officer to the petitioner or such other party as the hearing officer deems equitable. For the purposes of this section, costs include all incremental costs incurred by the Commission, including, but not limited to, hearing officer and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(2) Upon the scheduling of a matter for hearing, the hearing officer shall furnish to the petitioner a reasonable estimate of the costs to be incurred under this section. The project sponsor may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a member state.

(3) A party to an appeal under this section who desires to proceed in forma pauperis shall submit an affidavit to the Commission requesting the same and showing in detail the assets possessed by the party, and other information indicating the reasons why that party is unable to pay costs incurred under this section or to give security for such costs. The Commission may grant or refuse the request based upon the contents of the affidavit or other factors, such as whether it believes the appeal or intervention is taken in good faith.

(f) Findings and report. The hearing officer shall prepare a report of his/her findings and recommendations based on the record of the hearing. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel. Any party may file objections to the report. Such objections shall be filed with the Commission and served on all parties within 20 days after the service of the report. A brief shall be filed together with objections. Any replies to the objections shall be filed and served on all parties within 10 days of service of the objections. Prior to its decision on such objections, the Commission may grant a request for oral argument upon such filing.

(g) Action by the Commission. The Commission will act upon the findings and recommendations of the presiding officer pursuant to law. The determination of the Commission will be in writing and shall be filed in Commission records together with any transcript of the hearing, report of the hearing officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing.

§ 808.4 Optional joint hearing.

(a) The Commission may order any two or more public hearings involving a common or related question of law or fact to be consolidated for hearing on any or all of the matters at issue in such hearings.

(b) Whenever designated by a department, agency or instrumentality of a member jurisdiction, and within any limitations prescribed by the designation, a hearing officer designated pursuant to § 808.2 may also serve as a hearing officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a hearing officer shall cause to be filed with the department, agency, or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him/her and, if requested, of his/her findings and recommendations. Neither the hearing officer nor the Susquehanna River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a member jurisdiction (other than the compact).

Subpart B—Compliance and Enforcement

§ 808.10 Scope of subpart.

This subpart shall be applicable where there is reason to believe that a person may have violated any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. The said person shall hereinafter be referred to as the alleged violator.

§ 808.11 Duty to comply.

It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

§ 808.12 Investigative powers.

(a) The Commission or its agents or employees, at any reasonable time and upon presentation of appropriate credentials, may inspect or investigate any person or project to determine compliance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. Such employees or agents are authorized to conduct tests or sampling; to take photographs; to perform measurements, surveys, and other tests; to inspect the methods of construction, operation, or maintenance; to inspect all measurement equipment; and to audit, examine, and copy books, papers, and records pertinent to any matter under investigation. Such employees or agents are authorized to take any other action necessary to assure that any project is constructed, operated and maintained in accordance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(b) Any person shall allow authorized employees or agents of the Commission, without advance notice, at any reasonable time and upon presentation of appropriate credentials, and without delay, to have access to and to inspect all areas where a project is being constructed, operated, or maintained.

(c) Any person shall provide such information to the Commission as the Commission may deem necessary to determine compliance with any

provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. The person submitting information to the Commission shall verify that it is true and accurate to the best of the knowledge, information, and belief of the person submitting such information. Any person who knowingly submits false information to the Commission shall be subject to civil penalties as provided in the compact and criminal penalties under the laws of the member jurisdictions relating to unsworn falsification to authorities.

§ 808.13 Notice of violation.

When the Executive Director or his/her designee issues a Notice of Violation (NOV) to an alleged violator, such NOV will:

(a) List the violations that are alleged to have occurred.

(b) State a date by which the alleged violator shall respond to the NOV.

§ 808.14 Orders.

(a) Whether or not an NOV has been issued, where exigent circumstances warrant, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket approval, the commissioners may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners may issue such other orders as may be necessary to enforce any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

§ 808.15 Show cause proceeding.

(a) The Executive Director may issue an order requiring an alleged violator to appear before the Commission and show cause why a penalty should not be assessed in accordance with the provisions of this chapter and Section 15.17 of the compact. The order to the alleged violator shall:

(1) Specify the nature and duration of violation(s) that is alleged to have occurred.

(2) Set forth the date and time on which, and the location where, the alleged violator shall appear before the Commission.

(3) Set forth any information to be submitted or produced by the alleged violator.

(4) Identify the limits of the civil penalty that will be recommended to the Commission.

(5) Name the individual(s) who has been appointed as the enforcement officer(s) in this matter pursuant to paragraph (b) of this section.

(b) Simultaneous with the issuance of the order to show cause, the Executive Director shall designate a staff member(s) to act as prosecuting officer(s).

(c) In the proceeding before the Commission, the prosecuting officer(s) shall present the facts upon which the alleged violation is based and may call any witnesses and present any other supporting evidence.

(d) In the proceeding before the Commission, the alleged violator shall have the opportunity to present both oral and written testimony and information, call such witnesses and present such other evidence as may relate to the alleged violation(s).

(e) The Commission shall require witnesses to be sworn or make affirmation, documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions or oral presentations from any other persons as to whether a violation has occurred and any resulting adverse consequences.

(f) The prosecuting officer(s) shall recommend to the Commission the amount of the penalty to be imposed. Based upon the record presented to the Commission, the Commission shall determine whether a violation(s) has occurred that warrants the imposition of a penalty pursuant to Section 15.17 of the compact. If it is found that such a violation(s) has occurred, the Commission shall determine the amount of the penalty to be paid, in accordance with § 808.16.

§ 808.16 Civil penalty criteria.

(a) In determining the amount of any civil penalty or any settlement of a violation, the Commission shall consider:

(1) Previous violations, if any, of any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission.

(2) The intent of the alleged violator.

(3) The extent to which the violation caused adverse consequences to public health, safety and welfare or to water resources.

(4) The costs incurred by the Commission or any member jurisdiction relating to the failure to comply with any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission.

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that has resulted therefrom.

(6) The extent to which the failure to comply with any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission was economically beneficial to the violator.

(7) The length of time over which the violation occurred and the amount of water used during that time period.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty recommended by the prosecuting officer under § 808.15(f) should it determine, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

§ 808.17 Enforcement of penalties, abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary, the penalty amount determined in accordance with § 808.15(f) shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to Section 15.17 of the compact.

§ 808.18 Settlement by agreement.

(a) An alleged violator may offer to settle an enforcement proceeding by agreement. The Executive Director shall submit to the Commission any offer of settlement proposed by an alleged violator. No settlement will be submitted to the Commission by the Executive Director unless the alleged violator has indicated, in writing, acceptance of the terms of the agreement

and the intention to comply with all requirements of the settlement agreement, including advance payment of any settlement amount or completion of any abatement or remedial action within the time period provided or both. If the Commission determines not to approve a settlement agreement, the Commission may proceed with an enforcement action in accordance with this subpart.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

§ 808.19 Effective date.

This part shall be effective on January 1, 2007.

Dated: December 5, 2006.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E6–21674 Filed 12–28–06; 8:45 am]

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Federal Register

Friday,
December 29, 2006

Part IV

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, et al.

Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 176, 178 and 180

[Docket No. PHMSA–06–25476 (HM–215I)]

RIN 2137–AE16

Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Oganization's Technical Instructions

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. These revisions will harmonize the Hazardous Materials Regulations with certain recent changes to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods.

DATES: *Effective date:* January 1, 2007.

Voluntary Compliance Date: PHMSA is authorizing voluntary compliance beginning January 1, 2007.

Delayed Compliance Date: Unless otherwise specified, mandatory compliance with the amendments adopted in this final rule is required beginning January 1, 2008.

Incorporation by Reference Date: The incorporation by reference of the publications adopted in § 171.7 of this final rule has been approved by the Director of the Federal Register as of January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Charles Betts, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Contents

I. Background

By notice of proposed rulemaking (NPRM) published August 31, 2006, the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published proposed revisions to the hazard communication, classification, and packaging requirements of the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, to align with updates and revisions to the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), the International Maritime Dangerous Goods (IMDG) Code and the International Civil Aviation Organization (ICAO) Technical Instructions for the Transport of Dangerous Goods by Air. The UN Recommendations are amended and updated biennially by the UN Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labeling of Chemicals and serve as the basis for national, regional, and international modal regulations, including the IMDG Code, and the ICAO Technical Instructions.

The harmonization of domestic and international standards becomes increasingly important as the volume of hazardous materials transported in international commerce grows. Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials to and from the United States. By facilitating compliance, harmonization also tends to enhance safety for international movements, but only if the international standards themselves provide an appropriate level of safety. To that end, PHMSA actively participates in the development of international standards for the transportation of hazardous materials, frequently advocating the adoption in international standards of particular HMR requirements. When considering the adoption of international standards under the HMR, we review and consider each amendment on its own merit. Each amendment is considered on the basis of its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR and without imposing undue burdens on the regulated public.

To maintain alignment of the HMR with international requirements, in this final rule, we are incorporating changes into the HMR based on the Fourteenth revised edition of the UN Recommendations and UN Manual of Tests and Criteria, Amendment 33 to the IMDG Code, and the 2007–2008 ICAO Technical Instructions, which become effective January 1, 2007. We are also addressing petitions for rulemaking concerning harmonization with international standards and additional measures to facilitate international transportation.

The comment period for the proposed rule closed on October 16, 2006. PHMSA received 28 comments in response to the proposed rulemaking. The following individuals, companies and organizations submitted comments:

(1) Georgia Department of Public Safety (GPS; PHMSA–06–25476–4);
(2) North American Transportation Consultants (NATC; PHMSA–06–25476–7);
(3) Lawrence Laude (Laude; PHMSA–06–25476–8);
(4) United Parcel Service (UPS; PHMSA–06–25476–9);
(5) Christopher L. Botteri (Botteri; PHMSA–06–25476–10);
(6) Dennis Eisenhofer (Eisenhofer; PHMSA–06–25476–11);
(7) HMT Associates (HMT; PHMSA–06–25476–12);
(8) Phillip Adamo (Adamo; PHMSA–06–25476–13);
(9) Institute of Makers of Explosives (IME; PHMSA–06–25476–14);
(10) J & S Warehouse (J&S; PHMSA–06–25476–17);
(11) Rising Star Transportation (RST; PHMSA–06–25476–18);
(12) National Tank Truck Carriers (NTTC; PHMSA–06–25476–19);
(13) Air Products and Chemicals (AP&C; PHMSA–06–25476–20);
(14) All Chemical Transport and Leasing (AllChem; PHMSA–06–25476–21);

(15) International Sanitary Supply Association (ISSA; PHMSA–06–25476–22);
(16) American Trucking Association (ATA; PHMSA–06–25476–23);
(17) The Chlorine Institute (CI; PHMSA–06–25476–24);
(18) International Vessel Operators Hazardous Materials Association, Inc. (VOHMA; PHMSA–06–25476–25);
(19) Arkema (Arkema; PHMSA–06–25476–26);
(20) Unidentified commenter (UC1; PHMSA–06–25476–28);
(21) Laboratory Corporation of America Holdings (LabCorp; PHMSA–06–25476–29);
(22) Unidentified commenter (UC2; PHMSA–06–25476–30);
(23) National Association of Chemical Distributors (NACD; PHMSA–06–25476–31);
(24) National Paint & Coating Association (NPCA; PHMSA–06–25476–33);
(25) Dangerous Goods Advisory Council (DGAC; PHMSA–06–25476–34);
(26) Degussa Corporation (Degussa; PHMSA–06–25476–35);
(27) Federal Express (FedEx; PHMSA–06–25476–36): and
(28) Association of HazMat Shippers, Inc. (AHS; PHMSA–06–25476–37).

Commenters were supportive of PHMSA's efforts to harmonize the HMR with international standards. Many of the proposals in the NPRM are fully supported by commenters, while others received little or no comment; these amendments are adopted as proposed. Several comments were beyond the scope of this rulemaking and are not addressed in this final rule.

In the NPRM, we requested comments on whether certain amendments should be tied to a sunset provision. We received six comments (GPS, IME, NTTC, AP&C, ATA, and NPCA) opposing the idea of a sunset provision. We agree with the commenters that for an international harmonization rulemaking, sunsetting some or all of the regulatory provisions is not appropriate. Therefore, we are not adopting a sunset provision for the amendments in this final rule. Other comments are discussed in the Section-by-Section Review.

II. Overview

A. Amendments Adopted in This Final Rule

In this final rule, we are adopting the following amendments to the HMR:

- Adoption of a single shipping paper description sequence (identification number, proper shipping name, hazard class or division, packing group).
- Requirement to indicate the net quantity of hazardous material per package on the shipping paper if transportation is by aircraft.
- Incorporation by reference of the updated ICAO Technical Instructions, IMDG Code, and UN Recommendations.
- Amendments to the Hazardous Materials Table (HMT) to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, passenger and cargo aircraft maximum quantity limitations and vessels stowage provisions.
- Revision of the ORGANIC PEROXIDE label and placard.
- Revision of the classification criteria for PG III flammable liquids.
- Revision of the classification criteria and packing group assignments for Division 6.1 materials.
- Requirements for the transportation of fuel cells containing flammable liquid.
- Adoption of a one-packet limit for matches carried by airline passengers or crew members.

B. International Standards Not Being Adopted in This Final Rule

This final rule makes changes to the HMR based on amendments to the Fourteenth revised edition of the UN Recommendations, Amendment 33 to the IMDG Code, and the 2007–2008 ICAO Technical Instructions, which become effective January 1, 2007. However, we are not adopting all of the amendments to those documents into the HMR. In many cases, amendments to the international regulations have not been adopted because the framework or structure of the HMR makes adoption unnecessary. In other cases, we have handled, or will be handling, the amendments in separate rulemaking proceedings. For example, we addressed requirements related to the transportation of infectious substances in a final rule published June 2, 2006, under Docket HM–226A (71 FR 32244). Similarly, we adopted amendments relating to the use of UN cylinders and pressure vessels in a final rule published June 12, 2006, under Docket HM–220E (71 FR 33858).

One of the goals of this rulemaking is to continue to maintain consistency between the HMR and the international requirements. We are not striving to make the HMR identical to the international regulations but rather to remove or avoid potential barriers to international transportation.

Below is a listing of significant amendments to the international regulations that we are not adopting in this final rule with a brief explanation of why the amendment was not included:

- *Environmentally hazardous substances.* The UN Recommendations include new defining criteria for environmentally hazardous substances. The UN criteria have not yet been adopted by ICAO and IMO. We will consider these changes in a separate rulemaking proceeding.
- *Hazardous materials security.* Like the HMR, the UN Recommendations require carriers, consignors and others engaged in the transport of "high consequence" dangerous goods to adopt, implement and comply with a security plan that addresses the transportation risks associated with these materials. A major difference between the HMR and the UN Recommendations is the quantity of hazardous material that triggers the requirement for a security plan. On September 21, 2006, PHMSA published an advance notice of proposed rulemaking (71 FR 55156) to consider revisions to the list of hazardous materials that triggers security plan requirements under the HMR. We will consider whether the HMR list should be harmonized with the UN Recommendations list as part of this initiative.
- *Requirements for radioactive materials.* We are not adopting provisions pertaining to the transportation of Class 7 (radioactive) materials. Amendments to requirements pertaining to the transportation of Class 7 materials are based on changes contained in the International Atomic Energy Agency (IAEA) publication, "IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Materials." Due to their complexity, these changes will be addressed in a separate rulemaking.
- *Default classification system for fireworks.* We are not adopting these provisions of the UN Recommendations because we do not believe the UN classification system provides an equivalent level of safety to the current HMR requirements. Under the HMR, fireworks must be classed and approved by the Associate Administrator for Hazardous Materials Safety; the approvals are based on American Pyrotechnic Association Standard 87–1.
- *Fuel cells.* We are not adopting provisions for the carriage of fuel cell cartridges in the passenger cabin of a passenger aircraft that were adopted by ICAO. Also, we are not adopting the packaging provisions for the transport of "Hydrogen in a metal hydride storage system," (UN3468), as adopted by ICAO. Currently, the HMR allow

transportation of these storage systems by motor vehicle and rail under the terms of a special permit and by motor vehicle, rail, cargo vessel and cargo aircraft with approval of the Associate Administrator. These issues will be considered in a separate rulemaking proceeding.

• *Marking of Limited Quantity shipments.* The ICAO Technical Instructions include a marking requirement for packages containing a limited quantity of hazardous material. The mark consists of the identification number of the material placed within a square-on-point border. The marking is anticipated to become effective January 1, 2009. Except for transportation by aircraft, this marking is currently authorized under the HMR as an alternative to marking the proper shipping name on the package; we are allowing continued use of this marking to minimize transportation costs and provide flexibility.

III. Section-by-Section Review

Part 171

Section 171.7

Section 171.7 lists the standards incorporated by reference into the HMR. We are updating the incorporation by reference materials for the ICAO Technical Instructions, the IMDG Code, the UN Recommendations and the UN Manual of Tests and Criteria. The updated editions of these standards become effective January 1, 2007. We did not receive comments opposing these incorporations by reference; therefore the standards are updated as follows:

• The ICAO Technical Instructions, 2007–2008 Edition.

• The IMDG Code, Amendment 33–06.

• The UN Recommendations, Fourteenth revised edition.

• The UN Manual of Tests and Criteria, Fourth revised edition (2003), and Addendum 2 (2004).

Section 171.14

This section lists specific transition periods for certain provisions adopted into the HMR. Comments pertaining to transition periods are discussed below.

Paragraph (b) lists transitional provisions related to revised placarding requirements. In this final rule, we are removing paragraph (b) because the transition period has expired.

Paragraph (d) of this section specifies transitional provisions for previously adopted amendments intended to harmonize the HMR with international standards. We are revising this paragraph to provide specific transitional provisions for certain amendments in this final rule. The effective date of this final rule is January 1, 2007, and the mandatory compliance date is January 1, 2008. We are permitting voluntary compliance as of January 1, 2007, to correspond with the effective implementation dates of the 2007–2008 ICAO Technical Instructions and Amendment 33–06 of the IMDG Code. This authorization allows shippers to prepare their international shipments in accordance with international standards that will become effective on January 1, 2007.

Paragraph (e) of this section contains an outdated transitional provision. In this final rule, we are replacing the outdated transitional provision with a new paragraph (e) that permits use for domestic shipments of the shipping description sequences in effect on December 31, 2006, until January 1, 2013. See the § 172.202 preamble discussion for a complete explanation of the shipping description sequence issue.

Paragraph (f) of this section contains an outdated transitional provision. We are revising paragraph (f) by removing the current provision and adding a transitional provision to allow continued display of Division 5.2 labels and placards conforming to the specifications in effect on December 31, 2006, until January 1, 2014 for transportation by highway and until January 1, 2011 for transportation by rail, vessel or aircraft. See the §§ 172.407, 172.427 and 172.552 preamble discussions for a complete explanation of this issue.

In new paragraph (g), we are allowing continued use of the Class 3 and Division 6.1 classification criteria and packing group assignments in effect on December 31, 2006, until January 1, 2012. See §§ 173.120 and 174.133 preamble discussions for a complete explanation of this issue.

Part 172

Section 172.101

Section 172.101 contains the Hazardous Materials Table (HMT) and explanations for each of the columns in the HMT. Paragraph (d) of this section addresses column 3 of the HMT containing the hazard class or division for each specific material listed in the HMT. Paragraph (d)(4) addresses entries classed as combustible liquids. In the NPRM, we proposed to revise paragraph (d)(4) to revise the lower limit for classing a material as a combustible liquid from 60.5 °C (141 °F) to 60 °C (140 °F). This is consistent with recent changes to the classification of flammable liquids based on the adoption of the GHS within the UN Recommendations. We did not receive comments opposing this proposal; therefore, it is adopted in this final rule.

The § 172.101 Hazardous Materials Table (HMT)

In this final rule, we are making various amendments to the § 172.101 Hazardous Materials Table (HMT). Readers should review all changes for a complete understanding of the Table amendments. For purposes of the Government Printing Office's typesetting procedures, changes to the HMT appear under three sections of the Table, "remove," "add" and "revise." Certain entries in the HMT, such as those with revisions to the proper shipping names, will appear as a "remove" and "add." We did not receive comments opposing the changes to the HMT proposed in the NPRM. Therefore, in this final rule we are adopting the following amendments to the HMT for the purpose of harmonizing with international standards:

1. We are correcting Column (7) Special provisions of the HMT by removing Special Provision 101 which requires the name of the particular substance or article to be specified. With the introduction of the letter "G" for these materials in Column (1), requiring the n.o.s. and generic proper shipping names to be supplemented with the technical name of the hazardous material, Special Provision 101 becomes obsolete and duplicative. The affected entries are as follows:

UN0349	Articles, explosive, n.o.s.
UN0350	Articles, explosive, n.o.s.
UN0351	Articles, explosive, n.o.s.
UN0352	Articles, explosive, n.o.s.
UN0353	Articles, explosive, n.o.s.
UN0354	Articles, explosive, n.o.s.
UN0355	Articles, explosive, n.o.s.
UN0356	Articles, explosive, n.o.s.
UN0462	Articles, explosive, n.o.s.
UN0463	Articles, explosive, n.o.s.
UN0464	Articles, explosive, n.o.s.
UN0465	Articles, explosive, n.o.s.
UN0466	Articles, explosive, n.o.s.
UN0467	Articles, explosive, n.o.s.
UN0468	Articles, explosive, n.o.s.
UN0469	Articles, explosive, n.o.s.
UN0470	Articles, explosive, n.o.s.
UN0471	Articles, explosive, n.o.s.
UN0472	Articles, explosive, n.o.s.
UN0382	Components, explosive train, n.o.s.
UN0383	Components, explosive train, n.o.s.
UN0384	Components, explosive train, n.o.s.
UN0461	Components, explosive train, n.o.s.
UN0357	Substances, explosive, n.o.s.
UN0358	Substances, explosive, n.o.s.
UN0359	Substances, explosive, n.o.s.
UN0473	Substances, explosive, n.o.s.
UN0474	Substances, explosive, n.o.s.
UN0475	Substances, explosive, n.o.s.
UN0476	Substances, explosive, n.o.s.
UN0477	Substances, explosive, n.o.s.

UN0478 Substances, explosive, n.o.s.
UN0479 Substances, explosive, n.o.s.
UN0480 Substances, explosive, n.o.s.
UN0481 Substances, explosive, n.o.s.
UN0485 Substances, explosive, n.o.s.
UN0482 Substances, explosive, very insensitive, n.o.s. *or* Substances, EVI, n.o.s.

2. Amendment 32 of the IMDG Code added a new segregation group for alkalis. For consistency with international regulations and in response to a petition from Horizon Lines (P–1470), we are revising the Vessel stowage provisions in Column (10B) by adding Segregation Code "52" (Stow "Separated from" acids) to certain entries. The affected entries are as follows:

UN2733 Amines, flammable, corrosive, n.o.s. *or* Polyamines, flammable, corrosive, n.o.s.
UN2671 Aminopyridines *(o-; m-; p-)*
UN1005 Ammonia, anhydrous
UN3318 Ammonia solution, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia*
UN2672 Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*
UN2073 Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 35 percent but not more than 50 percent ammonia*
UN3028 Batteries, dry, containing potassium hydroxide solid, *electric, storage*
UN2795 Batteries, wet, filled with alkali, *electric storage*
UN2797 Battery fluid, alkali
UN2682 Caesium hydroxide
UN2681 Caesium hydroxide solution
UN1719 Caustic alkali liquids, n.o.s.
UN1160 Dimethylamine solution
UN2379 1, 3-Dimethylbutylamine
UN2382 Dimethylhydrazine, symmetrical
UN1163 Dimethylhydrazine, unsymmetrical
UN3253 Disodium trioxosilicate
UN2491 Ethanolamine *or* Ethanolamine solutions
UN2270 Ethylamine, aqueous solution *with not less than 50 percent but not more than 70 percent ethylamine*
UN1604 Ethylenediamine
UN2386 1-Ethylpiperidine
UN2029 Hydrazine, anhydrous
UN3293 Hydrazine, aqueous solution, *with not more than 37 percent hydrazine, by mass*
UN2030 Hydrazine, aqueous solution, *with more than 37 percent hydrazine, by mass*
UN2680 Lithium hydroxide
UN2679 Lithium hydroxide, solution
UN1235 Methylamine, aqueous solution
UN1244 Methylhydrazine
UN2399 1-Methylpiperidine
UN1813 Potassium hydroxide, solid
UN1814 Potassium hydroxide, solution
UN2033 Potassium monoxide
UN1922 Pyrrolidine
UN2678 Rubidium hydroxide
UN2677 Rubidium hydroxide solution
UN1907 Soda lime *with more than 4 percent sodium hydroxide*
UN1819 Sodium aluminate, solution
UN2318 Sodium hydrosulfide, *with less than 25 percent water of crystallization*
UN1823 Sodium hydroxide, solid
UN1824 Sodium hydroxide solution
UN1825 Sodium monoxide
UN1849 Sodium sulfide, hydrated *with not less than 30 percent water*
UN2320 Tetraethylenepentamine
UN3073 Vinylpyridines, stabilized

3. The entry "Aerosols, *non-flammable, (each not exceeding 1 L capacity),*" UN1950, is revised by adding vessel storage location code "A" in Column (10A). This code was inadvertently removed in a final rule published September 23, 2005 under Docket HM–189Y (70 *FR* 56084).

4. The entry "Antimony trichloride, solid," UN1733, PG II, is revised by adding Special Provisions T3 and TP33. Special Provision T3 specifies the applicable minimum test pressure, the minimum shell thickness, bottom opening requirements and pressure relief requirements when transporting this material in a UN portable tank. Special Provision TP33 specifies requirements applicable to the transportation of this material in IM and UN Specification portable tanks.

5. The entry, "Articles, explosive, extremely insensitive *or* Articles, EEI," UN0486, is revised by removing Special Provision 101 which requires the name of the particular substance or article to be specified.

6. The entry "Benzyl bromide," UN1737, PG II, is revised by removing the reference to § 173.153 "Exceptions for Division 6.1 (poisonous materials)" in Column (8A).

7. The entry "Benzyl chloride," UN1738, PG II, is revised by removing the reference to § 173.153 "Exceptions for Division 6.1 (poisonous materials)" in Column (8A).

7a. The entry "Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures," UN2880, PG II, is revised by removing Special Provision 166.

8. In accordance with changes in the Fourteenth revised edition of the UN Recommendations, we are removing the following entries:

—"Carbon dioxide and nitrous oxide mixtures," UN1015;
—"Carbon dioxide and oxygen mixtures, compressed," UN1014; and
—"Carbon monoxide and hydrogen mixture, compressed," UN2600.

9. The entry, "Charges, shaped, flexible, linear," UN0288, is revised by removing Special Provision 101, which requires the name of the particular substance or article to be specified.

10. The entry "Chlorosilanes, corrosive, n.o.s.," UN2987, PG II, is revised by removing the reference to § 173.154 "Exceptions for Class 8 (corrosive materials)" in Column (8A).

11. The entry "Chlorosilanes, flammable, corrosive, n.o.s.," UN2985, PG II, is revised by removing the reference to § 173.150 "Exceptions for Class 3 (flammable) and combustible liquids" in Column (8A).

12. The entry "Chlorosilanes, toxic, corrosive, n.o.s.," UN3361, PG II, is revised by removing the reference to § 173.153 "Exceptions for Division 6.1 (poisonous materials)" in Column (8A).

13. The entry "Chlorosilanes, toxic, corrosive, flammable, n.o.s.," UN3362, PG II, is revised by removing the reference to § 173.153 "Exceptions for Division 6.1 (poisonous materials)" in Column (8A).

14. The entry "Chromium trioxide, anhydrous," UN1463, Column (6) is revised by adding the Division 6.1 subsidiary hazard labeling requirement.

15. The entry "Compressed gas, n.o.s.," UN1956, is revised by adding Special Provision 77. Special Provision 77 requires, for domestic transportation, a Division 5.1 subsidiary risk label when a carbon dioxide and oxygen mixture contains more than 23.5% oxygen.

16. The entry, "Contrivances, water-activated, *with burster, expelling charge or propelling charge,*" UN0248, is revised by removing Special Provision 101, which requires the name of the particular substance or article to be specified. In addition, the letter "G" is added to Column (1), requiring the proper shipping name to be supplemented with the technical name of the hazardous material.

17. The entry, "Contrivances, water-activated, *with burster, expelling charge or propelling charge,*" UN0249, is revised by removing Special Provision 101, which requires the name of the particular substance or article to be specified. In addition, the letter "G" is added to Column (1), requiring the proper shipping name to be supplemented with the technical name of the hazardous material.

18. The entry "Corrosive liquid, acidic, inorganic, n.o.s.," UN3264, PG II, is revised by removing Special Provision A6. Special Provision A6 specifies that for combination packagings, if plastic inner packagings are used, they must be packed in tightly closed metal receptacles before packing in outer packagings. Special Provision A6 applies only to the PG I entry of this material.

19. The proper shipping name for the entry "Crotonaldehyde, stabilized,"

UN1143, is revised to read "Crotonaldehyde *or* Crotonaldehyde, stabilized" and to add new Special Provision 175. New Special Provision 175 specifies this material is required to be stabilized when in concentrations of not more than 99%. The revision appears as a "Remove/Add" in this rulemaking.

20. The proper shipping name for the entry "Crotonic acid, *liquid,*" UN2823, is corrected to read "Crotonic acid, liquid" and the Identification Number is revised to read "UN3472." This revision appears as a "Remove/Add" in this rulemaking.

21. The proper shipping name for the entry "Crotonic acid, *solid,*" UN2823, is corrected to read "Crotonic acid, solid," UN2823. This correction appears as a "Remove/Add" in this rulemaking.

22. In accordance with the ICAO Technical Instructions, the entry "Dangerous Goods in Machinery *or* Dangerous Goods in Apparatus," UN3363, is revised by adding quantity limits for transportation by aircraft. The quantity limits are specified in new Special Provision A105.

23. The entry "Ethyltrichlorosilane," UN1196, PG II, is revised by removing the reference to § 173.150 "Exceptions for Class 3 (flammable) and combustible liquids" in Column (8A).

24. The entry "Formic acid," UN1779, is revised to read "Formic acid *with more than 85% acid by mass,*" and the Class 3 subsidiary hazard is added in Column (6). This revision appears as a "Remove/Add" in this rulemaking.

25. A new entry, "Formic acid *with not less than 10% but not more than 85% acid by mass,*" UN3412, is added.

26. A new entry, "Formic acid *with not less than 5% but less than 10% acid by mass,*" UN3412, is added.

27. A new entry, "Fuel cell cartridges *containing flammable liquids,*" UN3473, is added.

28. The entry "Hydrazine aqueous solutions, *with more than 37% hydrazine, by mass,*" UN2030, PG I, is revised by removing Special Provision 151. Special Provision 151 specifies that if this material meets the definition of a flammable liquid in § 173.120 of the HMR, a FLAMMABLE LIQUID label is required and the basic description on the shipping paper must indicate the Class 3 subsidiary hazard. Changes to the Fourteenth revised edition of the UN Recommendations removed this requirement. Shipping paper and labeling requirements for materials with subsidiary hazards are addressed in §§ 172.202 and 172.402, respectively.

28a. The entry "Hydrogen in a metal hydride storage system," UN3468, is revised by amending Column (9B) to authorize 100 kg gross.

29. The entry "Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water, and not more than 5 percent peroxyacetic acid,*" UN3149, is revised by adding Special Provision IP5. When this material is transported in an IBC, Special Provision IP5 specifies the IBC must have a device to allow venting.

30. The entry "Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary),*" UN2014, is revised by adding Special Provision IP5. When this material is transported in an IBC, Special Provision IP5 specifies the IBC must have a device to allow venting.

31. The entry "Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary),*" UN2014, is revised by adding Special Provision IP5. When this material is transported in an IBC, Special Provision IP5 specifies the IBC must have a device to allow venting.

32. The entry "Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary),*" UN2984, is revised by adding Special Provision IP5. When this material is transported in an IBC, Special Provision IP5 specifies the IBC must have a device to allow venting.

33. The entry "Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide,*" UN2015, is revised by removing Special Provision T10 and adding Special Provision T9. When this material is transported in a UN portable tank, Special Provision T10 requires the UN portable tank pressure relief device to comply with the requirements specified in § 178.275(g)(3) of the HMR. The addition of Special Provision T9 removes this requirement.

34. For the entry "Hydrogendifluorides, n.o.s.," UN1740, PG II and III, the proper shipping name is revised to read "Hydrogendifluorides, solid, n.o.s." This revision appears as a "Remove/Add" in this rulemaking.

35. A new entry "Hydrogendifluorides, solution, n.o.s.," UN3471, PG II and III, is added.

36. The entry "Hydroquinone, solid," UN2662, is removed.

37. The entry "Hydroquinone solution," UN3435, is removed.

38. The entry "Hypochlorite solutions," UN1791, PG II, is revised by adding Special Provision IP5. When this material is transported in an IBC, Special Provision IP5 specifies the IBC must have a device to allow venting.

39. For the entry "Lead phosphite, dibasic," UN2989, PG II, the quantity limitations in Columns (9A) and (9B) are revised to read 15 kg and 50 kg, respectively.

40. For the entry "Lead phosphite, dibasic," UN2989, PG III, the quantity limitations in Columns (9A) and (9B) are revised to read 25 kg and 100 kg, respectively.

41. The entry "Methylphenyl dichlorosilane," UN2437, PG II, is revised by removing the reference to § 173.154 "Exceptions for Class 8 (corrosive materials)" in Column (8A).

42. The entry "Motor fuel anti-knock mixtures," UN1649, is corrected by removing the subsidiary hazard label requirement in Column (6).

42a. A new entry "Nitric acid *other than red fuming, with not more than 20 percent nitric acid,*" UN2031, PG II, is added.

42b. The entry "Organoarsenic compound, liquid, n.o.s.," UN3280, PG I, II, and III, is corrected by inserting the symbol "G" in Column (1).

43. The entry "Organometallic substance, solid, pyrophoric," UN3391, PG I, is revised by correcting the Column (8B) Non-bulk packaging entry "181" to read "187."

44. The entry "Organometallic substance, solid, pyrophoric, water-reactive," UN3393, PG I, is revised by correcting the Column (8B) Non-bulk packaging entry "181" to read "187."

45. A new entry, "Paint, corrosive, flammable (*including paint, lacquer, enamel, stain, shellac, varnish, polish, liquid filler and liquid lacquer base*)," UN3470, PG II, is added.

46. A new entry "Paint, flammable, corrosive (*including paint, lacquer, enamel, stain, shellac, varnish, polish, liquid filler and liquid lacquer base*)," UN3469, PG I, II, and III, is added.

47. The entry "Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler and liquid lacquer base,*" UN1263, is revised by adding the following Special Provisions to the PG I, II, and III entries, respectively:

—TP27 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 4 bar (400 kPa) may be used provided the calculated test pressure is 4 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP28 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 2.65 bar (265 kPa) may be used provided the calculated test pressure is 2.65 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP29 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 1.5 bar (150.0 kPa) may be used provided the calculated test pressure is 1.5 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

48. The entry "Paint *or* Paint related materials," UN3066, is revised by adding the following Special Provisions to the PG II and III entries, respectively:

—TP28 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 2.65 bar (265 kPa) may be used provided the calculated test pressure is 2.65 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP29 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 1.5 bar (150.0 kPa) may be used provided the calculated test pressure is 1.5 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

49. A new entry, "Paint related material, corrosive, flammable (*including paint thinning or reducing compound*)," UN3470, PG II, is added.

50. A new entry, "Paint related material, flammable, corrosive (*including paint thinning or reducing compound*)," UN3469, PG I, II, and III is added.

51. The entry "Paint related material *including paint thinning, drying, removing, or reducing compound,*" UN1263, is revised by adding the following Special Provisions to the PG I, II, and III entries, respectively:

—TP27 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 4 bar (400 kPa) may be used provided the calculated test pressure is 4 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP28 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 2.65 bar (265 kPa) may be used provided the calculated test pressure is 2.65 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP29 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 1.5 bar (150.0 kPa) may be used provided the calculated test pressure is 1.5 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

52. The entry "Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor,* UN3314, PG III, is revised by removing Vessel stowage location A and adding location E in Column (10A), and by removing Vessel stowage provision 85 and adding Vessel stowage provisions 19, 21, 25 and new Vessel stowage provision 144 in Column (10B).

53. The entry "Polymeric beads, expandable, *evolving flammable vapor,* UN2211, PG III, is revised by removing stowage location A and adding location E in Column (10A), and by removing Vessel stowage provision 85 and adding Vessel stowage provisions 19, 21, 25 and new Vessel stowage provision 144 in Column (10B).

54. For the entry "Propionic acid," UN1848, the proper shipping name is revised to read, "Propionic acid *with not less than 10% and less than 90% acid by mass.*" This revision appears as a "Remove/Add" in this rulemaking.

55. A new entry, "Propionic acid *with not less than 90% acid by mass,*" UN3463, is added.

56. The entry "Rare gases mixtures, compressed," UN1979, is removed.

57. The entry "Rare gases and oxygen mixtures, compressed," UN1980, is removed.

58. The entry "Rare gases and nitrogen mixtures, compressed," UN1981, is removed.

59. The proper shipping name "Regulated medical waste," UN3291, is removed and a new proper shipping name "Regulated medical waste, n.o.s. *or* Clinical waste unspecified, n.o.s. *or* (BIO) Medical waste, n.o.s.," UN3291, is added in its place.

60. For the international entry for "Sulfur," UN1350, the quantity limitations in Columns (9A) and (9B) are revised to read 25 kg and 100 kg, respectively.

61. The entry "Trimethylchlorosilane," UN1298, PG II, is revised by removing the reference to § 173.150 "Exceptions for Class 3 (flammable) and combustible liquids" in Column (8A).

Also, *see* § 172.102 for additional HMT amendments.

Appendix B to § 172.101

Appendix B to § 172.101 lists Marine Pollutants regulated under the HMR. For the entry "Copper chloride" we are adding the designation "PP" to indicate that copper chloride is a severe marine pollutant. We are also correcting an oversight by removing the entries "Alcohol C–13—C–15 poly (1–6) ethoxylate" and "1,2-Dichlorobenzene." Removal of the entry "Alcohol C–13—C–15 poly (1–6) ethoxylate" was overlooked in a final rule published December 20, 2004 under Docket HM–215G (69 *FR* 76044) and removal of the entry "1,2-Dichlorobenzene" was overlooked in a final rule published June 21, 2001 under Docket HM–215D (66 *FR* 33316).

Section 172.102

Section 172.102 lists a number of special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging provisions, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. We did not receive comments opposing the revisions proposed in the NPRM; therefore, in this final rule for consistency with international standards, we are amending § 172.102 Special provisions, as follows:

- Special Provision 15 specifies the types of materials and packaging requirements for chemical kits and first aid kits. We are revising Special Provision 15 to list examples that may be described as "Chemical kits" and "First aid kits."
- Special Provision 47 specifies requirements for mixtures of non-hazardous solids and flammable liquids. In accordance with the UN Recommendations, Special Provision 47 is revised to specify that, in addition to sealed packets, articles containing less than 10 mL of a Class 3 Packing Group

II or III liquid absorbed into a solid material are excepted from the HMR provided there is no free liquid in the packet or article.

• Special Provision 77 applies to use of the Division 5.1 subsidiary risk label. We are revising this special provision for consistency with the wording in the UN Recommendations. As a result, Special Provision 77 will no longer apply only to "domestic transportation." Further, we are clarifying that a Division 5.1 label is not required for mixtures containing not more than 23.5% oxygen by volume. Also, the provision is assigned to the entry "Compressed gas, n.o.s.," UN1956, which is the most appropriate description for mixtures currently described as "Carbon dioxide and oxygen mixtures, compressed." In this final rule, we are removing the entry for "Carbon dioxide and oxygen mixtures, compressed."

• Special Provision 146 is amended to authorize the domestic classification of a material as environmentally hazardous if it is designated as such by a foreign competent authority. The provision as currently worded only allows such classification for international shipments. Due to current differences in criteria for the classification of environmentally substances world-wide, we believe the amended provision will afford additional flexibility to industry and reduce shipping costs by allowing both domestic and international shipments to be treated identically. Although generally the HMR do not authorize materials not meeting the definition of a hazardous material to be transported as regulated materials, due to the low risk posed by these materials, and the fact that the HMR already authorize domestic movement in association with international air and vessel transport, we believe this change will not result in a significant impact other than to lower costs for our stakeholders.

• Special Provision 147 applies to non-sensitized emulsions, suspensions and gels consisting primarily of a mixture of ammonium nitrate and fuel, intended to produce a Type E blasting explosive only after further processing prior to use. In accordance with the UN Recommendations, this special provision is revised to specify the composition of mixtures for suspensions and gels and to specify these substances be tested in accordance with Test Series 8 of the UN Manual of Tests and Criteria.

• Special Provision 166 authorizes non-friable, tablet form calcium hypochlorite, dry or hydrated, to be transported as a Packing Group III material. In accordance with the UN Recommendations, we are revising Special Provision 166 to remove the authorization for "hydrated" non-friable tablet forms of calcium hypochlorite to be transported as a PG III material.

• A new Special Provision 175 is added to require stabilization for certain substances when transported in concentrations of not more than 99%.

• Special Provision 101 is removed. This special provision required the name of the particular substance or article to be specified. With the introduction of the letter "G" in Column (1), which requires the n.o.s. and generic proper shipping names to be supplemented with the technical name of the hazardous material, Special Provision 101 became obsolete.

• A new Special Provision A105 is added to specify the quantity of hazardous materials allowed in equipment or apparatus.

Section 172.202

Shipping Description Sequence

Section 172.202 establishes requirements for shipping descriptions on shipping papers. Currently, the basic description of a hazardous material consists of the proper shipping name, hazard class, ID number and packing group, in that order. The HMR also authorize an alternative description sequence, which lists the identification number first, followed by the proper shipping name, hazard class, and packing group. Beginning January 1, 2007, the alternative shipping description sequence will be mandatory on shipping documents prepared in accordance with the ICAO Technical Instructions and the IMDG Code. In the NPRM, we proposed to adopt the current, alternative shipping description sequence as the mandatory basic description of a hazardous material on a shipping paper. We also proposed a two-year transition period to allow offerors adequate time to convert to the new shipping description sequence.

A total of 19 commenters addressed this proposal. Eight commenters [NPCA, AP&C, ATA, GPS, LabCorp, NTTC, UPS, and VHOMA] support the proposal. NPCA notes that many of its members have already implemented this change to simplify internal shipping processes.

Eleven commenters [Adamo; AllChem; Botteri; Eisenhofer; ISSA, J&S; NACD; NATC; RST; and two unidentified commenters] oppose this proposal, suggesting that the change is not necessary, lacks an economic justification, and will have a negative impact on safety. These commenters note that, because the current regulations allow the international sequence as an alternative, the proposed change merely removes the existing sequence with no positive safety rationale. These commenters further assert that the proposed change could result in significant cost impacts to companies that utilize computer systems for the preparation of shipping documents and to track associated packaging and training requirements. According to these commenters, potential costs could include database reorganization, employee training, and related revisions to product labels that also include shipping information. Commenters suggest that costs could also result from confusion on the part of enforcement and inspection personnel that could lengthen inspections and delay shipments. These commenters are also concerned that the proposed revision could have a negative impact on safety because it could result in confusion for emergency response personnel, most of whom are volunteers and receive limited training. Commenters note that confusing emergency response information could expose emergency responders to unnecessary danger.

PHMSA does not believe this proposal is unnecessary or will adversely impact transportation safety. A uniform system for describing and identifying hazardous materials on shipping papers, as proposed in this NPRM, will increase safety by helping to eliminate potential indecision and confusion during emergency situations. For example, when incidents occur during transportation, it is crucial to promptly identify packages of hazardous materials present in a given shipment. Emergency responders at the scene of an incident would use a standard description of hazardous materials on shipping papers to quickly determine that they have accounted for all hazardous materials in both domestically- and internationally-bound packages. In addition, following the release of a hazardous material, it is vital for emergency responders to quickly identify the hazardous materials to facilitate their emergency response decision-making. A standardized shipping description for both domestic and international shipments will aid in this process and will lead to a potential reduction in the loss of life and property.

PHMSA analyzes potential cost impacts of proposed regulations on the regulated community. Our justification regarding this proposal in the Regulatory Evaluation is located under the Docket Management System (*http://dms.dot.gov*). In the Regulatory

Evaluation, we determined that this NPRM, including this specific proposal, should result in cost savings by easing the regulatory compliance burden for shippers and carriers engaged in international commerce, including trans-border shipments within North America. In addition, shippers and carriers will not need to revise shipping papers to address differing domestic and international requirements for shipping descriptions. We acknowledge the proposal to require one basic description of a hazardous material on a shipping paper will necessitate additional training and software revisions. However, to allow for the training of hazmat employees and to ease the minimal burden on entities affected by the adoption of the proposed amendments, we are authorizing an extended transition period. An extended transition period will allow businesses to incorporate this requirement into their training material for both new and current hazardous materials employees, and to upgrade system software over the course of normal computer upgrades and revisions with a minimal economic impact.

The NPRM proposed a two-year transition period to allow shippers sufficient time to convert to the new shipping description sequence. Three commenters [NTTC, ATA, and VOHMA] suggest the proposed transition period is unnecessary and recommend a one-year transition. These commenters state that the industry is able to alter current software systems and deplete pre-printed shipping paper inventory within a relatively short time period. VOHMA asserts lengthy transition periods create confusion and increased training burdens. Six commenters [ATA; GPS; LabCorp; NTTC; UPS; VOHMA] state that the proposed transition period is too short, recommending up to six years to permit shippers to convert to the new sequence. These commenters suggest a longer transition period would allow the new shipping sequence to be incorporated into responder training programs and the next revision of the Emergency Response Guidebook (ERG). The ERG lists hazardous materials in numerical order of ID number and in alphabetical order of material name.

We understand commenters' concerns regarding the length of the transition period for this proposal. However, it is our intention to specify a uniform method to describe a hazardous material on a shipping paper in order to promote the universal recognition of hazardous materials, while allowing sufficient time for affected parties to properly train personnel, reconfigure internal computer systems, and deplete existing stock. We do not believe a time period less than six years would allow businesses to adequately accomplish these objectives. Moreover, a six-year transition period would allow for the incorporation of this requirement into the initial and recurrent training cycle for hazardous materials employees and emergency responders.

Therefore, for the reasons described above, in this final rule, we are adopting the requirement that the shipping description of a hazardous material be indicated on a shipping paper in the following manner: Identification (ID) number listed first, followed by the proper shipping name, hazard class, and packing group. In addition, we are authorizing a six-year transition period to implement this requirement.

Quantity Limitations

The description of a hazardous material on a shipping paper must include the total quantity of hazardous material (by mass or volume) covered by the description (see § 172.202(a)(5)). The majority of quantity limitations set forth for transportation by aircraft, in Columns (9A) and (9B), are "net" quantities. Section 175.75 limits the quantity of hazardous materials, expressed in net mass, aboard an aircraft. To facilitate compliance with the aircraft operator's requirements, in the NPRM we proposed that, for transportation by aircraft, the total quantity per package be shown, expressed as net mass, except as otherwise specified. For example:

UN1263, Paint, 3, PG II, 5 fiberboard boxes x 5 L each

As proposed, different size packages containing different quantities of the same hazardous material must be clearly identified. For example:

UN1263, Paint, 3, PG II, 5 fiberboard boxes x 5 L, 6 fiberboard boxes x 10 L

As proposed, where the letter "G" follows the quantity in Column (9A) or (9B), the gross mass rather than the net quantity must be indicated.

A commenter [DGAC] opposes the proposal to require the quantity of a hazardous materials shipment by aircraft to be expressed as a net quantity per package. The commenter questions the safety benefit of adopting the requirement and states that the costs to industry associated with the change, such as computer software upgrades, may be substantial. The commenter did not provide data to support this argument. We disagree that there is no safety benefit in expressing the quantity of hazardous material in terms of "net quantity" for air shipments. Quantity limitations aboard aircraft, as prescribed in § 175.75, are specified in the HMR as net quantities; thus, an indication of the net quantity per package on shipping papers facilitates load planning and compliance. We do not believe the cost of indicating net quantity rather than total quantity, as previously required, is increased substantially. Therefore, in this final rule, we are adopting the amendment as proposed.

In the NPRM, we also proposed the following additional requirements:

—For empty uncleaned packaging, only the number and type of packaging must be shown;
—For chemical kits and first aid kits, the total net mass of hazardous materials must be shown. Where a kit contains solids and/or liquids, the net mass of liquids within the kit is to be calculated on a 1 to 1 basis, i.e., 1 liter equals 1 kilogram;
—For dangerous goods in machinery or apparatus, the individual total quantities of dangerous goods in solid, liquid or gaseous state, contained in the article must be shown;
—For dangerous goods transported in a salvage packaging, an estimate of the quantity of dangerous goods per package must be shown;
—For cylinders, the total quantity may be indicated by the number of cylinders, for example, "10 cylinders;"
—For items where "No Limit" is shown in Column (9A) or (9B) of the HMT, the quantity shown should be the net mass or volume of the material, except for UN2800, UN2807, UN3072, UN3166 and UN3173, where the quantity should be the gross mass of the article.

On the proposal to identify the total quantity of each hazardous material in machinery or apparatus, a commenter [UPS] states that the "precision implied in this proposal is unrealistic." UPS suggests that, absent a precise quantity, a shipper should be permitted to estimate the quantity of hazardous material. We agree and are amending paragraph (a)(6)(iii) accordingly.

Another commenter [Laude] requests we include net quantity provisions for Class 7 materials transported by aircraft. Similar provisions for transportation by other modes are contained in paragraph (a)(5). We agree with the commenter and are amending paragraph (a)(6) accordingly.

The same commenter points out that in proposed paragraph (a)(6)(vi) ID numbers UN2807 and UN3173 do not exist in the HMT; (ID number UN2807 is assigned to "magnetized material" in the ICAO Technical Instructions). We are removing UN2807 and UN3173 in this final rule.

Section 172.312

Section 172.312 addresses marking requirements for liquid hazardous materials in non-bulk packagings. Specifically, the packaging must be marked with orientation arrows to indicate how the package should be oriented during transportation; the arrows indicate which end of the package is "up." Currently the HMR require orientation markings only on a non-bulk combination package with inner packagings that contain a liquid hazardous material, unless specifically excepted.

We proposed to amend paragraph (a) by requiring orientation markings on single packagings fitted with vents and on open cryogenic receptacles intended for the transport of refrigerated liquefied gases. We received one comment [AP&C] supporting the proposal and, in this final rule, are adopting the amendment as proposed.

Also, we proposed to require the size of the marking to be proportioned so that it is clearly visible in relation to the size of the package, and the color of the arrows to be either black or red on a suitable contrasting background. One commenter [AP&C] supports the proposal requiring the size of the marking to be proportionate with the size of the package. Several commenters [NATC; Botteri; Eisenhofer; Adamo; NACD; J&S; RST; AllChem; UC1; UC2] question the meaning of the phrase "clearly visible" and suggest we specify the size of the marking; either by requiring the marking to be at least equal to the size of the largest package marking or, at a minimum, requiring the marking to be ½ inch. We agree with commenters that the phrase "clearly visible" is vague; however, we disagree with specifying the size of the orientation marking. The HMR currently require non-bulk packages containing liquid hazardous materials to be "legibly marked" with the orientation marking. Specifying the size of the orientation marking would be inconsistent with the general marking requirements (proper shipping name and identification number) for non-bulk packagings which do not specify the size of the markings. In this final rule, we are removing the phrase "clearly visible" and requiring the orientation marking to be commensurate with the size of the package.

We also proposed adding a new paragraph (c)(7) to except Class 7 materials in Type A, IP–2, IP–3, Type B(U), or Type B(M) packages from the orientation marking requirement. We received no comments on this proposal and are adopting the amendment as proposed.

Sections 172.407 and 172.427

Section 172.407 establishes specifications for package labels. Section 172.427 establishes requirements for the ORGANIC PEROXIDE label. In accordance with the UN Recommendations, we proposed to revise the ORGANIC PEROXIDE label. The revised label would reflect the fact that organic peroxides are highly flammable and enable transport workers to readily distinguish peroxides from oxidizers. We also proposed to authorize labels meeting the specifications in effect on December 31, 2006, to continue to be displayed until January 1, 2011 (see § 171.14). This would eliminate the current requirement in § 172.402 for a package containing an organic peroxide to bear a FLAMMABLE LIQUID subsidiary label in addition to the ORGANIC PEROXIDE primary hazard class label.

We received no comments opposing the proposal to revise the ORGANIC PEROXIDE label; therefore, in this final rule we are adopting the revisions as proposed.

Section 172.552

Section 172.552 establishes specific requirements for the ORGANIC PEROXIDE placard. In accordance with the UN Recommendations, in paragraph (b), we proposed to revise the ORGANIC PEROXIDE placard. The revised placard would reflect the fact that organic peroxides are highly flammable and enable transport workers to readily distinguish peroxides from oxidizers. We proposed to authorize placards meeting the specifications in effect on December 31, 2006, to continue to be displayed until January 1, 2011 (see § 171.14).

We received one comment [ATA] supporting the revised placard design; however, ATA disagrees with the length of the proposed transition period. The ATA requests a seven-year transition period until January 1, 2014. The ATA states that trucking companies with large fleets use dual metal flip placards on each side of the trailer. According to the ATA, trailer fleets are generally refurbished every seven years. This would allow companies to replace the ORGANIC PEROXIDE placard at the time of refurbishment. Based on this comment, in this final rule, we are authorizing ORGANIC PEROXIDE placards meeting the specifications in effect on December 31, 2006, to continue to be displayed until January 1, 2014 for transportation by highway and until January 1, 2011 for transportation by rail, vessel or aircraft.

Part 173

Section 173.9

Section 173.9 sets forth requirements for transporting cargo that has been fumigated or is undergoing fumigation. Such shipments must have a FUMIGANT marking. As specified in this section, the FUMIGANT marking includes an indication of the material used for fumigation and the date and time the fumigant was applied. Currently, transport vehicles or freight containers containing fumigated cargoes are not required to show the date the fumigated transport vehicle or freight container was ventilated to remove harmful concentrations of fumigant gas. To minimize the possibility of an individual entering a fumigated transport vehicle or freight container prematurely, in the NPRM we proposed to require the FUMIGANT marking to include the date of ventilation. We also proposed to revise the specifications for the FUMIGANT marking to allow either red or black marking on a white background. No commenters opposed these proposals, therefore, we are adopting them without change in this final rule.

Sections 173.35, 173.120, 173.121, and Appendix H to Part 173

Section 173.35 sets forth requirements for transporting hazardous materials in intermediate bulk containers (IBCs); § 173.120 establishes classification criteria for flammable liquid (Class 3) materials; § 173.121 addresses packing group assignments for Class 3 materials; and Appendix H to Part 173 sets forth methods to test a material to determine its combustibility. In the NPRM, we proposed to revise all of these sections to reflect the new upper limit of 60 °C (140 °F) for a PG III flammable liquid. This is consistent with recent changes to the classification of flammable liquids based on the GHS and adoption into the UN Recommendations. PHMSA also proposed to authorize a five-year transition period.

A commenter [DGAC] appreciates the length of the proposed transition period. DGAC urges PHMSA to propose a similar transition period for the criteria in international regulations. Modifications to the international standards are outside the scope of this rulemaking. International shippers should be aware of this disparity and take appropriate action. In this final rule, we are adopting the amendment as proposed.

Section 173.115

The HMR define a Division 2.2 non-flammable gas as any material or mixture that "exerts in the packaging an absolute pressure of 280 kPa (40.6 psia) or greater at 20 °C (68 °F), * * *." In paragraph (b)(1), we proposed to add the phrase "or is a cryogenic liquid," to clarify that a cryogenic liquid, whether or not it meets the definition of a Division 2.2 non-flammable gas, is subject to the HMR. This is consistent with the current requirements for cryogenic liquids in § 173.115(g). We received no comments opposing this proposal; therefore, in this final rule, we are adopting the proposal without change.

Currently, paragraph (k)(5) of this section requires aerosols containing Class 8, PG III materials to be assigned a Class 8 subsidiary hazard. In the NPRM, we proposed to amend paragraph (k)(5) to specify that aerosols containing Class 8, PG II or PG III materials must be assigned a Class 8 subsidiary hazard. We received no comments opposing this proposal; therefore, in this final rule, we are adopting the proposal without change.

Section 173.124

Section 173.124 establishes classification criteria for Division 4.1 (flammable solid), Division 4.2 (spontaneously combustible), and Division 4.3 (dangerous when wet) materials. In the NPRM, we proposed to revise § 173.124 by adding a new paragraph (a)(2)(i)(D)(*3*) to require mixtures of oxidizing substances containing 5.0% or more combustible organic substances to be subject to the self-reactive substance classification procedure. This will ensure that oxidizing substances containing 5.0% or more of combustible organic substances are also tested for their ability to self-react and to ensure that in such instances, these substances are appropriately classed for their self-reactive hazard. We received no comments on this proposal; it is adopted without change in this final rule.

Section 173.133

Section 173.133 establishes criteria for assignment of packing groups to poisonous (Division 6.1) materials. We proposed to amend the toxicity criteria for consistency with the toxicity criteria adopted in the UN Recommendations on the basis of the limits established in the GHS. As a result, some materials that were not previously regulated under the HMR would now be regulated as Division 6.1, Packing Group III; some materials currently regulated as Division 6.1, Packing Group I or II are assigned to a different packing group; and some materials that were previously regulated as Division 6.1, Packing Group III would no longer be subject to regulation under the HMR. PHMSA also proposed a five-year transition period.

The effect of these proposed changes to packing group assignments for Division 6.1 materials is summarized as follows:

Material properties	Current PG assignment	New PG assignment
Oral $LD_{50} > 200, \leq 300$ (Solid)	Not regulated	III
Oral $LD_{50} > 300, \leq 500$ (Liquid)	III	Not regulated.
Dermal $LD_{50} > 40, \leq 50$	II	I
Inhalation toxicity by dusts and mists $LC_{50} > 0.2, \leq 0.5$	I	II
Inhalation toxicity by dusts and mists $LC_{50} > 4, \leq 10$	III	Not regulated.

Thirteen commenters [NATC; Botteri; Eisenhofer; Adamo; J&S; RST; AP&C; AllChem; Arkema; UC1; UC2; NACD; DGAC] support adoption of this proposal. Arkema notes that the amended criteria may result in reclassification of certain materials that are listed by name in the HMT. The commenter requests that the HMR be amended to allow the use of currently listed names instead of describing the material under an appropriate generic (n.o.s.) name based on the new toxicity criteria. The commenter also states Arkema, an international company, will review its materials to ensure they are in compliance with the provisions of the 2008 IMDG Code, and will handle air shipments on a case-by-case basis. PHMSA does not intend to provide such an allowance in the HMR; we believe such a provision could be confusing and would be inconsistent with the international regulations. However, we invite submission of data supporting reclassification of certain materials resulting from the revised criteria for toxic materials. Such data could be used to effect change in the listing of a material within the HMR and the UN Model Regulations.

A commenter [DGAC] appreciates the length of the proposed transition period. DGAC urges PHMSA to propose a similar transition period for the criteria in international regulations. Changes to the international standards are outside the scope of this rulemaking. International shippers should be aware of this disparity and take appropriate action.

Finally, ten commenters [NATC; Botteri; Eisenhofer; Adamo; J&S; RST; AllChem; UC1; UC2; NACD] request a five-year transition period and a grandfather clause to allow packages filled prior to a specific date to remain marked without modification for domestic transportation. In the NPRM, we proposed a five-year transition period and in this final rule, we are adopting the amendment as proposed (see § 171.14). We disagree with the request to allow packages filled prior to a specific date to remain marked without modification for domestic transportation. We believe that a five-year transition provides adequate time to transition to the new classification criteria and to ensure that packages marked based on regulations in effect on December 31, 2006, are out of the transportation stream. Therefore, we are not adopting a grandfather clause.

Sections 173.134 and 173.197

Consistent with the proposals in the NPRM, in this final rule, these sections are revised by replacing the wording "Regulated medical waste" with the wording "Regulated medical waste or clinical waste or (bio) medical waste." No commenters addressed this issue.

Section 173.136

Currently, the HMR define "corrosive material" to mean "a liquid or solid that causes full thickness destruction of human skin at the site of contact within a specified period of time. A liquid that has a severe corrosion rate on steel or aluminum based on the criteria in § 173.137(c)(2) is also a corrosive material." Certain solids with a low melting point may become liquid during transportation, and others may be intentionally heated above their melting point and transported as a liquid in the molten state. We believe the Class 8 definition should apply equally to liquids and to solids offered for transportation or transported in a liquid state. In the NPRM, we proposed to revise the definition of a "corrosive

material" to include a solid material that is offered for transportation or transported as a liquid and has a severe corrosion rate on steel or aluminum. A commenter [Degussa] requests that we align the definition with the UN Recommendations. We agree and are modifying the definition of "corrosive material" to include the phrase "solids that may become liquid during transportation." Also, we are removing the grandfather provision in § 173.136(d) on the basis that it is no longer necessary because tests other than the one specified in the UN Manual of Tests and Criteria will be authorized. See the § 173.137 preamble discussion below.

Section 173.137

Section 173.137 establishes packing group criteria for corrosive (Class 8) materials. In a final rule published December 20, 2004 under Docket HM–215G (69 *FR* 76155), we revised the language in paragraph (c)(2) mandating the corrosion test in the UN Manual of Tests and Criteria as the only acceptable test method for determining the corrosivity of a material. That was not our intent. In the NPRM, we proposed to revise paragraph (c)(2) to specify that corrosivity may be determined in accordance with methods described in the UN Manual of Tests and Criteria, as well as other equivalent methods, such as those described in ASTM G 31–72. No commenters addressed this proposal; it is adopted without change in this final rule.

Section 173.159

Section 173.159 establishes transportation requirements for wet electric storage batteries. For consistency with the ICAO Technical Instructions, in the NPRM we proposed to revise paragraphs (a), (c)(1), (c)(2), (c)(4), (c)(5), (d)(1) and (e)(2) to clarify that batteries may be protected against short circuits by the use of non-conductive caps that cover the entire terminal(s). No commenters addressed this proposal; therefore, we are adopting it without change in this final rule.

Section 173.166

Section 173.166 establishes transportation requirements for air bag inflators, air bag modules, and seat-belt pretensioners. Currently, paragraph (d)(1) excepts from the HMR air bag modules and seat-belt pretensioners approved by the Associate Administrator and installed in a motor vehicle or a completed motor vehicle component. In the NPRM, we proposed to revise paragraph (d)(1) to expand the exception to include air bag modules and seat-belt pretensioners installed in other means of conveyances, such as boats and aircraft, or their components. We received no comments on this proposal; therefore, we are adopting it without change in this final rule.

Section 173.187

Section 173.187 establishes transportation requirements for pyrophoric solids, metals, or alloys, not otherwise specified (n.o.s.). In the NPRM, we proposed to revise this section for clarity and to correct an oversight by adding 4A steel boxes to the list of authorized packagings for pyrophoric solids, metals or alloys, n.o.s. We received no comments on this proposal; it is adopted without change in this final rule.

Section 173.216

Section 173.216 establishes transportation requirements for blue, brown, or white asbestos. Paragraph (c) of this section specifies packaging requirements for these materials. In the NPRM, we proposed to require bags or other non-rigid packages containing asbestos to be transported in rigid outer packages or closed freight containers. No commenters addressed this proposal; therefore, it is adopted without change in this final rule.

Section 173.220

Section 173.220 establishes transportation requirements for internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles and equipment. For transportation by aircraft, the HMR impose a pressure limit of not more than 5% of the maximum allowable working pressure in any part of the system between the pressure receptacle and the shut off valve of a flammable gas powered vehicle. In the NPRM, we proposed to revise paragraph (b)(2)(ii)(B)(*3*) to specify that the pressure limit imposed applies to the entire closed system and that the maximum pressure allowed is 290 psig (2000 kPa). Also, consistent with the ICAO Technical Instructions, we proposed to revise paragraphs (c) and (d) to clarify that batteries may be protected against short circuits by the use of non-conductive caps that cover the entire terminal(s). We received no comments on these proposals; therefore, we are adopting them without change in this final rule.

Section 173.222

This section establishes requirements for hazardous materials in equipment, machinery and apparatus. Because of the addition of Special Provision A105 in the HMT, the shipping paper requirements in paragraph (d) no longer apply to transportation by aircraft. In the NPRM, we proposed to revise paragraph (d) accordingly. No commenters addressed this proposal, and it is adopted without change in this final rule.

A commenter [Laude] requests we remove the phrase "equipment" in this section. The phrase "equipment" is not part of the proper shipping name "Dangerous Goods in Machinery *or* Dangerous Goods in Apparatus" in the HMT. Therefore, we are editorially revising § 173.222 to remove the phrase "equipment" in the heading and regulatory text.

Section 173.224

Section 173.224 establishes packaging and control and emergency temperatures for self-reactive materials. The Self-Reactive Materials Table in paragraph (b)(7) of this section specifies self-reactive materials authorized for transportation without first being approved for transportation by the Associate Administrator for Hazardous Materials Safety and requirements for transporting these materials. In the NPRM, we proposed to add a new entry to "Acetone-pyrogallol copolymer 2-diazo-1-naphthol-5-sulphonate" to the Self-Reactive Materials Table. We received no comments on this proposal, and are adopting it without change in this final rule.

Section 173.230

In the NPRM, we proposed to add a new packaging section (§ 173.230) for the transportation of "Fuel cell cartridges *containing flammable liquids*, UN3473," including methanol or methanol/water solutions. For consistency with the ICAO Technical Instructions, we proposed to require fuel cell cartridges containing flammable liquids, other than those packaged with equipment, to be packaged in specification packagings for all modes of transportation. Fuel cell cartridges packaged in or with equipment must be packaged in strong outer packagings.

A commenter [HMT] suggests we add a special provision to the entry "Fuel cell cartridges containing flammable liquids" in the HMT that would allow fuel cell cartridges to be considered the inner packaging of a combination packaging so that shippers can take advantage of the limited quantity provisions for flammable liquids in § 173.150. We do not believe that such a clarification is necessary. A fuel cell cartridge, shipped under the provisions

of § 173.150 as a limited quantity, may be considered the inner packaging provided all applicable requirements are met. The commenter also suggests we change the one liter net capacity limit to allow up to one liter volume of the flammable liquid itself. We do not agree. The net capacity of a fuel cell cartridge should be the capacity of the fuel cell cartridge containing the flammable liquid. This is consistent with the requirements for other flammable liquids shipped as a limited quantity in inner packagings or articles. Finally, the commenter recommends we authorize any rigid outer packaging conforming to the PG II performance level. We agree and are amending the requirements in paragraph (a)(2) accordingly.

Section 173.301

On August 29, 2006, the **Federal Register** published a final rule under Docket HM–220F (71 *FR* 51122)) establishing additional requalification requirements for cylinders manufactured of aluminum alloy 6351–T6. In § 173.301, we moved a sentence prohibiting the use of DOT 3AL cylinders manufactured of aluminum alloy 6351–T6 for transporting pyrophoric gases from paragraph (d) to a new paragraph (o). We revised the remaining requirement in paragraph (d). However, we inadvertently omitted a sentence prohibiting the use of aluminum alloy 6351–T6 for the manufacture of UN cylinders recently added in paragraph (d) under a final rule published June 12, 2006 under Docket HM–220E (71 *FR* 33858). In this final rule, we are correcting § 173.301(o) by reinserting the language prohibiting the use of UN cylinders manufactured of aluminum alloy 6351–T6.

Section 173.306

This section establishes transportation requirements for limited quantities of compressed gases. Paragraph (i) of this section excepts aerosols with capacities under 50 mL (1.7 oz) and pressures not exceeding 970 kPa (141 psig) at 55 °C (131 °F) from all HMR requirements. In the NPRM, we proposed to expand this exception to aerosols with capacities of less than 50 mL (1.7 oz) and pressures of up to 290 psig (2000 kPa) provided the packagings conform to the general packaging requirements of Subpart B of Part 173. The proposed amendment is not consistent with provisions of the UN Recommendations or the ICAO Technical Instructions, which do not limit the pressure within the aerosol or small receptacle. We are not convinced that aerosols should be excepted from all regulation when the pressure in the container exceeds 290 psig (2000 kPa). Because the exceptions in the UN Recommendations and ICAO Technical Instructions include an exception from shipping paper, package marking, and labeling requirements, a carrier might not be aware of the potential risks associated with higher pressure aerosols and small gas receptacles. In addition, to avoid confusion and further clarify the intent of this exception, in the NPRM we proposed to revise paragraph (i) to specify that the 50 mL exception for aerosols does not apply to self-defense sprays. It was not our intent to authorize the use of this exception for self-defense sprays. We received no comments on this proposal; it is adopted in this final rule.

Part 175

Section 175.10

Currently, safety matches or lighters carried on board an aircraft and intended for use by a passenger or crew member are excepted from the HMR. Consistent with the ICAO Technical Instructions, in the NPRM we proposed to revise paragraph (a)(2) to limit the number of safety matches that may be carried on one's person or in carry-on baggage by a passenger or crewmember to one packet. We received no comments on this issue; therefore, it is adopted without change in this final rule.

Section 175.78

Section 175.78 establishes requirements for stowing hazardous materials on an airplane. In the NPRM, we proposed to paragraph (c)(4) to clarify which explosive materials may be stowed together aboard an aircraft and to remove existing stowage references for explosive materials not authorized for transportation aboard aircraft under any circumstances. We received no comments on this issue; therefore, it is adopted without change in this final rule.

Part 176

Section 176.76

Section 176.76 establishes requirements for vessel transportation of transport vehicles, freight containers, and portable tanks containing hazardous materials. Paragraph (f) includes requirements for portable tanks containing flammable liquids or gases. Consistent with recent changes to the classification of flammable liquids based on the GHS and adopted into the UN Recommendations and discussed elsewhere in this preamble, in the NPRM we proposed to revise paragraph (f)(2) to specify the new upper limit for a PG III flammable liquid to be 60 °C (140 °F). We received no comments on this issue; therefore, it is adopted without change in this final rule.

Section 176.83

Section 176.83 establishes segregation requirements for hazardous materials transported by vessel. In the NPRM, we proposed to revise paragraph (a)(4) to identify materials of different hazard classes that do not react dangerously with each other and, therefore, do not need to be segregated. No commenters addressed this proposal; it is adopted without change in this final rule.

Section 176.84

Section 176.84 contains additional stowage and segregation requirements for hazardous materials on cargo and passenger vessels. Consistent with the 2004 Edition of the IMDG Code, incorporating Amendment 33–06, in the paragraph (b) Table of provisions, in the NPRM we proposed to add new Code "144" to the entries "Plastic molding compound *in dough, sheet or extruded rope from evolving flammable vapor*," UN3314, and "Polymeric beads expandable, *evolving flammable vapor*," UN2211. New Code "144" specifies these materials must be mechanically ventilated in accordance with SOLAS Chapter II–2/Regulation 19 for flammable liquids with a flashpoint below 23 °C (73 °F) when stowed under deck. No comments addressed this issue; it is adopted without change in this final rule.

Also, in the NPRM, we proposed to add a new note "2" following the Table. Note "2" provides an exception from the segregation requirements for Class 8, PG II and III materials, provided the substances do not react dangerously with one another and the quantities per package do not exceed 30 L (7.8 gallons) for liquids and 30 kg (66 lbs.) for solids. We also proposed to revise Codes "26," "27," "52," and "53" to add the new Note "2."

One commenter [VOHMA] supports the proposal to add a new Note "2," but suggests the following provision be added: "The transport document must include the statement required by § 172.203(i)(5) and a copy of the test report that verifies that the substances do not react dangerously with each other shall be provided if requested by the competent authority." The commenter also recommends an additional shipping paper requirement under § 172.203 to indicate the utilization of this provision. The commenter bases its request on a need for consistency with the IMDG Code, and the need for verification to the carrier that the substances have been

tested and do not react dangerously with each other.

We acknowledge the commenter's recommendation that new Note "2" may require an accompanying statement on a transport document, such as a shipping paper, in order to adequately notify carriers of the use of this provision. We also acknowledge the commenter's suggestion that supporting documentation, such as a test report, should accompany shipments of these hazardous materials. Because these additional requirements were not proposed in the NPRM, they are beyond the scope of this rulemaking. However, we agree that carriers may need some notification of the use of this provision and will consider the issue in a future rulemaking.

In this final rule, we are adopting the proposal to add new Note "2" to the Segregation Table, and to revise Codes "26," "27," "52," and "53" by adding the new Note "2," as proposed in the NPRM. In addition, we are also adopting the proposal to add Code "144" to the entries "Plastic molding compound *in dough, sheet or extruded rope from evolving flammable vapor*," UN3314, and "Polymeric beads expandable, *evolving flammable vapor*," UN2211, to specify these materials must be mechanically ventilated in accordance with SOLAS regulation II–2/19 (IBR; see § 171.7 of this subchapter) for flammable liquids with a flashpoint below 23 °C (73 ° F) when stowed under deck. Finally, in paragraph (b), we are revising Provisions "22," "23," and "109" to reflect the new upper flammability limit for flammable liquids. Also see §§ 173.35, 173.120, 173.121 and Appendix H to Part 173 preamble text.

Part 178

Section 178.274

Section 178.274 establishes design, manufacturing, and test requirements for UN portable tanks. Currently, a prototype UN portable tank must be shown to be capable of absorbing the forces resulting from an impact not less than four times the maximum permissible gross weight of the fully loaded portable tank at a duration that is typical of the mechanical shocks experienced in rail transportation. Several standards describing methods acceptable for performing the impact test were previously listed in the UN Recommendations (6.7.3.15). The Fourth revised edition of the UN Manual of Tests and Criteria includes a dynamic longitudinal impact test for portable tanks. All procedures, test requirements, processing and analysis of data are found in Section 41 of Addendum 2 to the UN Manual of Tests and Criteria.

Consistent with the UN Recommendations, in the NPRM we proposed to revise paragraph (j)(6) to require each UN portable tank design type be subjected to a dynamic longitudinal impact test to prove the ability of the portable tank to withstand the effects of a longitudinal impact. The NPRM proposed an effective for the new requirement of January 1, 2008, and further proposed that UN portable tanks impact-tested prior to January 1, 2008, based on the criteria in effect on October 1, 2005, need not be retested. We received no comments on this proposal; we are adopting it without change in this final rule.

Section 178.602

Section 178.602 establishes requirements for the preparation of packagings for testing to ensure that the packaging conforms to the design requirements of the applicable specification. Currently, for the preparation of bags for the drop and stacking tests, paragraph (b) requires bags to be filled to the maximum mass at which they may be used. In the NPRM, we proposed to revise paragraph (b) to clarify that the preparation of bags for the drop and stacking tests only applies to bags containing solids. No commenters addressed this proposal; it is adopted without change in this final rule.

Section 178.810

Section 178.810 establishes requirements for performing the drop test for IBCs. In the NPRM, we proposed to revise paragraph (b)(1) to clarify that metal, rigid plastic, and composite IBCs must be filled to not less than 95% of their maximum capacity when conducting drop tests for solids, and not less than 98% of their maximum capacity for liquids. Similarly, in paragraph (b)(2), we proposed to require fiberboard and wooden IBCs to be filled with a solid material to not less than 95% of their maximum capacity. Also, we proposed to add a new paragraph (b)(3) to require filling flexible IBCs to the maximum permissible gross mass and even distribution of the contents. No commenters addressed these proposals; they are adopted without change in this final rule.

Part 180

Section 180.213

On August 29, 2006 the **Federal Register** published a final rule under Docket HM–220F (71 *FR* 51122) establishing additional requalification requirements for cylinders manufactured of aluminum alloy 6351–T6. In the amendatory language, we inadvertently revised paragraph (d) rather than the paragraph (d) introductory text. In this final rule, we are revising paragraph (d) to correct this error.

Section 180.352

Section 180.352 establishes requirements for retesting and inspection of IBCs to ensure that they continue to conform to the applicable specification. In the NPRM, we proposed to revise paragraph (b) to specify that each IBC intended to contain solids that are loaded or discharged under pressure or intended to contain liquids must be tested in accordance with the leakproofness test prescribed in § 178.813 prior to its first use in transportation. For this test, the IBC is not required to have its closures fitted. These proposals incorporate clarifications adopted in the Fourteenth revised edition of the UN Recommendations. We received no comments on these proposals and are adopting them without change in this final rule.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule amends regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. To this end, as discussed in detail earlier in this preamble, the final rule amends the HMR to more fully align them with the biennial updates of the UN Recommendations, the IMDG Code and the ICAO Technical Instructions; this will facilitate the transport of hazardous materials in international commerce.

Harmonization serves to facilitate international transportation; at the same time, harmonization ensures the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and

transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. Thus, as discussed in detail earlier in this preamble, there are several instances where we elected not to adopt a specific provision of the UN Recommendations, the IMDG Code or the ICAO Technical Instructions. Moreover, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This final rule amends the HMR to maintain alignment with international standards by incorporating various amendments to facilitate the transport of hazardous material in international commerce. To this end, as discussed in detail earlier in this preamble, the rule incorporates changes into the HMR based on the Fourteenth revised edition of the UN Recommendations, Amendment 33 to the IMDG Code, and the 2007–2008 ICAO Technical Instructions, which become effective January 1, 2007. The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. This final rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, and radiopharmaceutical companies. Benefits resulting from the amendments in this final rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by U.S. manufacturers of hazardous materials.

The majority of amendments in this final rule result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

We are authorizing a delayed effective date and a one-year transition period for the majority of amendments in this final rule; we are authorizing extended transition periods for certain amendments. The transition periods allow for training of employees and ease any burden on entities affected by the amendments. The total net increase in costs to businesses in implementing the final rule is considered to be minimal. The costs are the result of reprogramming shipping paper computer programs, replacement of pre-printed forms for firms that do not use automated systems, and changes to package markings and labels. Initial start-up and inventory costs result from these changes; however, the costs will be offset by greater long-term savings of conformance with one set of regulations and a one-year transition period. A regulatory evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts State, local and Indian tribe requirements but does not impose any regulation that has substantial direct effects 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. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (1), (2), (3), and (5) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2007. If the changes in this final rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes in this rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is March 29, 2007.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule facilitates the transportation of hazardous materials in international commerce by providing

consistency with international standards. This final rule applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical users and suppliers, packaging manufacturers, distributors, and battery manufacturers. As discussed above, under *Executive Order 12866*, the majority of amendments in this final rule result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this final rule will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, I certify that the requirements in this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. PHMSA currently has two approved information collections affecting this final rule: OMB Control Number 2137–0557, "Approvals for Hazardous Materials" with 25,605 burden hours and $562,837.40 burden costs; and OMB Control Number 2137–0613, "Subsidiary Hazard Class & Number/ Type of Packagings" with 63,309 burden hours and $216,705 burden costs.

There are minor editorial changes under this rule. However, there is no net increase in burden for OMB Control Number 2137–0557 or OMB Control Number 2137–0613. We estimate the total information collection and recordkeeping burden as follows:

"Approvals for Hazardous Materials" OMB Number 2137–0557:

Total Annual Number of Respondents: 3,523.
Total Annual Responses: 3,874.8.
Total Annual Burden Hours: 25,605.
Total Annual Burden Cost: $562,837.40.

"Subsidiary Hazard Class & Number/ Type of Packagings" OMB Number 2137–0613:

Total Annual Number of Respondents: 250,000.
Total Annual Responses: 6,337,500.
Total Annual Burden Hours: 17,604.
Total Annual Burden Cost: $216,705.
Total First Year Burden Hours: 45,705.
Total First Year Burden Cost: $1,115,992.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–10), Pipeline and Hazardous Materials Safety Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

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

H. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 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 rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Consistency in the regulations for the transportation of hazardous materials aids in shipper understanding of the requirements and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. Our findings conclude that there are no significant environmental impacts associated with this final rule. For interested parties, an Environmental Assessment is available in the public docket.

J. Privacy Act

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

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.7, in the paragraph (a)(3) table, the following changes are made:

■ a. Under the entry "International Civil Aviation Organization (ICAO)," the entry "Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2005–2006 Edition" is revised;

■ b. Under the entry "International Maritime Organization (IMO)," the entries "International Convention for the Safety of Life at Sea, (SOLAS) Amendments 2000, Chapter II–2/Regulation 19, 2001" and "International Maritime Dangerous Goods Code (IMDG Code), 2004 Edition, Incorporating Amendment 32–04 (English Edition), Volumes 1 and 2" are revised;

■ c. Under the entry "United Nations," the entry "UN Recommendations on the Transport of Dangerous Goods, Thirteenth Revised Edition (2003), Volumes I and II" is revised;

■ d. Under the entry "United Nations," the entry "UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, Fourth Revised Edition, (2003)" is revised.

The revisions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
International Civil Aviation Organization (ICAO),	
* * * * * * *	
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2007–2008 Edition.	171.8; 171.11; 172.202; 172.401; 172.512; 172.602; 173.320; 175.33; 178.3.
International Maritime Organization (IMO),	
* * * * * * *	
International Convention for the Safety of Life at Sea, (SOLAS) Amendments 2000, Chapter II–2/Regulation 19, 2001.	176.63; 176.84.
International Maritime Dangerous Goods Code (IMDG Code), 2006 Edition, Incorporating Amendment 33–06 (English Edition), Volumes 1 and 2.	171.12; 172.202; 172.401; 172.502; 172.602; 173.21; 176.2; 176.5; 176.11; 176.27; 176.30; 178.3; 178.274.
* * * * * * *	
United Nations,	
* * * * * * *	
UN Recommendations on the Transport of Dangerous Goods, Fourteenth revised edition (2005), Volumes I and II.	171.8; 171.12; 172.202; 172.401; 172.502; 173.22; 173.24; 173.24b; 173.40; 173.192; 173.197; 173.302b; 173.304b; 178.75; 178.274; 178.801.
UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, Fourth revised edition, (2003), and Addendum 2, (2004).	172.102; 173.21; 173.56; 173.57; 173.58; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.185; Part 173, appendix H; 178.274.
* * * * * * *	

* * * * *

■ 3. In § 171.14, paragraph (b) is removed and reserved; paragraphs (d) introductory text, (d)(1) and (d)(2) are revised; paragraphs (d)(7) and (d)(8) are removed; paragraphs (e) and (f) are revised; and new paragraph (g) is added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(b) [Reserved]

* * * * *

(d) A final rule published in the **Federal Register** on December 29, 2006, effective January 1, 2007, resulted in revisions to this subchapter. During the transition period, until January 1, 2008, as provided in paragraph (d)(1) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on December 31, 2006, or the requirements published in the December 29, 2006 final rule.

(1) *Transition dates.* The effective date of the final rule published on December 29, 2006 is January 1, 2007. A delayed compliance date of January 1, 2008, is authorized. Unless otherwise specified, on and after January 1, 2008, all applicable regulatory requirements adopted in the final rule in effect on January 1, 2007, must be met.

(2) *Intermixing old and new requirements.* Marking, labeling, placarding, and shipping paper descriptions must conform to either the old requirements of this subchapter in effect on December 31, 2006, or the new requirements of this subchapter in the final rule without intermixing communication elements, except that intermixing is permitted during the applicable transition period for packaging, hazard communication and handling provisions, as follows:

(i) If either shipping names or identification numbers are identical, a shipping paper may display the old shipping description even if the package is marked and labeled under the new shipping description;

(ii) If either shipping names or identification numbers are identical, a shipping paper may display the new shipping description; and

(iii) Either old or new placards may be used regardless of whether old or new

shipping descriptions, labels, and package markings are used.

* * * * *

(e) The shipping description sequences in effect on December 31, 2006, may be used until January 1, 2013.

(f) Except for transportation by highway, a Division 5.2 label and a Division 5.2 placard conforming to the specifications in §§ 172.427 and 172.552, respectively, of this subchapter in effect on December 31, 2006, may be used until January 1, 2011. For transportation by highway, a Division 5.2 placard conforming to the specifications in § 172.552 of this subchapter in effect on December 31, 2006 may be used until January 1, 2014.

(g) The Class 3 and Division 6.1 classification criteria and packing group assignments in effect on December 31, 2006, may be used until January 1, 2012.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

■ 5. In § 172.101, paragraph (d)(4) is revised and the Hazardous Materials Table is amended by removing, adding and revising, in the appropriate alphabetical sequence, to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(d) * * *

(4) Each reference to a Class 3 material is modified to read "Combustible liquid" when that material is reclassified in accordance with § 173.150(e) or (f) of this subchapter or has a flash point above 60 °C (140 °F) but below 93 °C (200 °F).

* * * * *

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Carbon dioxide and nitrous oxide mixtures.	2.2	UN1015		2.2		306	None	314, 315	75 kg	150 kg	A	
	Carbon dioxide and oxygen mixtures, compressed.	2.2	UN1014		2.2, 5.1	77, A14	306	304	314, 315	75 kg	150 kg	A	
	Carbon monoxide and hydrogen mixture, compressed.	2.3	UN2600		2.3, 2.1	6	None	302	302	Forbidden	Forbidden	D	40
	Crotonaldehyde, stabilized.	6.1	UN1143	I	6.1, 3	2, B9, B14, B32, B74, B77, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	B	40.
	Crotonic acid, *liquid*	8	UN2823	III	8	IB8, T1	154	203	241	5 L	60 L	A	12.
	Crotonic acid, *solid*	8	UN2823	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A	12.
	Formic acid	8	UN1779	II	-8	B2, B28, IB2, T7, TP2.	154	202	242	1 L	30 L	A	40
	Hydrogen difluorides, n.o.s.	8	UN1740	II	8	IB8, IP2, IP4, N3, N34, T3, TP33.	None	212	240	15 kg	50 kg	A	25, 40, 52.
				III	8	IB8, IP3, N3, N34, T1, TP33.	154	213	240	25 kg	100 kg	A	25, 40, 52.
	Hydroquinone, solid.	6.1	UN2662	III	8.1	IB8, IP3, T1, TP33.	153	213	240	100 kg	200 kg	A	
	Hydroquinone solution.	6.1	UN3435	III	6.1	IB3, T4, TP1	153	203	241	60 L	220 L	A	
	Propionic acid	8	UN1848	III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	
	Rare gases and nitrogen mixtures, compressed.	2.2	UN1981		2.2		306	302	None	75 kg	150 kg	A	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Rare gases and oxygen mixtures, compressed.	2.2	UN1980		2.2	79	306	302	None	75 kg	150 kg	A.	
	Rare gases mixtures, compressed.	2.2	UN1979		2.2		306	302	None	75 kg	150 kg	A.	
	Regulated medical waste.	6.2	UN3291	II	6.2	A13	134	197	197	No limit	No limit	A	40.
	[Add]:												
	Crotonaldehyde or Crotonaldehyde, stabilized.	6.1	UN1143	I	6.1, 3	2, 175, B9, B14, B32, B74, B77, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	B	40.
	Crotonic acid, liquid	8	UN3472	III	8	IB8, T1	154	203	241	5 L	60 L	A	12.
	Crotonic acid, solid	8	UN2823	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A	12.
	Formic acid *with not less than 10% but not more than 85% acid by mass.*	8	UN3412	II	8	IB2, T7, TP2	154	202	242	1 L	30 L	A	40.
	Formic acid *with not less than 5% but less than 10% acid by mass.*	8	UN3412	III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	40
	Formic acid *with more than 85% acid by mass.*	8	UN1779	II	8, 3	B2, B28, IB2, T7, TP2.	154	202	242	1 L	30 L	A	40.
	Fuel cell cartridges.*containing flammable liquids.*	3	UN3473	II	3		150	230	None	5 L	60 L	A.	
	Hydrogendifluorides, solid, n.o.s.	8	UN1740	II	8	IB8, IP2, IP4, N3, N34, T3, TP33.	None	212	240	15 kg	50 kg	A	25, 40, 52.
				III	8	IB8, IP3, N3, N34, T1, TP33.	154	213	240	25 kg	100 kg	A	25, 40, 52.
	Hydrogendifluoride solution, n.o.s.	8	UN3471	II	8, 6.1	IB2, T7, TP2	154	202	242	1 L	30 L	A	25, 40, 52.
				III	8, 6.1	IB3, T4, TP1	154	203	241	5 L	60 L	A	25, 40, 52.

Nitric acid *other than red fuming with not more than 20 percent nitric acid.*	8	UN2031	II	8	A6, B2, B47, B53, IB2, T8, TP2, TP12.	None	158	242	1 L	30 L	D.	
Paint, corrosive, flammable *(including paint, lacquer, enamel, stain, shellac, varnish, polish, liquid filler and liquid lacquer base).*	8	UN3470	II	8, 3	IB2, T7, TP2, TP8, TP28.	154	202	243	1 L	30 L	B	40.
Paint related material corrosive, flammable *(including paint thinning or reducing compound).*	8	UN3470	II	8, 3	IB2, T7, TP2, TP8, TP28.	154	202	243	1 L	30 L	B	40.
Paint, flammable, corrosive *(including paint, lacquer, enamel, stain, shellac, varnish, polish, liquid filler and liquid lacquer base).*	3	UN3469	I	3, 8	T11, TP2, TP27	None	201	243	0.5 L	2.5 L	E	40.
			II	3, 8	IB2, T7, TP2, TP8, TP28.	150	202	243	1 L	5 L	B	40.
			III	3, 8	IB3, T4, TP1, TP29.	150	203	242	5 L	60 L	A	40.
Paint related material, flammable, corrosive *(including paint thinning or reducing compound.*	3	UN3469	I	3, 8	T11, TP2, TP27	None	201	243	0.5 L	2.5 L	E	40.
			II	3, 8	IB2, T7, TP2, TP8, TP28.	150	202	243	1 L	5 L	B	40.
			III	3, 8	IB3, T4, TP1, TP29.	150	203	242	5 L	60 L	A	40.
Propionic acid *with not less than 90% acid by mass.*	8	UN3463	II	8, 3	IB2, T7, TP2	154	202	243	1 L	30 L	A..	
Propionic acid *with not less than 10% and less than 90% acid by mass.*	8	UN1848	III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A..	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Regulated medical waste, n.o.s. *or* Clinical waste, unspecified, n.o.s. *or* (BIO) Medical waste, n.o.s.	6.2	UN3291	II	6.2	A13	134	197	197	No limit	No limit	B	40.
	[Revise]:												
	Aerosols, *non-flammable,(each not exceeding 1 L capacity).*	2.2	UN1950		2.2		306	None	None	75 kg	150 kg	A	48, 87, 126.
G	Amines, flammable, corrosive, n.o.s. *or* Polyamines, flammable, corrosive, n.o.s.	3	UN2733	I	3, 8	T14, TP1, TP27	None	201	243	0.5 L	2.5 L	D	40, 52.
				II	3, 8	IB2, T11, TP1, TP27.	150	202	243	1 L	5 L	B	40, 52.
				III	3, 8	B1, IB3, T7, TP1, TP28.	150	203	242	5 L	60 L	A	40, 52.
	Aminopyridines *(o-; m-; p-).*	6.1	UN2671	II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	12, 40, 52.
I	Ammonia, anhydrous.	2.3	UN1005		2.3, 8	4, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57.
D	Ammonia, anhydrous.	2.2	UN1005		2.2	13, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57.
D	Ammonia solution, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*	2.2	UN3318		2.2	13,T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57.
I	Ammonia solution, *relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.*	2.3	UN3318		2.3, 8	4,T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57.

	Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia.*	8	UN2672	III	8	IB3, IP8, T7, TP1	154	203	241	5 L	60 L	A	40, 52, 85.
	Ammonia solutions, *relative density less than 0.880 at 15 degrees C in water, with more than 35 percent but not more than 50 percent ammonia.*	2.2	UN2073		2.2		306	304	314, 315	Forbidden	150 kg	E	40, 52, 57.
	Antimony trichloride, solid.	8	UN1733	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	40.
	Articles, explosive, extremely insensitive or Articles, EEI.	1.6N	UN0486	II	1.6N		None	62	None	Forbidden	Forbidden	07.	
G	Articles, explosive, n.o.s.	1.4S	UN0349	II	1.4S		None	62	None	25 kg	100 kg	05.	
G	Articles, explosive, n.o.s.	1.4B	UN0350	II	1.4B		None	62	None	Forbidden	Forbidden	06.	
G	Articles, explosive, n.o.s.	1.4C	UN0351	II	1.4C		None	62	None	Forbidden	75 kg	06.	
G	Articles, explosive, n.o.s.	1.4D	UN0352	II	1.4D		None	62	None	Forbidden	75 kg	06.	
G	Articles, explosive, n.o.s.	1.4G	UN0353	II	1.4GD		None	62	None	Forbidden	75 kg	06.	
G	Articles, explosive, n.o.s.	1.1L	UN0354	II	1.1L		None	62	None	Forbidden	Forbidden	08	8E, 14E, 15E, 17E.
G	Articles, explosive, n.o.s.	1.2L	UN0355	II	1.2L		None	62	None	Forbidden	Forbidden	08	8E, 14E, 15E, 17E.
G	Articles, explosive, n.o.s.	1.3L	UN0356	II	1.3L		None	62	None	Forbidden	Forbidden	08	8E, 14E, 15E, 17E.
G	Articles, explosive, n.o.s.	1.1C	UN0462	II	1.1C		None	62	None	Forbidden	Forbidden	07.	
G	Articles, explosive, n.o.s.	1.1D	UN0463	II	1.1D		None	62	None	Forbidden	Forbidden	07.	
G	Articles, explosive, n.o.s.	1.1E	UN0464	II	1.1E		None	62	None	Forbidden	Forbidden	07.	
G	Articles, explosive, n.o.s.	1.1F	UN0465	II	1.1F		None	62	None	Forbidden	Forbidden	08.	
G	Articles, explosive, n.o.s.	1.2C	UN0466	II	1.2C		None	62	None	Forbidden	Forbidden	07.	
G	Articles, explosive, n.o.s.	1.2D	UN0467I	I	1.2D		None	62	None	Forbidden	Forbidden	07.	
G	Articles, explosive, n.o.s.	1.2E	UN0468	II	1.2E		None	62	None	Forbidden	Forbidden	07.	
G	Articles, explosive, n.o.s.	1.2F	UN0469	II	1.2F		None	62	None	Forbidden	Forbidden	08.	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
G	Articles, explosive, n.o.s.	1.3C	UN0470	II	1.3C		None	62	None	Forbidden	Forbidden	07.	
G	Articles, explosive, n.o.s.	1.4E	UN0471	II	1.4E		None	62	None	Forbidden	75 kg	06.	
G	Articles, explosive, n.o.s.	1.4F	UN0472	II	1.4F		None	62	None	Forbidden	Forbidden	08.	
	Batteries, dry, containing potassium hydroxide solid, *electric, storage.*	8	UN3028	III	8		None	213	None	25 kg gross	230 kg gross.	A	52.
	Batteries, wet, filled with alkali, *electric storage.*	8	UN2795	III	8		159	159	159	30 kg gross	No limit	A	52.
	Battery fluid, alkali	8	UN2797	II	8	B2, IB2, N6, T7, TP2, TP28.	154	202	242	1 L	30 L	A	29, 52.
	Benzyl bromide	6.1	UN1737	II	6.1, 8	A3, A7, IB2, N33, N34, T8, TP2, TP12, TP13.	None	202	243	1 L	30 L	D	13, 40.
	Benzyl chloride	6.1	UN1738	II	6.1, 8	A3, A7, B70, IB2, N33, N42, T8, TP2, TP12, TP13.	None	202	243	1 L	30 L	D	13, 40.
	Caesium hydroxide	8	UN2682	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	29, 52.
	Caesium hydroxide solution.	8	UN2681	II	8	B2, IB2, T7, TP2	154	202	242	1 L	30 L	A	29, 52.
				III	8	IB3, T4, TP1	154	202	241	5 L	60 L	A	29, 52.
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 16 percent water.*	5.1	UN2880	II	5.1	165, IB8, IP2, IP4, IP13, W9.	152	212	240	5 kg	25 kg	D	4, 25, 48, 52, 56, 58, 69, 142.
G	Caustic alkali liquids, n.o.s.	8	UN1719	II	8	B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	A	29, 52.
				III	8	IB3, T7, TP1, TP28.	154	203	241	5 L	60 L	A	29, 52.

	Charges, shaped, flexible, linear.	1.1D	UN0288	II	1.1D		None	62	None	Forbidden	Forbidden	07.			
	Chlorosilanes, corrosive, n.o.s.	8	UN2987	II	8	B2, IB2, T14, TP2, TP27.	None	202	242	1 L	30 L	C	40.		
	Chlorosilanes, flammable, corrosive, n.o.s.	3	UN2985	II	3, 8	IB1, T11, TP2, TP13, TP27.	None	201	243	1 L	5 L	B	40.		
	Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40.		
	Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1, 3, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40, 125.		
	Chromium trioxide, anhydrous.	5.1	UN1463	II	5.1, 6.1, 8	IB8, IP4, T3, TP33.	None	212	242	5 kg	25 kg	A.			
G	Components, explosive train, n.o.s.	1.2B	UN0382	II	1.2B		None	62	None	Forbidden	Forbidden	11.			
G	Components, explosive train, n.o.s.	1.4B	UN0383	II	1.4B		None	62	None	Forbidden	75 kg	06.			
G	Components, explosive train, n.o.s.	1.4S	UN0384	II	1.4S		None	62	None	25 kg	100 kg	05.			
G	Components, explosive train, n.o.s.	1.1B	UN0461	II	1.1B		None	62	None	Forbidden	Forbidden	11.			
G	Compressed gas, n.o.s.	2.2	UN1956		2.2	77	306, 307	302, 305	314, 315	75 kg	150 kg	A..			
	Contrivances, water-activated, *with burster, expelling charge or propelling charge.*	1.2L	UN0248	II	1.2L		None	62	None	Forbidden	Forbidden	08	8E, 14E, 15E, 17E.		
	Contrivances, water-activated, *with burster, expelling charge or propelling charge.*	1.3L	UN0249	II	1.3L		None	62	None	Forbidden	Forbidden	08	8E, 14E, 15E, 17E.		
G	Corrosive, liquid, acidic, inorganic, n.o.s.	8	UN3264	I	8	A6, B10, T14, TP2, TP27.	None	201	243	0.5 L	2.5 L	B	40.		
				II	8	B2, IB2, T11, TP2, TP27.	154	202	242	1 L	30 L	B	40.		
				III	8	IB3, T7, TP1, TP28.	154	203	241	5 L	60 L	A	40.		
	Dangerous Goods in Machinery *or* Dangerous Goods in Apparatus.	9	UN3363			136, A105	None	222	None	See A105	See A105	A..			

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Dimethylamine solution.	3	UN1160	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	52.
	1', 3-Dimethylbutylamine.	3	UN2379	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	52.
	Dimethylhydrazine, symmetrical.	6.1	UN2382	I	6.1, 3	2, B9, B14, B32, B74, B77, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	40, 52, 74.
	Dimethylhydrazine, unsymmetrical.	6.1	UN1163	I	6.1, 3, 8	2, B7, B9, B14, B32, B74, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	21, 38, 40, 52, 100.
	Disodium trioxosilicate.	8	UN3253	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A	52.
	Ethanolamine *or* Ethanolamine solutions.	8	UN2491	III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	52.
	Ethylamine, aqueous solution *with not less than 50 percent but not more than 70 percent ethylamine.*	3	UN2270	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	40, 52.
	Ethylenediamine	8	UN1604	II	8, 3	IB2, T7, TP2	154	202	243	1 L	30 L	A	40, 52.
	1-Ethylpiperidine	3	UN2386	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	52.
	Ethyltrichlorosilane	3	UN1196	II	3, 8	A7, IB1, N34, T7, TP2, TP13.	None	202	243	1 L	5 L	B	40.
	Hydrazine, anhydrous.	8	UN2029	I	8, 3, 6.1	A3, A6, A7, A10, B7, B16, B53.	None	201	243	Forbidden	2.5 L	D	40, 52, 125.
	Hydrazine, aqueous solution, *with not more than 37 percent hydrazine, by mass.*	6.1	UN3293	III	6.1	IB3, T4, TP1	153	203	241	60 L	220 L	A	52.

Hydrazine, aqueous solution, *with more than 37 % hydrazine, by mass.*	8	UN2030	I	8, 6.1	B16, B53, T10, TP2, TP13.	None	201	243	Forbidden	2.5 L	D	40, 52.
			II	8, 6.1	B16, B53, IB2, T7, TP2, TP13.	None	202	243	Forbidden	30 L	D	40, 52.
			III	8, 6.1	B16, B53, IB3, T4, TP1.	None	203	241	5 L	60 L	D	40, 52.
Hydrogen in a metal hydride storage system.	2.1	UN3468		2.1	167	None	214	None	Forbidden	100 kg gross.	D.	
Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water, and not more than 5 percent peroxyacetic acid.*	5.1	UN3149	II	5.1, 8	145, A2, A3, A6, B53, IB2, IP5, T7, TP2, TP6, TP24.	None	202	243	1 L	5 L	D	25, 66, 75.
Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	5.1, 8	12, B53, B80, B81, B85, IB2, IP5, T7, TP2, TP6, TP24, TP37.	None	202	243	Forbidden	Forbidden	D	25, 66, 75.
Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	5.1, 8	A2, A3, A6, B53, IB2, IP5, T7, TP2, TP6, TP24, TP37.	None	202	243	1 L	5 L	D	25, 66, 75.
Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary).*	5.1	UN2984	III	5.1	A1, IB2 IP5, T4, TP1, TP6, TP24, TP37.	152	203	243	2.5 L	30 L	B	25, 66, 75.
Hydrogen peroxide, stabilized *or* Hydrogen peroxide aqueous solutions, stabilized *with more than 60 percent hydrogen peroxide.*	5.1	UN2015	I	5.1, 8	12, B53, B80, B81, B85, T9, TP2, TP6, TP24, TP37.	None	201	243	Forbidden	Forbidden	D	25, 66, 75.

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
	Hypochlorite solutions.	8	UN1791	II	8	A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24.	154	202	242	1 L	30 L	B	26.
	Lead phosphite, dibasic.	4.1	UN2989	II	4.1	IB8, IP2, IP4, T3, TP33.	None	212	240	15 kg	50 kg	B	34.
				III	4.1	IB8, IP3, T1, TP33.	151	213	240	25 kg	100 kg	B	34.
	Lithium hydroxide ..	8	UN2680	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	52.
	Lithium hydroxide, solution.	8	UN2679	II	8	B2, IB2, T7, TP2	154	202	242	1 L	30 L	A	29, 52.
				III	8	IB3, T4, TP2	154	203	241	5 L	60 L	A	29, 52, 96.
	Methylamine, aqueous solution.	3	UN1235	II	3, 8	B1, IB2, T7, TP1	150	202	243	1 L	5 L	E	52, 135.
	Methylhydrazine	6.1	UN1244	I	6.1, 3, 8	1, B7, B9, B14, B30, B72, B77, N34, T22, TP2, TP13, TP38, TP44.	None	226	244	Forbidden	Forbidden	D	21, 40, 49, 52, 100.
	Methylphenyldichlorosilane.	8	UN2437	II	8	IB2, T7, TP2, TP13.	None	202	242	1 L	30 L	C	40.
	1-Methylpiperidine	3	UN2399	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	52.
+	Motor fuel antiknock mixtures.	6.1	UN1649	I	6.1	14, 151, B9, B90, T14, TP2, TP13.	None	201	244	Forbidden	30 L	D	25, 40.
G	Organoarsenic compound, liquid, n.o.s.	6.1	UN3280	I	5, T14, TP2, TP13, TP27.	None	201	242	1 L	30 L	B	6.1.	
				II	6.1	IB2, T11, TP2, TP27.	153	202	242	5L	60L	B.	
				III	6.1	IB3, T7, TP1, TP28.	153	203	241	60 L	220 L	A.	
G	Organometallic substance, solid, pyrophoric.	4.2	UN3391	I	4.2	T21, TP7, TP33	None	187	244	Forbidden	Forbidden	D.	

G	Organometallic substance, solid, pyrophoric, water-reactive.	4.2	UN3393	I	4.2, 4.3	B11, T21, TP7, TP33.	None	187	244	Forbidden	Forbidden	D	52.
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler and liquid lacquer base.*	3	UN1263	I	3	T11, TP1, TP8, TP27.	150	201	243	1 L	30 L	E.	
				II	3	149, B52, IB2, T4, TP1, TP8, TP28.	150	173	242	5 L	60 L	B.	
				III	3	B1, B52, IB3, T2, TP1, TP29.	150	173	242	60 L	220 L	A.	
	Paint *or* Paint related materials.	8	UN3066	II	8	B2, IB2, T7, TP2, TP28.	154	173	242	1 L	30 L	A.	
				III	8	B52, IB3, T4, TP1, TP29.	154	173	241	5 L	60 L	A.	
	Paint related material *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	I	3	T11, TP1, TP8, TP27.	150	201	243	1 L	30 L	E.	
				II	3	149, B52, IB2, T4, TP1, TP8, TP28.	150	173	242	5 L	60 L	B.	
				III	3	B1, B52, IB3, T2, TP1, TP29.	150	173	242	60 L	220 L	A.	
	Plastic molding compound *in dough, sheet or extruded rope form evolving flammable vapor.*	9	UN3314	III	9	32, IB8, IP3, IP7	155	221	221	100 kg	200 kg	E	19, 21, 25, 87, 144.
	Polymeric beads expandable, *evolving flammable vapor.*	9	UN2211	III	9	32, IB8, IP3, IP7, T1, TP33.	155	221	221	100 kg	200 kg	E	19, 21, 25, 87, 144.
	Potassium hydroxide, solid.	8	UN1813	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	52.
	Potassium hydroxide, solution.	8	UN1814	II	8	B2, IB2, T7, TP2	154	202	242	1 L	30 L	A	52.
				III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	52.
	Potassium monoxide.	8	UN2033	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	29, 52.
	Pyrrolidine	3	UN1922	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	40, 52
	Rubidium hydroxide.	8	UN2678	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	29, 52.

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
	Rubidium hydroxide solution.	8	UN2677	II	8	B2, IB2, T7, TP2	154	202	242	1 L	30 L	A	29, 52.
				III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	29, 52.
	Soda lime *with more than 4 percent sodium hydroxide.*	8	UN1907	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A	52.
	Sodium aluminate, solution.	8	UN1819	II	8	B2, IB2, T7, TP2	154	202	242	1 L	30 L	A	52.
				III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	52.
	Sodium hydrosulfide, *with less than 25 percent water of crystallization.*	4.2	UN2318	II	4.2	A7, A19, A20, IB8, IP2, T3, TP33.	None	212	241	15 kg	50 kg	A	52.
	Sodium hydroxide, solid.	8	UN1823	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	52.
	Sodium hydroxide solution.	8	UN1824	II	8	B2, IB2, N34, T7, TP2.	154	202	242	1 L	30 L	A	52.
				III	8	IB3, N34, T4, TP1.	154	203	241	5 L	60 L	A	52.
	Sodium monoxide	8	UN1825	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	52.
	Sodium sulfide, hydrated *with not less than 30 percent water.*	8	UN1849	II	8	IB8, IP2, IP4, T3, TP33.	154	212	240	15 kg	50 kg	A	52.
G	Substances, explosive, n.o.s.	1.1L	UN0357	II	1.1L		None	62	None	Forbidden	Forbidden		8E, 14E, 15E, 17E.
G	Substances, explosive, n.o.s.	1.2L	UN0358	II	1.2L		None	62	None	Forbidden	Forbidden		8E, 14E, 15E, 17E.
G	Substances, explosive, n.o.s.	1.3L	UN0359	II	1.3L		None	62	None	Forbidden	Forbidden		8E, 14E, 15E, 17E.
G	Substances, explosive, n.o.s.	1.1A	UN0473	II	1.1A	111	None	62	None	Forbidden	Forbidden	12.	
G	Substances, explosive, n.o.s.	1.1C	UN0474	II	1.1C		None	62	None	Forbidden	Forbidden	10.	
G	Substances, explosive, n.o.s.	1.1D	UN0475	II	1.1D		None	62	None	Forbidden	Forbidden	10.	
G	Substances, explosive, n.o.s.	1.1G	UN0476	II	1.1G		None	62	None	Forbidden	Forbidden	08.	

G	Substances, explosive, n.o.s.	1.3C	UN0477	II	1.3C		None	62	None	Forbidden	Forbidden	10.		
G	Substances, explosive, n.o.s.	1.3G	UN0478	II	1.3G		None	62	None	Forbidden	Forbidden	08.		
G	Substances, explosive, n.o.s.	1.4C	UN0479	II	1.4C		None	62	None	Forbidden	75 kg	09.		
G	Substances, explosive, n.o.s.	1.4D	UN0480	II	1.4D		None	62	None	Forbidden	75 kg	09.		
G	Substances, explosive, n.o.s.	1.4S	UN0481	II	1.4S		None	62	None	25 kg	75 kg	05.		
G	Substances, explosive, n.o.s.	1.4G	UN0485	II	1.4G		None	62	None	Forbidden	75 kg	08.		
G	Substances, explosive, very insensitive, n.o.s. *or* Substances, EVI, n.o.s.	1.5D	UN0482	II	1.5D		None	62	None	Forbidden	Forbidden	10.		
I	Sulfur	4.1	UN1350	III	4.1	30, IB8, IP3, T1, TP33.	None	None	240	25 kg	100 kg	A	19, 74.	
	Tetraethylenepentamine.	8	UN2320	III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	52.	
	Trimethylchlorosilane.	3	UN1298	II	3, 8	A3, A7, B77, IB2, N34, T7, TP2, TP13.	None	202	243	1 L	5 L	E	40.	
	Vinylpyridines, stabilized.	6.1	UN3073	II	6.1, 3, 8	IB1, T7, TP2, TP13.	153	202	243	1 L	30 L	B	21, 40, 52.	

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■ 6. In Appendix B to § 172.101, the List of Marine Pollutants, the entry "Copper chloride" is amended by adding the designation "PP" in Column (1) and the entries "Alcohol C–13—C–15 poly (1–6) ethoxylate" and "1,2-Dichlorobenzene" are removed.

■ 7. In § 172.102, paragraph (c)(1), Special Provisions 15, 47, 77, 146, 147, and 166 are revised; new Special Provision 175 is added; Special Provision 101 is removed; and in paragraph (c)(2), new Special Provision A105 is added.

The revisions and additions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

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15 This entry applies to "Chemical kits" and "First aid kits" containing one or more compatible items of hazardous materials in boxes, cases, etc. that, for example, are used for medical, analytical, diagnostic, testing, or repair purposes. For transportation by aircraft, materials forbidden for transportation by passenger aircraft or cargo aircraft may not be included in the kits. Chemical kits and first aid kits are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings. Chemical kits and first aid kits are also excepted from the labeling and placarding requirements of this subchapter, except when offered for transportation or transported by air. Chemical and first aid kits may be transported in accordance with the consumer commodity and ORM exceptions in § 173.156, provided they meet all required conditions. Kits that are carried on board transport vehicles for first aid or operating purposes are not subject to the requirements of this subchapter.

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47 Mixtures of solids that are not subject to this subchapter and flammable liquids may be transported under this entry without first applying the classification criteria of Division 4.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Except when the liquids are fully absorbed in solid material contained in sealed bags, each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level. Small inner packagings consisting of sealed packets and articles containing less than 10 mL of a Class 3 liquid in Packing Group II or III absorbed onto a solid material are not subject to this subchapter provided there is no free liquid in the packet or article.

* * * * *

77 Mixtures containing not more than 23.5% oxygen by volume may be transported under this entry when no other oxidizing gases are present. A Division 5.1 subsidiary risk label is not required if this special provision applies.

* * * * *

146 This description may be used for a material that poses a hazard to the environment but does not meet the definition for a hazardous waste or a hazardous substance, as defined in § 171.8 of this subchapter, or any hazard class, as defined in part 173 of this subchapter, if it is designated as environmentally hazardous by another Competent Authority. This provision may be used for both domestic and international shipments.

147 This entry applies to non-sensitized emulsions, suspensions, and gels consisting primarily of a mixture of ammonium nitrate and fuel, intended to produce a Type E blasting explosive only after further processing prior to use. The mixture for emulsions typically has the following composition: 60–85% ammonium nitrate; 5–30% water; 2–8% fuel; 0.5–4% emulsifier or thickening agent; 0–10% soluble flame suppressants; and trace additives. Other inorganic nitrate salts may replace part of the ammonium nitrate. The mixture for suspensions and gels typically has the following composition: 60–85% ammonium nitrate; 0–5% sodium or potassium perchlorate; 0–17% hexamine nitrate or monomethylamine nitrate; 5–30% water; 2–15% fuel; 0.5–4% thickening agent; 0–10% soluble flame suppressants; and trace additives. Other inorganic nitrate salts may replace part of the ammonium nitrate. These substances must satisfactorily pass Test Series 8 of the UN Manual of Tests and Criteria, Part I, Section 18 (IBR, see § 171.7 of this subchapter), and may not be classified and transported unless approved by the Associate Administrator.

* * * * *

166 When transported in non-friable tablet form, calcium hypochlorite, dry, may be transported as a Packing Group III material.

* * * * *

175 This substance must be stabilized when in concentrations of not more than 99%.

(2) * * *

Code/Special Provisions

* * * * *

A105 The total net quantity of dangerous goods contained in one package, excluding magnetic material, must not exceed the following:

a. 1 kg (2.2 pounds) in the case of solids;

b. 0.5 L (0.1 gallons) in the case of liquids;

c. 0.5 kg (1.1 pounds) in the case of Division 2.2 gases; or

d. any combination thereof.

■ 8. In § 172.202, paragraphs (a) and (b) are revised to read as follows:

§ 172.202 Description of hazardous material shipping papers.

(a) The shipping description of a hazardous material on the shipping paper must include:

(1) The identification number prescribed for the material as shown in Column (4) of the § 172.101 table;

(2) The proper shipping name prescribed for the material in Column (2) of the § 172.101 table;

(3) The hazard class or division number prescribed for the material, as shown in Column (3) of the § 172.101 table. Except for combustible liquids, the subsidiary hazard class(es) or subsidiary division number(s) must be entered in parentheses immediately following the primary hazard class or division number. In addition—

(i) The words "Class" or "Division" may be included preceding the primary and subsidiary hazard class or division numbers.

(ii) The hazard class need not be included for the entry "Combustible liquid, n.o.s."

(iii) For domestic shipments, primary and subsidiary hazard class or division names may be entered following the numerical hazard class or division, or following the basic description.

(4) The packing group in Roman numerals, as designated for the hazardous material in Column (5) of the § 172.101 table. Class 1 (explosives) materials, self-reactive substances, organic peroxides and entries that are not assigned a packing group are excepted from this requirement. The packing group may be preceded by the letters "PG" (for example, "PG II"); and

(5) Except for transportation by aircraft, the total quantity of hazardous materials covered by the description must be indicated (by mass or volume, or by activity for Class 7 materials) and must include an indication of the applicable unit of measurement. For example, "200 kg" or "50 L." The following provisions also apply:

(i) For Class 1 materials, the quantity must be the net explosive mass. For an explosive that is an article, such as Cartridges, small arms, the net explosive mass may be expressed in terms of the net mass of either the article or the explosive materials contained in the article.

(ii) For hazardous materials in salvage packaging, an estimate of the total quantity is acceptable.

(iii) The following are excepted from the requirements of paragraph (a)(5) of this section:

(A) Bulk packages, provided some indication of the total quantity is shown, for example, "1 cargo tank" or "2 IBCs."

(B) Cylinders, provided some indication of the total quantity is shown, for example, "10 cylinders."

(C) Packages containing only residue.

(6) For transportation by aircraft, the total net mass per package, must be shown unless a gross mass is indicated in Columns (9A) or (9B) of the § 172.101 table in which case the total gross mass per package must be shown; or, for Class 7 materials, the quantity of radioactive material must be shown by activity. The following provisions also apply:

(i) For empty uncleaned packaging, only the number and type of packaging must be shown;

(ii) For chemical kits and first aid kits, the total net mass of hazardous materials must be shown. Where the kits contain solids and/or liquids, the net mass of liquids within the kits is to be calculated on a 1 to 1 basis, i.e., 1 L equals 1 kg;

(iii) For dangerous goods in machinery or apparatus, the individual total quantities or an estimate of the individual total quantities of dangerous goods in solid, liquid or gaseous state, contained in the article must be shown;

(iv) For dangerous goods transported in a salvage packaging, an estimate of the quantity of dangerous goods per package must be shown;

(v) For cylinders, total quantity may be indicated by the number of cylinders, for example, "10 cylinders;"

(vi) For items where "No Limit" is shown in Column (9A) or (9B) of the § 172.101 table, the quantity shown should be the net mass or volume of the material, except for UN2800, UN3072, and UN3166 where the quantity should be the gross mass of the article; and

(7) The number and type of packages must be indicated. The type of packages must be indicated by description of the package (for example, "12 drums"). Indication of the packaging specification number ("1H1") may be included in the description of the package (for example, "12 1H1 drums" or "12 drums (UN 1A1)"). Abbreviations may be used for indicating packaging types (for example, "cyl." for "cylinder") provided the abbreviations are commonly accepted and recognizable.

(b) Except as provided in this subpart, the basic description specified in paragraphs (a)(1), (2), (3) and (4) of this section must be shown in sequence with no additional information interspersed. For example, "UN2744, Cyclobutyl chloroformate, 6.1, (8, 3), PG II."

* * * * *

■ 9. In § 172.312, paragraphs (a) introductory text, and (a)(2) introductory text are revised and a new paragraph (c)(7) is added to read as follows:

§ 172.312 Liquid hazardous materials in non-bulk packaging.

(a) Except as provided in this section, each non-bulk combination package having inner packagings containing liquid hazardous materials, single packaging fitted with vents, or open cryogenic receptacle intended for the transport of refrigerated liquefied gases must be:

(1) * * *

(2) Legibly marked with package orientation markings that are similar to the illustration shown in this paragraph, on two opposite vertical sides of the package with the arrows pointing in the correct upright direction. The arrows must be either black or red on white or other suitable contrasting background and commensurate with the size of the package. Depicting a rectangular border around the arrows is optional.

* * * * *

(c) * * *

(7) Class 7 radioactive material in Type A, IP–2, IP–3, Type B(U), or Type B(M) packages.

■ 10. In § 172.407, paragraph (d)(2)(i) is amended by removing "; and" at the end of the paragraph and adding a period in its place, and paragraph (d)(2)(iii) is added to read as follows:

§ 172.407 Label specifications.

* * * * *

(d) * * *

(2) * * *

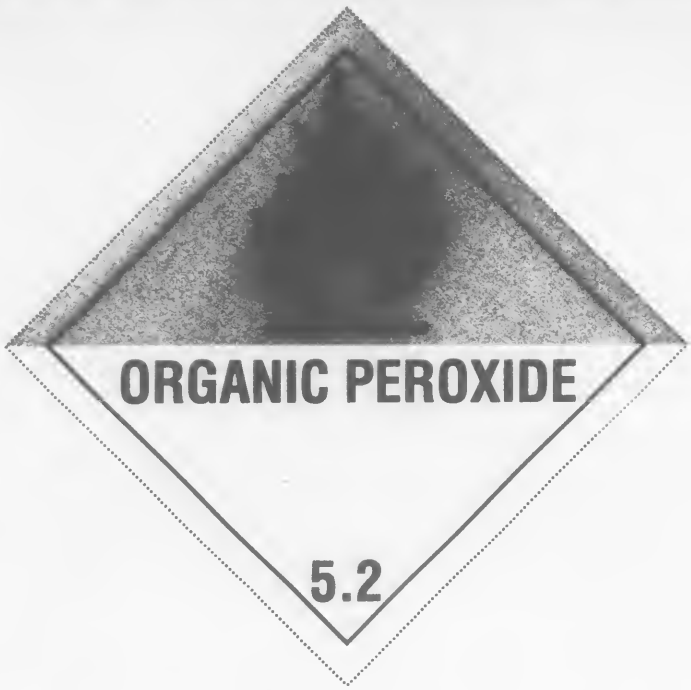
(iii) White may be used for the symbol for the ORGANIC PEROXIDE label.

* * * * *

■ 11. Section 172.427 is revised to read as follows:

§ 172.427 ORGANIC PEROXIDE label.

(a) Except for size and color, the ORGANIC PEROXIDE label must be as follows:

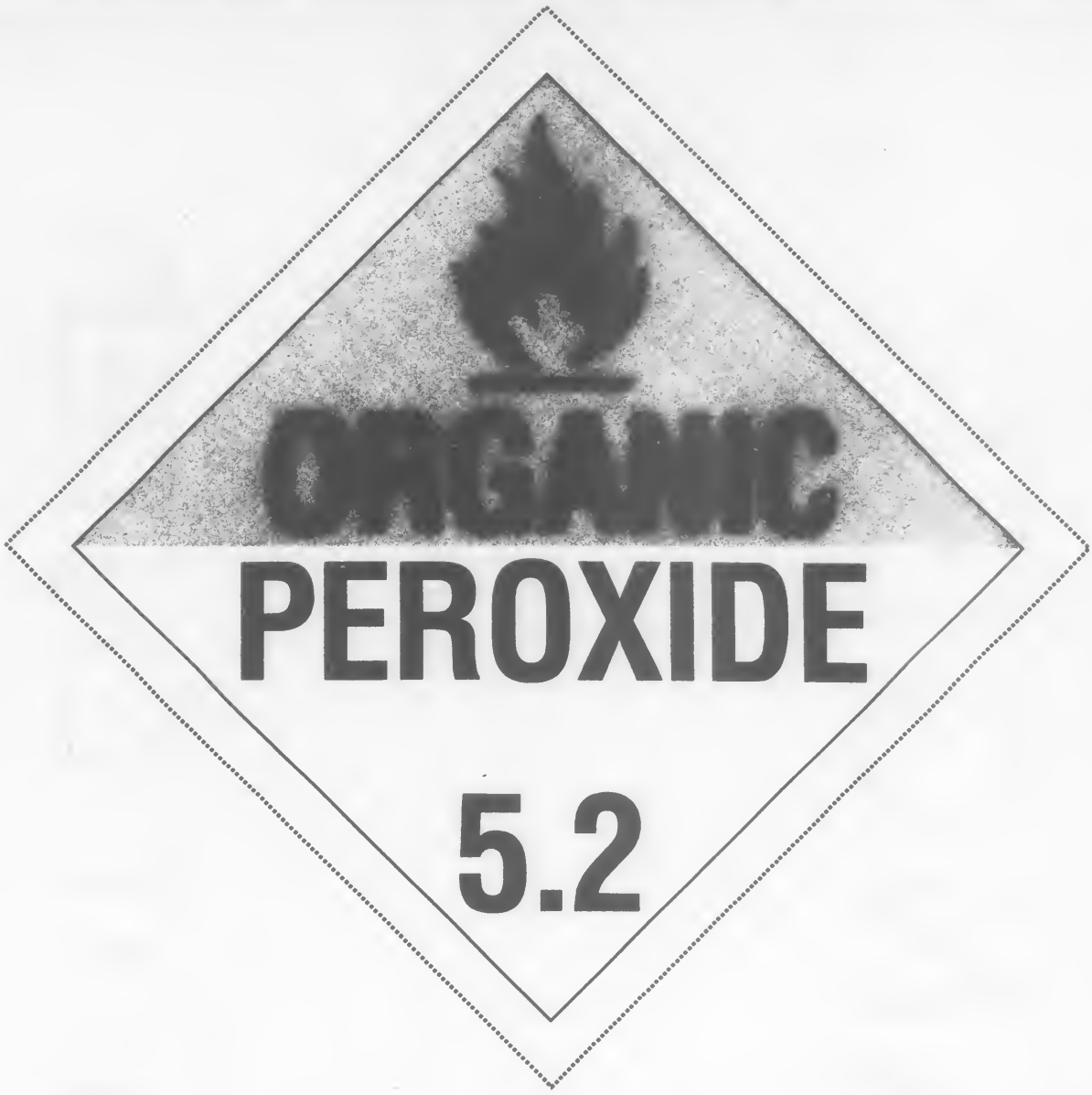


(b) In addition to complying with § 172.407, the background on the ORGANIC PEROXIDE label must be red in the top half and yellow in the lower half.

■ 12. Section 172.552 is revised to read as follows:

§ 172.552 ORGANIC PEROXIDE placard.

(a) Except for size and color, the ORGANIC PEROXIDE placard must be as follows:



(b) In addition to complying with § 172.519, the background on the ORGANIC PEROXIDE placard must be red in the top half and yellow in the lower half. The text, division number and inner border must be black; the symbol may be either black or white.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 13. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 14. Section 173.9 is revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

(a) For the purpose of this section, not including 49 CFR part 387, a rail car, freight container, truck body, or trailer in which the lading has been fumigated with any material, or is undergoing fumigation, is a package containing a hazardous material.

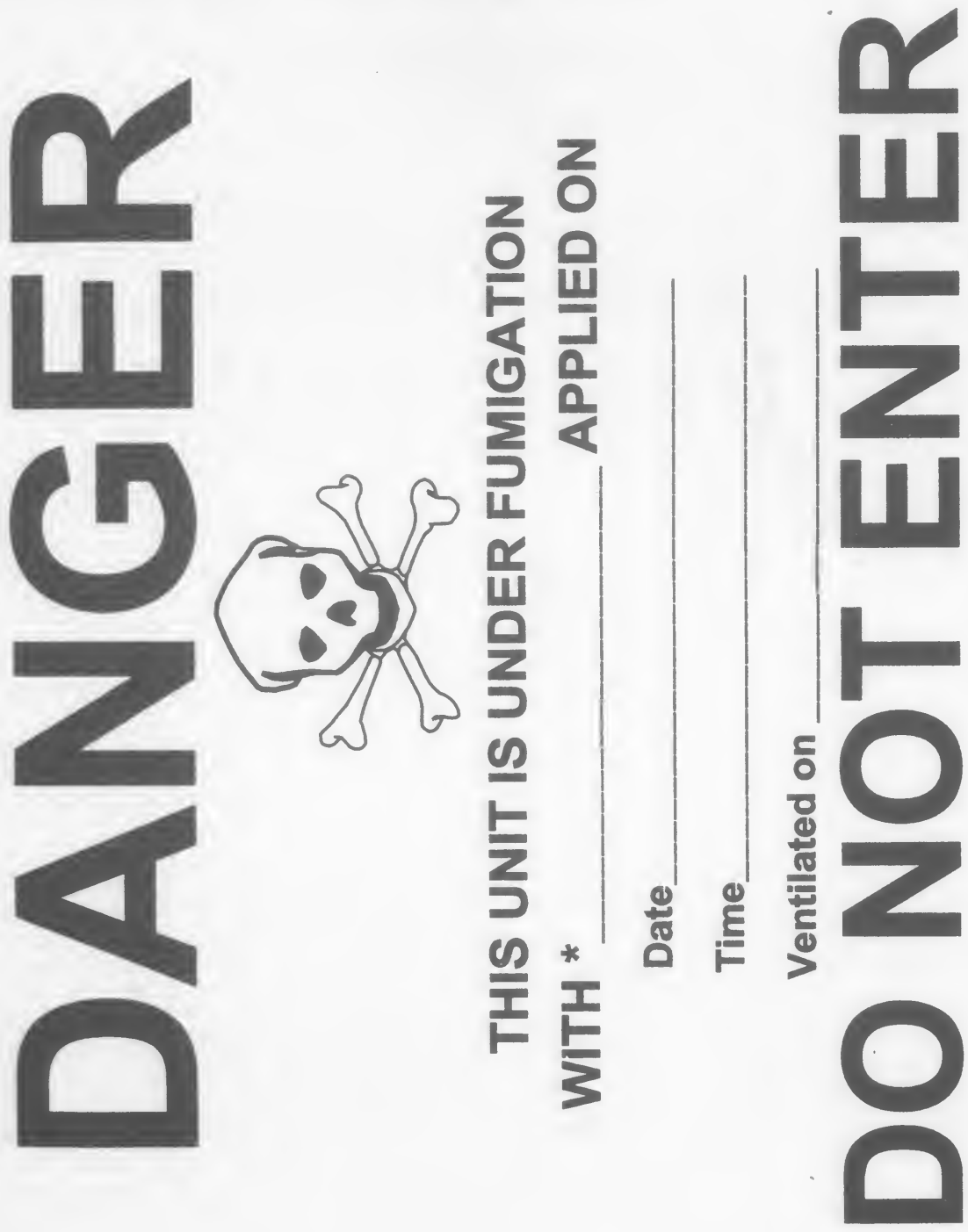
(b) No person may offer for transportation or transport a rail car, freight container, truck body, or trailer in which the lading has been fumigated or treated with any material, or is undergoing fumigation, unless the FUMIGANT marking specified in paragraph (e) of this section is prominently displayed so that it can be seen by any person attempting to enter the interior of the transport vehicle or freight container. For domestic transportation, a hazard warning label authorized by EPA under 40 CFR part 156 may be used as an alternative to the FUMIGANT marking.

(c) No person may affix or display on a rail car, freight container, truck body,

or trailer the FUMIGANT marking specified in paragraph (e) of this section, unless the lading has been fumigated or is undergoing fumigation.

(d) The FUMIGANT marking required by paragraph (b) of this section must remain on the rail car, freight container, truck body, or trailer until the rail car, freight container, truck body, or trailer has been completely ventilated either by opening the doors of the unit or by mechanical ventilation to ensure no harmful concentration of gas remains after fumigation has been completed.

(e) *FUMIGANT marking.* (1) The FUMIGANT marking must consist of red or black letters on a white background that is at least 30 cm (11.8 inches) wide and at least 25 cm (9.8 inches) high. Except for size and color, the FUMIGANT marking must be as follows:



(2) The "*" shall be replaced with the technical name of the fumigant.

(f) A closed cargo transport unit that has been fumigated is not subject to any other provisions of this subchapter if it—

(1) Has been completely ventilated either by opening the doors of the unit or by mechanical ventilation after fumigation, and

(2) Displays the FUMIGANT marking, including the date of ventilation.

(g) For international shipments, transport documents should indicate the date of fumigation, type and amount of fumigant used, and instructions for disposal of any residual fumigant, including fumigation devices.

(h) Any person subject to the requirements of this section, solely due to the fumigated lading, must be informed of the requirements of this section and the safety precautions necessary to protect themselves and others in the event of an incident or accident involving the fumigated lading.

(i) Any person who offers for transportation or transports a rail car, freight container, truck body or trailer that is subject to this subchapter solely because of the hazardous materials designation specified in paragraph (a) of this section is not subject to any requirements of this subchapter other than those contained in this section.

§ 173.35 [Amended]

■ 15. In § 173.35, in paragraph (k), the wording "60.5 °C (141 °F)" is removed and the wording "60 °C (140 °F)" is added in its place.

■ 16. In § 173.115, paragraphs (b)(1) and (k)(5) are revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(b) * * *

(1) Exerts in the packaging an absolute pressure of 280 kPa (40.6 psia) or greater at 20 °C (68 °F), or is a cryogenic liquid, and

* * * * *

(k) * * *

(5) When the contents are classified as Division 6.1, PG III or Class 8, PG II or III, the aerosol must be assigned a subsidiary hazard of Division 6.1 or Class 8, as appropriate.

* * * * *

§ 173.120 [Amended]

■ 17. In § 173.120, in paragraphs (a) introductory text, (a)(2) and (b)(1), the wording "60.5 °C (141 °F)" is removed and the wording "60 °C (140 °F)" is added each place it appears.

§ 173.121 [Amended]

■ 18. In § 173.121, in the paragraph (a) table, in Column (2), for the entry Packing group "III", the wording "≥ 23 °C, ≤ 60.5 °C (≥ 73 °F, ≤ 141 °F)" is removed and the wording "≥23 °C, ≤ 60 °C (≥ 73 °F, ≤ 140 °F)" is added in its place.

■ 19. In § 173.124, a new paragraph (a)(2)(i)(D)*(3)* is added to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(2) * * *

(i) * * *

(D) * * *

* * * * *

(3) It is an oxidizing substance in Division 5.1 containing less than 5.0% combustible organic substances; or

* * * * *

■ 20. In § 173.133, in paragraph (a)(1), the table is revised to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

(a) * * *

(1) * * *

Packing group	Oral toxicity LD_{50} (mg/kg)	Dermal toxicity LD_{50} (mg/kg)	Inhalation toxicity by dusts and mists LC_{50} (mg/L)
I	≤5.0	≤50	≤0.2
II	>5.0 and ≤50	>50 and ≤200	>0.2 and ≤2.0
III	>50 and ≤300	>200 and ≤1000	>2.0 and ≤4.0

* * * * *

■ 21. In § 173.134, paragraph (a)(5) is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

(a) * * *

(5) *Regulated medical waste or clinical waste or (bio) medical waste* means a waste or reusable material derived from the medical treatment of an animal or human, which includes diagnosis and immunization, or from biomedical research, which includes the production and testing of biological products. Regulated medical waste or clinical waste or (bio) medical waste containing a Category A infectious substance must be classed as an infectious substance, and assigned to UN2814 or UN2900, as appropriate.

* * * * *

■ 22. In § 173.136, paragraph (d) is removed and the last sentence in paragraph (a) is revised to read as follows:

§ 173.136 Class 8—Definitions.

(a) * * * A liquid, or a solid which may become liquid during transportation, that has a severe corrosion rate on steel or aluminum based on the criteria in § 173.137(c)(2) is also a corrosive material.

* * * * *

■ 23. In § 173.137, paragraph (c)(2) is revised to read as follows:

§ 173.137 Class 8—Assignment of packing group.

* * * * *

(c) * * *

(2) That do not cause full thickness destruction of intact skin tissue but exhibit a corrosion on steel or aluminum surfaces exceeding 6.25 mm (0.25 inch) a year at a test temperature of 55 °C (130 °F). The corrosion may be determined in accordance with the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) or other equivalent test methods.

■ 24. In § 173.159, paragraphs (a), (c)(1), (c)(2), (c)(4), (c)(5), (d)(1) and (e)(2) are revised to read as follows:

§ 173.159 Batteries, wet.

(a) Electric storage batteries, containing electrolyte acid or alkaline corrosive battery fluid, must be completely protected so that short circuits will be prevented (e.g., by the use of non-conductive caps that entirely cover the terminals); they may not be packed with other materials except as provided in paragraphs (g) and (h) of this section and in §§ 173.220 and 173.222. For transportation by aircraft, the packaging for wet cell batteries must incorporate an acid- or alkali-proof liner, or include a supplementary packaging with sufficient strength and be adequately sealed to prevent leakage of electrolyte fluid in the event of spillage.

* * * * *

(c) * * *

(1) Electric storage batteries protected against short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals) and firmly secured to skids or pallets capable of withstanding the shocks normally incident to transportation, are authorized for transportation by rail, highway, or water. The height of the completed unit must not exceed 1½ times the width of the skid or pallet. The unit must be capable of withstanding, without damage, a superimposed weight equal to two times the weight of the unit or, if the weight of the unit exceeds 907 kg (2000 pounds), a superimposed weight of 1814 kg (4000 pounds). Battery terminals must not be relied upon to support any part of the superimposed weight.

(2) Electric storage batteries weighing 225 kg (500 pounds) or more, consisting of carriers' equipment, may be shipped by rail when mounted on suitable skids and protected against short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals). Such shipments may not be offered in interchange service.

* * * * *

(4) Not more than four batteries not over 7 kg (15 pounds) each, packed in strong outer fiberboard or wooden boxes. Batteries must be securely cushioned and packed to prevent short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals). The maximum authorized gross weight is 30 kg (65 pounds).

(5) Not more than five batteries not over 4.5 kg (10 pounds) each, packed in strong outer fiberboard or wooden boxes. Batteries must be securely cushioned and packed to prevent short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals). The maximum authorized gross weight is 30 kg (65 pounds).

* * * * *

(d) * * *

(1) The battery must be protected against short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals) and securely packaged;

* * * * *

(e) * * *

(2) The batteries must be loaded or braced so as to prevent damage and short circuits in transit (e.g., by the use of non-conductive caps that entirely cover the terminals);

* * * * *

■ 25. In § 173.166, paragraph (d)(1) is revised to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(d) * * *

(1) An air bag module or seat-belt pretensioner that has been approved by the Associate Administrator and is installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels, is not subject to the requirements of this subchapter.

* * * * *

■ 26. Section 173.187 is revised to read as follows:

§ 173.187 Pyrophoric solids, metals or alloys, n.o.s.

Packagings for pyrophoric solids, metals, or alloys, n.o.s. must conform to the requirements of part 178 of this subchapter at the packing group performance level specified in the § 172.101 Table. These materials must be packaged as follows:

(a) In steel boxes (4A) and contain not more than 15 kg (33 pounds) each.

(b) In wooden boxes (4C1, 4C2, 4D, or 4F) with inner metal receptacles which have a positive (not friction) means of closure and contain not more than 15 kg (33 pounds) each.

(c) In fiberboard boxes (4G) with inner metal receptacles which have a positive (not friction) means of closure and contain not more than 7.5 kg (17 pounds) each.

(d) In steel drums (1A1 or 1A2) with a gross mass not exceeding 150 kg (331 pounds) per drum.

(e) In plywood drums (1D) with inner metal receptacles which have a positive (not friction) means of closure and contain not more than 15 kg (33 pounds) each.

(f) In fiber drums (1G) with inner metal receptacles which have a positive (not friction) means of closure and contain not more than 15 kg (33 pounds) each.

(g) In specification cylinders, as prescribed for any compressed gas, except for Specifications 8 and 3HT.

■ 27. In § 173.197, paragraph (a), the first sentence in paragraph (b), and the first sentence in paragraph (e)(2) are revised to read as follows:

§ 173.197 Regulated medical waste.

(a) *General provisions.* Non-bulk packagings, Large Packagings, and non-specification bulk outer packagings used for the transportation of regulated medical waste or clinical waste or (bio) medical waste must be rigid containers meeting the provisions of subpart B of this part.

(b) * * * Except as provided in § 173.134(c) of this subpart, non-bulk packagings for regulated medical waste or clinical waste or (bio) medical waste must be UN standard packagings conforming to the requirements of Part 178 of this subchapter at the Packing Group II performance level. * * *

* * * * *

(e) * * *

(2) * * *Liquid regulated medical waste or clinical waste or (bio) medical waste transported in a Large Packaging, Cart, or BOP must be packaged in a rigid inner packaging conforming to the provisions of subpart B of this part.

* * * * *

■ 28. In § 173.216, paragraph (c)(3) is revised and paragraph (c)(4) is removed to read as follows:

§ 173.216 Asbestos, blue, brown or white.

* * * * *

(c) * * *

(3) Bags or other non-rigid packagings which are dust and sift proof must be placed in rigid outer packagings or closed freight containers.

■ 29. In § 173.220, paragraphs (b)(2)(ii)(B)(*3*), (c) and (d) are revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) * * *

(*3*) In no part of the closed system shall the pressure exceed 5% of the maximum allowable working pressure of the system or 290 psig (2000 kPa), whichever is less; and

* * * * *

(c) *Battery powered or installed.* Batteries must be securely installed, and wet batteries fastened in an upright position. Batteries must be protected against short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals) and leakage or removed and packaged separately under § 173.159. Battery powered vehicles, machinery or equipment including battery powered wheelchairs and mobility aids are excepted from the requirements of this subchapter when transported by rail, highway or vessel.

(d) *Lithium batteries.* Except as provided in § 172.102, Special Provision A102, of this subchapter, vehicles and machinery powered by primary lithium batteries that are transported with these batteries installed are forbidden aboard passenger-carrying aircraft. Lithium batteries contained in vehicles or engines must be securely fastened in the battery holder of the vehicle or engine, and be protected in such a manner as to prevent damage and short circuits (e.g.,

by the use of non-conductive caps that entirely cover the terminals). Lithium batteries must be of a type that have successfully passed each test in the UN Manual of Tests and Criteria as specified in § 173.185, unless approved by the Associate Administrator. Equipment, other than vehicles or engines, containing lithium batteries must be transported in accordance with § 173.185.

* * * * *

■ 30. In § 173.222, the section heading, paragraphs (a), (b)(1), (b)(2), (c) introductory text and (d) are revised to read as follows:

§ 173.222 Dangerous goods in machinery or apparatus.

* * * * *

(a) If the machinery or apparatus contains more than one hazardous material, the materials must not be capable of reacting dangerously together.

(b) * * *

(1) Damage to the receptacles containing the hazardous materials during transport is unlikely. However, in the event of damage to the receptacles containing the hazardous materials, no leakage of the hazardous materials from the machinery or apparatus is possible. A leakproof liner may be used to satisfy this requirement.

(2) Receptacles containing hazardous materials must be secured and cushioned so as to prevent their breakage or leakage and so as to control their movement within the machinery or apparatus during normal conditions of transportation. Cushioning material must not react dangerously with the content of the receptacles. Any leakage of the contents must not substantially impair the protective properties of the cushioning material.

* * * * *

(c) The total net quantity of hazardous materials contained in one item of machinery or apparatus must not exceed the following:

* * * * *

(d) Except for transportation by aircraft, when a package contains hazardous materials in two or more of the categories listed in paragraphs (c)(1) through (c)(3) of this section the total quantity required by § 172.202(c) of this subchapter to be entered on the shipping paper must be either the aggregate quantity, or the estimated quantity, of all hazardous materials, expressed as net mass.

■ 31. In § 173.224, in paragraph (b)(7), in the Self-Reactive Materials Table, a new entry is added in appropriate alphabetical order to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * * *

(b) * * *

(7) * * *

SELF-REACTIVE MATERIALS TABLE

Self-reactive substance	Identification No.	Concentration—(%)	Packing method	Control temperature—(°C)	Emergency temperature	Notes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Acetone-pyrogallol copolymer 2-diazo-1-naphthol-5-sulphonate	3228	100	OP8			
*	*	*	*	*	*	*

* * * * *

■ 32. A new section § 173.230 is added in subpart E to read as follows:

§ 173.230 Fuel cell cartridges containing flammable liquids.

(a) A fuel cell cartridge is a container that stores fuel for controlled discharge into fuel cell powered equipment through a valve. The cartridge must be designed and constructed to prevent the fuel from leaking during normal conditions of transportation and be free of electric charge generating components.

(b) Fuel cell cartridges containing flammable liquids, including methanol or methanol/water solutions, must conform to the following:

(1) The fuel cell cartridge design type without its packaging must be shown to pass an internal pressure test at a pressure of 15 psig (100 kPa);

(2) Fuel cell cartridges must be packaged in rigid outer packagings which meet the requirements of part 178 at the Packing Group II performance level and conform to the general packaging requirements of subpart B of part 173.

(c) Fuel cell cartridges packed in or with equipment are excepted from the packaging requirements in paragraph (b)(2) of this section if the cartridges are packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a. For cartridges installed in equipment, the equipment may be considered the outer packaging if it provides an equivalent level of protection. The packaging need not conform to performance requirements of part 178 of this subchapter. The cartridges must be protected against damage that may be caused by the movement or placement of the equipment and the cartridges within the outer packaging.

■ 33. In § 173.301, paragraph (o) is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(o) *Cylinders made of aluminum alloy 6351–T6.* A DOT 3AL cylinder manufactured of aluminum alloy 6351–T6 may not be filled and offered for transportation or transported with pyrophoric gases. The use of UN cylinders manufactured of aluminum alloy 6351–T6 is prohibited.

* * * * *

■ 34. In § 173.306, paragraph (i) is revised and a new paragraph (j) is added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(i) *Aerosols and receptacles small, containing gas with a capacity of less than 50 mL.* Aerosols, as defined in § 171.8 of this subchapter, and receptacles small, containing gas, with a capacity not exceeding 50 mL (1.7 oz.) and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter. The pressure limit may be increased to 2000 kPa (290 psig) at 55 °C (131 °F) provided the aerosols are transported in outer packages that conform to the packaging requirements of Subpart B of

this part. This paragraph (i) does not apply to a self-defense spray (e.g., pepper spray).

(j) For additional exceptions, also see § 173.307.

Appendix H to Part 173 [Amended]

■ 35. In Appendix H to Part 173, under heading 3. Apparatus, introductory text, the first occurrence of the wording "UN Manual of Test and Criteria," is removed and the wording "UN Manual of Test and Criteria (IBR, see § 171.7 of this subchapter)," is added in its place and under heading 5. Procedure, in paragraph (h), the wording "60.5 °C (141 °F)" is removed and the wording "60 °C (140 °F)" is added each place it appears.

PART 175—CARRIAGE BY AIRCRAFT

■ 36. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

■ 37. In § 175.10, in paragraph (a)(2), the first sentence is revised to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

* * * * *

(a) * * *

(2) One packet of safety matches or a lighter intended for use by an individual when carried on one's person or in carry-on baggage only. * * *

* * * * *

■ 38. In § 175.78, paragraph (c)(4) is revised to read as follows:

§ 175.78 Stowage compatibility of cargo.

* * * * *

(c) * * *

(4) Note 1. "Note 1" at the intersection of a row and column means the following:

(i) Only Division 1.4, Compatibility Group S, explosives are permitted to be transported aboard a passenger aircraft. Only certain Division 1.3, Compatibility Groups C and G, and Division 1.4, Compatibility Groups B, C, D, E, G and S, explosives may be transported aboard a cargo aircraft.

(ii) Division 1.4 explosives in Compatibility Group S may be stowed with Division 1.3 and 1.4 explosives in compatibility groups as permitted aboard aircraft under paragraph (c)(4)(i) above.

(iii) Except as otherwise provided in this Note, explosives of different compatibility groups may be stowed together whether or not they belong to the same division.

(iv) Division 1.4B and Division 1.3 explosives may not be stowed together. Division 1.4B explosives must be loaded into separate unit load devices and, when stowed aboard the aircraft, the unit load devices must be separated by other cargo with a minimum separation of 2 m (6.5 feet). When not loaded in unit load devices, Division 1.4B and Division 1.3 explosives must be loaded into different, non-adjacent loading positions and separated by other cargo with a minimum separation of 2 m (6.5 feet).

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 39. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

§ 176.76 [Amended]

■ 40. In § 176.76, in paragraph (f)(2), the wording "141 °F" is removed and the wording "60 °C (140 °F)" is added in its place.

■ 41. In § 176.83, paragraph (a)(4) is revised to read as follows:

§ 176.83 Segregation.

(a) * * *

(4) Segregation is not required:

(i) Between hazardous materials of different classes which comprise the same substance but vary only in their water content (for example, sodium sulfide in Division 4.2 or Class 8) or quantity for Class 7 materials; or

(ii) Between hazardous materials of different classes which comprise a group of substances that do not react dangerously with each other. The following materials are grouped by compatibility:

(A) Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary);* Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide;* Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide;* Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid;* Organic peroxide type D, liquid; Organic peroxide type E, liquid; Organic peroxide type F, liquid; and

(B) Dichlorosilane, Silicon tetrachloride, and Trichlorosilane.

* * * * *

■ 42. In § 176.84, in paragraph (b), in the Table of provisions, Codes "22," "23," "26," "27," "52," "53" and "109" are revised, a new Code "144" is added in appropriate numerical order, and following the table, a new note "2" is added to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
*	* * * *
22	Segregation same as for flammable liquids if flash point is below 60 °C (140 °F).
23	Segregation same as for flammable liquids if flash point is between 23 °C (73 °F) and 60 °C (140 °F).
*	* * * *
26	Stow "away from" acids.[2]
27	Stow "away from" alkaline compounds.[2]
*	* * * *
52	Stow "separated from" acids.[1, 2]
53	Stow "separated from" alkaline compounds.[2]
*	* * * *
109	Label as a flammable liquid if flash point is 60 °C (140 °F) or below.
*	* * * *
144	When stowed under deck, mechanical ventilation shall be in accordance with SOLAS, Chapter II–2/ Regulation 19 (IBR, see § 171.7 of this subchapter) for flammable liquids with flashpoint below 23 °C (73 °F).
*	* * * *

* * * * *

[2] Class 8 materials in PG II or III that otherwise are required to be segregated from one another may be transported in the same cargo transport unit, whether in the same packaging or not, provided the substances do not react dangerously with each other to cause combustion and/or evolution of considerable heat, or of flammable, toxic or asphyxiant gases, or the formation of corrosive or unstable substances; and the package does not contain more than 30 L (7.8 gallons) for liquids or 30 kg (66 lbs.) for solids.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 43. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 44. In § 178.274, paragraph (j)(6) is revised to read as follows:

§ 178.274 Specifications for UN portable tanks.

* * * * *

(j) * * *

(6) Effective January 1, 2008, each new UN portable tank design type meeting the definition of "container" in

the Convention for Safe Containers (CSC) (see 49 CFR 450.3(a)(2)) must be subjected to the dynamic longitudinal impact test prescribed in Part IV, Section 40 of the UN Manual of Tests and Criteria (see IBR, § 171.7 of this subchapter). A UN portable tank design type impact-tested prior to January 1, 2008, in accordance with the requirements of this section in effect on October 1, 2005, need not be retested. UN portable tanks used for the dedicated transportation of "Helium, refrigerated liquid," UN1963, and "Hydrogen, refrigerated liquid," UN1966, that are marked "NOT FOR RAIL TRANSPORT" in letters of a minimum height of 10 cm (4 inches) on at least two sides of the portable tank are excepted from the dynamic longitudinal impact test.

* * * * *

§ 178.602 [Amended]

■ 45. In § 178.602, in paragraph (b), the second sentence is amended by adding the wording "containing solids" after the word "Bags."

■ 46. In § 178.810, paragraph (b) is revised to read as follows:

§ 178.810 Drop test.

* * * * *

(b) *Special preparation for the drop test.* (1) Metal, rigid plastic, and composite IBCs intended to contain solids must be filled to not less than 95 percent of their maximum capacity, or if intended to contain liquids, to not less than 98 percent of their maximum capacity. Pressure relief devices must be removed and their apertures plugged or rendered inoperative.

(2) Fiberboard and wooden IBCs must be filled with a solid material to not less than 95 percent of their maximum capacity; the contents must be evenly distributed.

(3) Flexible IBCs must be filled to the maximum permissible gross mass; the contents must be evenly distributed.

(4) Rigid plastic IBCs and composite IBCs with plastic inner receptacles must be conditioned for testing by reducing the temperature of the packaging and its contents to −18 °C (0 °F) or lower. Test liquids must be kept in the liquid state, if necessary, by the addition of anti-freeze. Water/anti-freeze solutions with a minimum specific gravity of 0.95 for testing at −18 °C (0 °F) or lower are considered acceptable test liquids, and may be considered equivalent to water for test purposes. IBCs conditioned in this way are not required to be conditioned in accordance with § 178.802.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 47. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 48. In § 180.213, paragraph (d) is revised to read as follows:

§ 180.213 Requalification markings.

* * * * *

(d) *Requalification markings.* Each cylinder successfully passing requalification must be marked with the RIN set in a square pattern, between the month and year of the requalification date. The first character of the RIN must appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right; and the fourth in the lower left. Example: A cylinder requalified in September 2006, and approved by a person who has been issued RIN "A123", would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (b) of this section. An example of the markings prescribed in this paragraph (d) is as follows:

A1
9 06 X
32

Where:

"9" is the month of requalification
"A123" is the RIN
"06" is the year of requalification, and
"X" represents the symbols described in paragraphs (f)(2) through (f)(8) of this section.

(1) Upon written request, variation from the marking requirement may be approved by the Associate Administrator.

(2) Exception. A cylinder subject to the requirements of § 173.301(l) of this subchapter may not be marked with a RIN.

* * * * *

■ 49. In § 180.352, paragraphs (b) introductory text, (b)(1) and (g) are revised to read as follows:

§ 180.352 Requirements for retest and inspection of IBCs.

* * * * *

(b) *Test and inspections for metal, rigid plastic, and composite IBCs.* Each IBC is subject to the following test and inspections:

(1) Each IBC intended to contain solids that are loaded or discharged under pressure or intended to contain liquids must be tested in accordance with the leakproofness test prescribed in § 178.813 of this subchapter prior to its first use in transportation and every 2.5 years thereafter, starting from the date of manufacture or the date of a repair conforming to paragraph (d)(1) of this section. For this test, the IBC is not required to have its closures fitted.

* * * * *

(g) *Record retention.* (1) The owner or lessee of the IBC must keep records of periodic retests, initial and periodic inspections, and tests performed on the IBC if it has been repaired or remanufactured.

(2) Records must include design types and packaging specifications, test and inspection dates, name and address of test and inspection facilities, names or name of any persons conducting test or inspections, and test or inspection specifics and results.

(3) Records must be kept for each packaging at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test. These records must be made available for inspection by a representative of the Department on request.

Issued in Washington, DC on December 1, 2006 under authority delegated in 49 CFR part 1.

Thomas J. Barrett,

Administrator.

[FR Doc. 06–9849 Filed 12–28–06; 8:45 am]

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Federal Register

Friday,
December 29, 2006

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

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; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060824226–6322–02; 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: Final rule.

SUMMARY: This final rule implements Amendment 16–4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and sets 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 modifies 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 for non-overfished species. 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 ecosystem. In addition to the management measures implemented specifically for the groundfish fisheries, this rule implements a new Yelloweye Rockfish Conservation Area (YRCA) off Washington State, which will be closed to commercial salmon troll fishing to reduce incidental mortality of yelloweye rockfish in the salmon troll fishery.

DATES: Effective January 1, 2007.

ADDRESSES: Amendment 16–4 is available on the Pacific Fishery Management Council's (Council's) website at: *http://www.pcouncil.org/groundfish/gffmp.html.*

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6129; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

The final 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 FEIS, are available at the Council's website at *http://www.pcouncil.org.*

Background

NMFS published a Notice of Availability for Amendment 16–4 on September 1, 2006 (71 FR 25051.) On September 29, 2006, NMFS published a proposed rule to implement both Amendment 16–4 and the 2007–2008 groundfish harvest specifications and management measures (71 FR 57764.) Both the Notice of Availability and the proposed rule requested public comments through October 31, 2006. During the comment period, NMFS received two letters, one individualized email, and 1,445 form emails of comment, which are addressed later in the preamble to this final rule. See the preamble to the proposed rule for additional background information on the fishery and on this final rule.

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), OYs, and 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 affecting the sustainability of 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 lower than its ABC. Harvest specifications for 2007–2008 are provided in Tables 1a through 2c of this rulemaking.

Management measures set in this biennial management process are intended to constrain the fisheries so that OYs of healthier groundfish stocks are achieved within the constraints of requirements to rebuild co-occurring overfished groundfish species. To rebuild overfished species, allowable harvest levels of healthy species will only be achieved where such harvest will not deter rebuilding of overfished stocks.

Amendment 16–4, which this action implements concurrently with the 2007–2008 groundfish specifications and management measures, modifies the FMP with 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*,] as detailed in the preamble to the proposed rule for this action and in response to comments received, below.

After considering all comments received on Amendment 16–4, the draft environmental impact statement (DEIS,) and the proposed rule, NMFS partially approved Amendment 16–4 on November 30, 2006. NMFS approved all of the Council's Amendment 16–4 recommended revisions to the FMP except for one recommended for Chapter 4.0, "Preventing Overfishing and Achieving Optimum Yield." The Council had recommended adding a sentence to the introductory text to that chapter to read, "The Council may establish a research reserve for any stock, [sic] that is within the ABC but above and separate from the OY for that stock." This recommendation conflicts with NMFS's National Standard Guidelines at 50 CFR 600.310(f)(4)(iii), which state that "All fishing mortality must be counted against OY, including that resulting from bycatch, scientific research, and any other fishing activities." For 2007 and 2008, expected scientific research catch has been deducted from the OYs of overfished species, although those amounts may be adjusted inseason as new information on inseason scientific activities becomes available. For species that are not managed via overfished species rebuilding plans, scientific research will be deducted from OYs inseason, as information on inseason scientific activities becomes available.

Comments and Responses

During the comment period for Amendment 16–4 and the 2007–2008 harvest specifications and management measures, NMFS received two letters of comment and 1,446 emails of comment.

One letter was sent by a member of the public who conducts marine scientific research for the University of California, Santa Barbara; the other letter was sent jointly by three environmental advocacy organizations (Natural Resources Defense Council, Oceana, and The Ocean Conservancy; hereinafter, "The Three Organizations.") Of the 1,446 emails received from members of the public, one email was original and clearly different from all of the other emails. The remaining 1,445 emails were form emails from members of the public who repeated the same title and text in their email messages. Some senders of the form email added personalized, but non-substantive, pleas or threats to the repeated text. NMFS also received two letters from the Council, summarizing discussions it held at its September and November 2006 meetings on limited refinements to its 2007–2008 groundfish specifications and management measures recommendations. These recommendations were either based on scientific information received after the June 2006 Council meeting, or a correction to a numerical mistake. The Council's recommended changes are discussed below in the section on *Changes from the Proposed Rule.* Comments received on the proposed rule are addressed here:

Comment 1: The Three Organizations state that NMFS's legal and long-term obligation with an overfished species is to rebuild as quickly as possible. They further state that the only thing that the court order from *Natural Resources Defense Council* v. *NMFS*, 421 F.3d 872 (9th Cir. 2005) [hereinafter *NRDC* v. *NMFS*] allows NMFS to do in taking the short-term needs of fishing communities into account is to merely avoid disastrous short-term consequences for those communities. The Three Organizations provide their interpretation of "disastrous consequences" for a groundfish fishing community that annual revenue reductions from 2005/2006 to 2007/2008 should exceed 60 percent before those reductions result in disastrous consequences. They then express the belief that a 40 percent reduction in exvessel revenue from 2005 is not disastrous enough, and too far from the Court's example of a 100 percent reduction in revenue.

Response: NMFS's legal and long-term obligation with overfished species is to rebuild those species as quickly as possible, taking into account the status and biology of those stocks, the needs of fishing communities, and the interactions of those stocks within the marine ecosystem. Stating that the obligation is simply to rebuild as quickly as possible mis-characterizes the Magnuson-Stevens Act's requirement to manage fish stocks so that management measures rebuild those stocks while also taking into account the needs of fishing communities that depend on those stocks. In NRDC v. NMFS, the court interpreted the Magnuson-Stevens Act as showing Congress' intent that overfished species be rebuilt as quickly as possible (taking into account the status and biology of the fish stocks and the needs of fishing communities), but leaving "some leeway to avoid disastrous short-term consequences for fishing communities." NMFS and the Council applied the court's direction in developing the EIS for this action and Amendment 16–4 by first identifying, and then giving careful consideration to the short-term needs of fishing communities, particularly: the vulnerability of different fishing communities to reductions in available harvest; the resilience of different fishing communities to reductions in available harvest; 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 need for management flexibility to avoid disastrous immediate consequences from inseason management measures adjustments.

The statutory standard requires that NMFS take into account the needs of fishing communities. It does not require that there be a disaster (however defined) prior to making community adjustments. The 9th Circuit's use of the term "disastrous" was not meant to redefine the provisions of 304(e) of the Magnuson-Stevens Act or import "disaster" language from other portions of the Magnuson-Stevens Act or other statutes into the 304(e) process. Nevertheless, because the comment focuses on the question of whether Amendment 16–4 and the 2007–2008 groundfish specifications and management measures are "disastrous enough," the remainder of this response will address how NMFS and the Council considered the issue of taking short-term fishery impacts into account along with other relevant considerations, and how the 60 percent reduction recommended by The Three Organizations fits within Federal disaster determinations, which they suggest is appropriate and within the agency's considerations under the rebuilding provisions of the Magnuson-Stevens Act.

The two authorities that the Secretary of Commerce (Secretary) can use for declaring fisheries-related disasters are the Interjurisdictional Fisheries Management Act (IJA) and Section 312(a) of the Magnuson-Stevens Act. Neither the IJA nor the Magnuson-Stevens Act specifies a requirement that a negative economic impact of at least 60 percent, as suggested by The Three Organizations, is needed to trigger a disaster declaration by the Secretary. (We note that The Three Organizations acknowledge that the meaning of disaster in the context of Section 312(a) of the Magnuson-Stevens Act is distinct from "disastrous economic impacts" in the context of the 9th Circuit decision.) In fact, there are no formal quantitative definitions of what is a sufficient level of annual economic impact required for declaring a disaster under either Act. NMFS disagrees with The Three Organizations' suggested rule of thumb of a 60 percent decline for a disaster declaration. Many of the disasters that The Three Organizations noted as supporting their 60–percent-decline assumption were declared on the basis of hurricanes and red tides, which resulted in complete (100 percent) fisheries closures, biasing their calculations of averages upward. Over the years, the Secretary's disaster declaration decisions have been made case-by-case, based on specific facts surrounding the decline of the fishery in question, and on the requests for disaster that are typically submitted by governors of affected states. The decisions and associated analyses differ with respect to the legal authorities underlying the decision (IJA, Magnuson-Stevens Act, or both), the nature of the fishery (e.g., salmon, groundfish, shrimp, lobster, crab), the cause of the disaster (hurricane, red tide, flooding, confluence of long term and short term environmental factors such as El Nino's and droughts), duration (multi year, single year) and available information. Therefore, The Three Organizations' use of a simple average percentage impact obscures large differences between widely varying disaster situations and declaration decisions.

A review of past disaster declaration decisions shows that the Secretary looks at not only percentage declines in economic activities from various short- and long-term benchmarks, but also at absolute levels of impact and other factors as well. Typically, the Secretary will have before him the recommendations of the governors of affected states and any supporting analyses provided by the Governors, a biological assessment that shows the

dimensions of the fishery resource disaster, and an economic assessment that shows the existence and extent of the commercial fishery failure. These assessments also typically provide long- and short-term trends and an economic forecast of immediate and future impacts. In the case of the 2000 West Coast Groundfish Disaster Decision, the Secretary had a graph similar to that of Figure 2–13 of the DEIS, which shows trends in ex-vessel revenues with and without whiting harvested by at-sea processors. This figure, updated since 2000, also shows that the fishery has been held to below-disaster revenue levels since the Secretary's 2000 disaster declaration, despite the increasing biomasses of overfished and other groundfish species.

In referring to the NOAA Decision Memo that underlies the Secretary's 2000 West Coast Groundfish Disaster Declaration, The Three Organizations state that "In 2000, landings were projected to fall more than 60 percent below their median annual landings for a 1981–1999 period when a fishery resource disaster was declared." This reference does not provide the full context of the decision. In discussing the fishery resource disaster and associated commercial fishery failure, the NOAA memo had the following key paragraphs that show several time-related perspectives that were considered in the disaster declaration, and also supports the characterization of the current fishery as still in a disaster situation:

"For the year 2000 we are reducing the OYs for groundfish other than whiting to a combined level of 34,000 tons which if completely harvested will yield the lowest level of landings produced by this fishery since the MSFCMA was passed. However, we expect groundfish landings to be even lower than this total because we are also implementing new management measures to protect and rebuild depressed stocks that are within the 83+ species that make up the Pacific groundfish fishery. These management measures may result in the inability to attain the OY or allocation for some relatively healthy co-occurring stocks, particularly bottom-dwelling rockfish on the continental shelf, whose harvest is restricted because it may result in bycatch of depressed stocks. Consequently, OYs (and their associated allocations to harvest groups) may not be completely harvested. We cannot estimate how much of the OYs will not be harvested. If 20 percent of the combined OYs cannot be harvested because of these restrictions, the projected 2000 harvest would be 27,000 tons---a 25 percent decrease from 1999 levels. Some industry projections indicate that possibly 40 percent of the OYs may not be harvested because of the gear, trip, and area regulations being imposed. For purposes of this analysis we will assume 20 percent of the OYs will not be harvested.

What do these trends say about the degree of the fishery resource disaster? Statistically, for the period 1981 through 1999, median annual landings and average annual landings are both about 74,000 tons. (This estimate is not that different from the sum of the long term yield for economically important species and estimates of recent catches for economically unimportant species.) Since 1993, landings have fallen below 70,000 tons with a 20 percent reduction in landings between 1997 and 1998, a 14 percent reduction between 1998 and 1999, and a potential of a 25 percent reduction between 1999 and 2000. *Landings are projected to fall to 27,000 tons in the year 2000, more than 60 percent below median annual landings for the 1981–1999 period.* (Emphasis added here, because this is the sentence quoted by The Three Organizations in their letter of comment.)

These trends reflect the general decline in groundfish resources, but these trends make it difficult to pinpoint when these declines reached a stage where a disaster situation has set in. Is the first year of the disaster 1998, 1999, or 2000? Perhaps most illustrative of such a situation are the sharp reductions in the OYs for the recently declared overfished species lingcod, Pacific ocean perch, bocaccio, canary rockfish and cowcod whose OYs are reduced from their 1999 OY and catch levels from about 50 percent (bocaccio) to about 90 percent for cowcod. It is these reductions and their effects on other fisheries that led the Governors to request a disaster declaration.

Based on these sharp declines and the trend in non-whiting groundfish landings since 1993, we believe that the fishery is currently experiencing a fishery resource disaster which may also have occurred in 1999 and probably originated before 1999. *Because current and future species rebuilding plans involve long-lived rockfish that take decades to recover, we expect the fishery resource disaster to continue for a number of years.* (Emphasis added, since this sentence shows that the Agency projected a continuing disaster beyond the year 2000.)

Using 1999 as a benchmark for assessing the amount of the commercial fishery failure and assuming that ex-vessel prices in the year 2000 are the same as those seen in 1999, the projected commercial harvest value for the year 2000 is about $33 million 25 percent less than actual 1999 revenues of $44 million. Alternatively, using an average ex-vessel price based on 1991–1994 period for both the years 1999 and 2000, leads to projected estimate of $26 million for the year 2000 as compared to $35 million estimate for 1999. Therefore, the resulting estimates of the commercial fishery failure range from $9 million to $11 million. Previous estimates have typically ranged from $3 million to $15 million on an ex-vessel basis. The $3 million estimate assumed that all the OYs would be harvested while the other estimates were based on preliminary Council recommended OYs or perhaps had different benchmark years. This analysis assumes that 20 percent of the OYs will not be harvested as a result of management measures."

In their comment letter, The Three Organizations refer to a recent Federal Emergency Management Agency (FEMA) decision where a governor's disaster request for West Coast salmon was denied under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), even though there was an 85 percent decrease in ex-vessel revenues below the 2001–2005 average.

For Amendment 16–4 and the 2007–2008 groundfish harvest specifications and management measures, in order to provide contextual background information, NMFS presented the Council with information on how different Federal agencies such as FEMA, the United States Department of Agriculture (USDA,) and the Small Business Administration (SBA) analyze disasters. For example, the USDA defines severe production losses in a county as a reduction countywide of at least 30 percent, while the SBA will make a declaration of a physical disaster when at least three businesses have uninsured losses of 40 percent or more of their estimated fair replacement value. Therefore, given that different Agencies have different mandates, programs, criteria and processes for determining disaster situations, it is reasonable to expect situations where one agency like FEMA will deny a request for a disaster declaration under the Stafford Act, while another Agency such as NOAA will declare one under the Magnuson-Stevens Act or IJA. Further, NMFS reiterates, as stated above, that a "diaster" declaration is not the criterion in developing rebuilding plans under section 304(e) of the Magnuson-Stevens Act.

Comment 2: The Three Organizations state that the DEIS used a one-year comparison to measure the economic impact of the alternatives, and suggest instead that a five-year ex-vessel revenue average from 2001–2005 would be more statistically appropriate, saying that using such an average shows lower impacts from the three Action Alternatives considered in the DEIS.

Response: We disagree from several perspectives. First, the FEIS does compare effects of the alternatives on commercial fisheries between 2005, status quo management, and the three action alternatives (summarized in Tables 7–62a-c, 7–63a-c, and 7–64a-b,) and the central recreational analytical tables also show similar comparisons but include estimates for 2004 (summarized in Tables 7–65a-b, 7–66a-b, 7–67a-c, and 7–68a-e.) The analyses within the FEIS are also replete with background tables and charts that show historical trends in revenues, landings, and other socioeconomic variables allowing the Council and NOAA the

ability to compare these projections to past trends. Second, the use of a recent five-year average does not capture the information associated with long term trends, which shows that for the past five years the fishery has operated at its lowest historical levels, especially when whiting is excluded from the analysis. (Whiting is a highly variable fishery where much of the whiting is harvested by catcher-processors and motherships whose activities are not necessarily linked to a coastal community.) Finally, based on these trends, NMFS and the Council believe that communities have been operating at groundfish revenue levels far below those occurring when the Secretary declared a fishery disaster in 2000. Because the fishery has been operating at below-disaster levels in recent years, any further significant decrease will have additional disastrous effects.

Comment 3: The Three Organizations state that they believe that *NRDC* v. *NMFS* requires prioritization of overfished species rebuilding unless there are disastrous short-term consequences. They believe that the proposed rule impermissibly prioritizes economic interests for both yelloweye rockfish management, and for the suite of options implemented by this action. They believe that this action appears to prioritize preventing adverse short-term economic impacts and even increasing short-term revenues over rebuilding as quickly as possible.

Response: This action is consistent with NMFS's policy of placing its highest priority on rebuilding overfished species, and modifying harvest levels to accommodate incidental catch of those species only where eliminating that incidental catch would have disastrous effects on fishing communities. The Three Organizations presented a similar comment to the DEIS for this action; the response to that comment is excerpted here. The Three Organizations assert that: "disastrous short-term consequences for fishing communities are illustrated by a total moratorium on all fishing due to an absolute ban on any bycatch of overfished species." NMFS disagrees that "short-term disastrous consequences" can only occur if there is a total ban of fishing for overfished species, or in other words, only if OYs are set to zero. We also disagree that "disastrous short term economic consequences" is the legal test under the Magnuson-Stevens Act. Significant consequences to fishing communities can occur at OY levels that are so low that allowed economic activity levels are insufficient to maintain the basic community infrastructure during the time of rebuilding. NMFS provided a discussion of the terms "disaster" and "disastrous" in its response to Comment 1, above.

NMFS also disagrees that the rebuilding plan gives priority to economic interests over rebuilding. This action focuses on rebuilding overfished species in as short a time as possible, while taking into account the status and biology of those species and the needs of fishing communities. In taking into account the needs of fishing communities, this action recognizes that fishing communities have, for a number of years, already seen their economic activities curtailed in order to rebuild overfished species. The EIS for this action provides information and analyses on individual community impacts and broader coastwide fishery impacts of groundfish fishery management focused on rebuilding overfished species. The analyses within the EIS also identify classes of communities according to attributes of fishery dependence, resilience, and vulnerability. In comparing these community attributes to amounts of overfished species, target groundfish species and other target species (crab, shrimp, etc.) associated with these communities, NMFS found that there were few regions on the West Coast without a highly dependent or vulnerable groundfish fishing community.

As stated in FEIS at Section 8.3 (Rationale for Preferred Alternative), the key decision evaluated in the EIS for this action is the adoption of rebuilding plans for depleted species and adoption of associated OYs and management measures for the 2007 08 management period. The evaluation of the alternatives considered rebuilding in as short a time as possible, while also taking into account both the status and biology of overfished stocks and the needs of fishing communities. From a strictly biological perspective, rebuilding in a time period as short as possible equates to rebuilding in the absence of fishing. To address the absence-of- fishing scenario in the EIS, OY Alternative 1 provides OYs of 0 mt for all depleted species. This absence-of-fishing alternative would cause the least adverse impacts to the biological and physical environment and would rebuild the species in as quickly as possible. However, it would also have significant adverse short-term economic consequences on fishing communities because it would result in the complete closure of all groundfish fisheries and a range of non-groundfish fisheries, having serious, or, in the words of the court "disastrous consequences" to fishing communities. In contrast, the Council-preferred alternative was developed to fully address the requirements of the Magnuson-Stevens Act at section 304(e)(4)(A) and National Standard 8 (section 301(a)(8).

The Council preferred alternative for the yelloweye rockfish OY is based on a strategy that "ramps down" catch levels from current amounts in order to give managers and industry time to adapt and develop more refined tools for decreasing the catch of yelloweye rockfish while allowing some small access to healthier co-occurring target species. The ramp-down approach is expected to avoid some disastrous short-term economic consequences and still rebuild the stock as quickly as possible. An immediate reduction in the yelloweye OY to 12.6 mt could be expected to result in substantial and adverse economic impacts. As detailed in the FEIS and in comments submitted by the Makah Tribe, those impacts would be heavily centered on some of the most vulnerable communities (rural coastal communities in Oregon and Washington); the Council and NMFS concluded that shifting from current yelloweye rockfish OY levels of 27 mt to levels of 12.6 mt or less next year would significantly impact those fishing communities, including Neah Bay, Washington. As shown in the FEIS, and explained in the FEIS comment response on yelloweye rockfish management in section 13.2, these coastal communities in Oregon and Washington are heavily dependent on recreational fisheries, and any further reductions in the yelloweye OY would require further restrictions on the recreational fisheries, particularly those for halibut and groundfish. Additionally, as the Makah Tribe commented to NMFS, coastal tribal communities are dependent on the fisheries income from and infrastructure supporting non-tribal recreational fishing businesses. This lack of economic diversification and resiliency from negative economic impacts make them particularly vulnerable to severe groundfish fishery management measures.

Comment 4: The Three Organizations state that they believe that the EIS's fishing community vulnerability analysis is defective because it analyzes the economic resilience and vulnerability of fishing communities, rather than also looking at the potential vulnerability of port communities that do not have fishing industries or interests to groundfish rebuilding measures. The Three Organizations also believe that the vulnerability analysis does not take into account the

alternative income stream available to fishing communities from fishing opportunities for species other than groundfish.

Response: Taking into consideration The Three Organizations' assertions and other comments raised, NMFS continues to conclude that the economic analyses used in the FEIS for this action constitute the best available science on the socio-economic effects of rebuilding overfished groundfish species. NOAA's "Guidelines for Economic Analysis of Fishery Management Actions" (NOAA Office of Sustainable Fisheries 2000) do not prescribe particular methods and do not require the use of quantitative analyses. Rather, the Guidelines identify analytical elements that should be addressed and identify the scope of analysis required under applicable law. Recognizing the fact that there may be a lack of data and the complexity associated with developing economic models such as dynamic econometric models, the Guidelines state that: "Embodied in these guidelines is the principle that a well developed qualitative analysis may be preferable to a poorly specified complex analytical model." There are no econometric studies available for use in addressing the central theme of the EIS: rebuilding overfished species in the shortest time possible, taking into account the status and biology of the species and the needs of fishing communities by considering the impacts of allowing some access to healthy fish stocks in order to avoid disastrous consequences to fishing communities.

For purposes of assessing the needs of fishing communities, the Council adopted the following general definition at its April 2006 meeting: "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."

As discussed in the proposed rule for this action, the EIS describes the socioeconomic environment, provides economic impact projections of the alternatives, and classifies fishing communities in terms of their ability to withstand short-term negative consequences that could result from declines in annual groundfish revenue or recreational expenditures. Although the "needs" of fishing communities cannot be quantified because of the lack of data and models, available fisheries and economic demographic information on communities can be used to develop indicators of community engagement in fisheries, dependence on groundfish, and community resiliency. These indicators were combined to classify those communities or associated counties as either "vulnerable" or "most vulnerable" to changes in management measures. A community or county is considered "vulnerable" or "most vulnerable" to changes in fishery 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 socioeconomic impacts. As explained in the EIS and in the proposed rule for this action, a series of fishery-related indicators (e.g., number of fishery permits, number of commercial fishing vessels, number of party and charter trips, etc.) were associated with a series of non-fishery related indicators (e.g., unemployment rates, percent of population below the poverty level, population density, etc.). As listed in Tables A–4–7 and A–4–8, of Appendix A to the FEIS, information on 135 communities and 78 counties was analyzed, of which 38 cities and 18 counties were identified as commercial and/or recreational vulnerable areas. To qualify as a vulnerable area, a community or county had to be listed in the top one-third of ranked indicator values for at least one engagement or dependency indicator and one resiliency indicator. Under stricter ranking requirements, (a community had to be ranked in the top one-third of an indicator twice under engagement and/or dependence and resilience), 17 cities and 15 counties qualify as vulnerable. When even stricter requirements were applied (a community had to be ranked in the top one-third of an indicator three times under engagement and/or dependence and resilience variables), four cities and six counties were identified as vulnerable and received the label of "most vulnerable." The most vulnerable cities are: Garibaldi, OR; Ilwaco, WA; Moss Landing, CA; and Neah Bay, WA. The most vulnerable counties are: Coos, OR; Grays Harbor, WA; Humboldt, CA; Lincoln, OR; Medocino, CA; and Pacific, WA.

The analysis developed for this decision is the first of its type for analyzing U.S. fishing communities. It borrows heavily from socio-economic analysis methodologies employed elsewhere, such as the methodology the U.S. Forest Service uses to establish "counties of concern" or what state employment agencies, such as in Oregon, use to establish "distressed" counties. The Three Organizations incorrectly state in their letter that: "Such methodology guarantees that the analysis will find vulnerable areas, whether they exist or not as compared with the general population of cities." The West Coast groundfish community analysis includes major West Coast cities, such as Los Angeles, San Francisco, Seattle, and San Diego. (Los Angeles County, for example, scores high in areas of commercial fishing and recreational fishery engagement and dependency.) If the purpose of this comment from The Three Organizations is to suggest that NMFS establish some non-fishing community based standard or threshold to be applied to fishing communities, a review of available literature indicates that there is no such standard. The typical approach of almost every major study summarized in the literature review discussed in Appendix A to the FEIS was to select indicators, then rank communities or counties, and then apply differing levels of ranking requirements to see what communities or counties ranked the highest or lowest and could be inferred to be the "most vulnerable," "least resilient," or whatever socio-economic characteristic the analysts were focusing on. The EIS for this action follows this standard methodology, as described above, providing the appropriate analysis and background for the determining the shortest rebuilding periods possible, while taking into account the needs of fishing communities so as to avoid disastrous short-term consequences of management to those communities. In doing so, the fishing community analysis follows the directives of the Magnuson-Stevens Act by showing which communities are the most vulnerable, or in other words, in the most need.

The main factor constraining the ability to improve economic modeling of the fishery and its linkages (e.g., time-series regression analyses, estimation of resource efficiency and productivity, application of non-static models, etc.) with the rest of the economy is the absence of annual observations of employment, and cost and earnings data for vessels and processors. As acknowledged by The Three Organizations, improved modeling requires data from fishermen and companies regarding their purchases of capital and labor and the selling of fish in addition to demographic information such as age, education level and job experience. Such data are not currently available. Further, even if such data were available, econometric studies, particularly dynamic econometric studies, are not easily undertaken as such modeling requires knowledge of

the fishing industry and fish populations, advanced expertise in econometric theory and methodologies, and the ability to translate complex relationships into representative and statistically valid functions. Currently the groundfish industry cost and earnings profiles used within the Fishery Economic Assessment (FEAM) model are based on a year 2000 snapshot of the West Coast fishery (The FEAM model is a regional impact model that the Council and NMFS use to project the amount of income and number of jobs associated with each alternative.) Since 2000, among other things, the fishery has seen a significant increase in the cost of fuel. The EIS addresses this issue qualitatively in its discussion of the results, where appropriate.

Finally, in their letter of comment, The Three Organizations critique other aspects of the socio-economic analysis and assert that the input/output modeling is misleading and that analysis based on static data is an inferior method when compared with dynamic modeling. Citing a 1994 New York Times article addressing spotted owl issues where an Oregon community had replaced lost timber jobs with high technology jobs, The Three Organizations posit: "Even if fishing activity is reduced, ports could thrive as many extractions industry sites have once the extraction slows." Although some communities may have found a way to rebound from downturns associated with declining timber revenues associated with spotted owl protection, many have not. In 2005, the Federal government's interagency Regional Ecosystem Office (REO) to support the Northwest Forest Plan found that many communities that formerly had close association with the timber industry are not thriving 10 years following the implementation of that plan (See: *http://www.fs.fed.us/pnw/publications/gtr649/pnw-gtr649_vol1.pdf.*) Two key findings by the REO counter the assertion by The Three Organizations that fishing communities may thrive even if fishing is reduced. The first is that, for communities within five miles of federal forest lands, 40 percent had a decrease in socio-economic well-being (SEWB) between 1990 and 2000, 37 percent had an increase in SEWB, and 23 percent showed little change. Our interpretation of this finding is that two thirds of the forest communities are no better off or may be worse off then they were before spotted owl recovery programs went into place. The second key finding is that the Northwest Economic Adjustment Initiative, the major program for providing assistance to logging communities, was a mixed success since it did not create jobs in the quantity and quality of jobs lost. (See "Northwest Forest Plan, the First Ten Years Socio-economic Monitoring Key Results" by Susan Charnley, U.S. Forest Service, PNW Stations (*http://www.reo.gov/monitoring/10yr-report/social-economic/powerpoints.html*).

The Three Organizations also suggest that the vulnerability analysis should account for the ability of fishermen to enter other fisheries. While there may be minor opportunities to fish for species such as halibut, sandbass, and barracuda, almost all West Coast fisheries are fully subscribed and many suffer from overcapacity, which makes them inappropriate for absorbing any new entrants who might be displaced from the groundfish fishery. Adding an indicator to the vulnerability analysis to reflect alternative fishing opportunities does not seem a useful exercise, given that there are few such opportunities available. With respect to the examples of halibut and sandbass, California's Master Plan, A Guide for the Development of Fishery Management Plans, support NMFS's conclusion that West Coast fisheries are either sufficiently or overcapitalized and that additional effort in these fisheries is not desirable. (See *http://www.dfg.ca.gov/MRD/masterplan/index.html*, especially Chapter 3.) Therefore, if groundfish fishermen were to enter or step up effort in alternative fisheries, other fishermen would see their production decline. Consequently, in terms of the effects of this action on communities, there would be no change in the amount of fishing income generated.

Comment 5: The form emails stated that scientists recommended lowering catch levels for yelloweye rockfish. Senders of the form emails also believe that the Council recommended increasing yelloweye rockfish catch limits above levels recommended by scientists. The Three Organizations state that the yelloweye rockfish ramp-down rebuilding strategy is too liberal and risky given the depressed condition of the species. The Three Organizations believe that the yelloweye rockfish OY should be lower, and that new yelloweye rockfish management measures should be implemented now, prior to conducting research to determine what management measures may be effective beyond the current measures to close multiple YRCAs, rockfish conservation areas (RCAs,) and setting commercial trip limits and recreational bag limits and seasons to constrain the catch of species that co-occur with yelloweye rockfish. The Three Organizations also state that neither the DEIS nor the proposed rule commit to any plan to gather data on additional yelloweye rockfish rebuilding measures.

Response: The 2006 yelloweye rockfish rebuilding analysis had calculated that a 12.6 mt yelloweye rockfish OY would be needed to achieve an 80 percent probability of rebuilding the stock to its B_{MSY} level by 2096 ("B_{MSY}" means the biomass level at which the stock is estimated to be able to produce its maximum sustainable yield on a continuing basis; the FMP uses a default proxy for groundfish B_{MSY} of B_{40}.) This final rule implements a 2007 yelloweye rockfish OY of 23 mt and a 2008 OY of 20 mt, lowered from the 2006 OY of 27 mt, in an OY ramp-down strategy described in the preamble to the proposed rule for this action. Yelloweye rockfish OYs in 2009 and 2010 would be further reduced, 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. The OY 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.

Several management tools are being studied with the intention of reducing impacts to yelloweye rockfish. In addition to the NMFS continental shelf/slope trawl survey, the states have several new research programs already underway or under development for 2007–2008. The Washington Department of Fish and Wildlife (WDFW) is conducting cooperative research with the International Pacific Halibut Commission (IPHC) to enhance the IPHC's annual hook-and-line survey to incorporate additional survey stations within un-trawlable habitat areas to collect additional information on yelloweye (distribution, abundance, and biological samples). WDFW added 25 new survey stations in 2006 and plans to continue the enhanced survey in 2007 and beyond, contingent upon funding. The Oregon Department of Fish and Wildlife (ODFW) would add survey stations off the Oregon coast in 2008, contingent upon funding.

WDFW is also conducting cooperative rockfish habitat video research with the

Olympic Coast National Marine Sanctuary to characterize and map distribution of yelloweye and other rockfish habitat. Working with the recreational fishing industry, WDFW is collecting recreational vessel logbook catch and length data on rockfish that charter vessel anglers catch and release. This data collection research, and the cooperative IPHC survey could lead to new YRCAs for 2009 and beyond, or to modifications to existing closed areas to reflect improved and more recent information on yelloweye habitat sites.

ODFW has been using acoustic telemetry (data-recording fish tags) to assess discard survival and movements of yelloweye rockfish. In connection with this data collection, ODFW is studying rockfish behavior following hook-and-line capture, recompression of air bladders, and release. ODFW is also studying recreational gear modification to determine whether the height of the baited hooks above the ocean floor has an effect on which species are captured by the hooks. This last study could result in gear modification requirements that would reduce the potential for recreational gear to incidentally catch yelloweye rockfish.

Comment 6: The Three Organizations state that the ramp-down rebuilding strategy extends the yelloweye rockfish rebuilding time 38 years beyond T_{MIN} (the time it would take to rebuild if all sources of fishing mortality had been when the rebuilding plan was first implemented in 2003). They also note that an OY of 12.6 mt extends the yelloweye rockfish rebuilding time 37 years beyond $T_{F=0}$. [NMFS note: the rebuilt date for yelloweye rockfish is 2084, 36 years beyond $T_{F=0}$, which is 2048.] They conclude that because the rebuilding periods in both of these cases are more than 33 years beyond $T_{F=0}$, those periods are therefore not as short as possible in accordance with *NRDC* v. *NMFS*. The Three Organization then state that the National Environmental Policy Act requires NMFS to consider yelloweye rockfish harvest level alternatives between 0 and 12 mt, and rebuilding period end dates between 2048 and 2078, before taking final action.

Response: In *NRDC* v. *NMFS*, the court rejected NMFS's 2002 darkblotched rockfish rebuilding period, saying that the Magnuson-Stevens Act direction to rebuild darkblotched rockfish as quickly as possible, taking into account the status and biology of the stock and the needs of fishing communities, could not be reconciled with a rebuilding period "20 to 33 years longer than the biologically shortest possible rebuilding period (and that increases the annual take in the meanwhile)." In response, NMFS notes that there are numerous differences between the darkblotched rebuilding plan addressed in *NRDC* v. *NMFS*, and the yelloweye rebuilding period.

First, darkblotched rockfish is continental slope species almost exclusively taken in slope trawl fisheries, whereas yelloweye rockfish is a continental shelf species almost exclusively taken with hook-and-line gear. The two species have different life histories and habitat preferences, different rebuilding trajectories and current levels of abundance, and different fishing communities that rely on fishing opportunities for groundfish species they co-occur with. The yelloweye rockfish OY ramp-down strategy would extend the yelloweye rebuilding period for 36 years beyond TF=0. The Three Organizations are incorrect, however, in assuming that because 36 years is greater than the 33 years the court rejected for darkblotched rockfish, the yelloweye rockfish rebuilding period should also be rejected. Such an assumption fails to take into account both the status and biology of yelloweye rockfish and the needs of fishing communities that depend on yelloweye rockfish.

NMFS and the Council did analyze a reasonable range of alternatives, as required by NEPA, ranging from a zero-harvest alternative, 12 mt alternative, a 12.6 mt alternative, and the ramp-down strategy adopted in Amendment 16–4. Wholesale closures of major portions of the groundfish fishery would have been necessary to achieve catch levels at or below 12 mt, and these closures would most likely have been in regions and communities that are least adaptable and least resilient (see response to Comment 3, above). For example, yelloweye rockfish catch occurs primarily off the coasts of Washington and Oregon. These coastal communities generally have high unemployment levels, low average wage levels, little diversification opportunities, and are relatively isolated. In other words, these communities have the least resilient economies and they would be most affected by management strategies designed to achieve reductions in yelloweye impacts. At an OY level less than or equal to 12 mt, these communities would lose major portions of their recreational and/or commercial fisheries. Given that the West Coast commercial groundfish fishery was declared a disaster from which it has not recovered, and that achieving a yelloweye OY of 12 mt or less would require closing major portions of the fishery for the least resilient communities, yelloweye OY levels that were less than 12 mt were considered as clearly resulting in disastrous consequences for tribal and non-tribal fishing communities.

Comment 7: The Three Organizations cite Tables 4–5 through 4–7 of the Final EIS for the 2007–2008 groundfish harvest specifications and management measures, which show that the yelloweye rockfish mortality in 2003 was 8.1 mt. They then conclude that this means that the fishing industry was able to function at this lower yelloweye harvest level without any disaster declaration. The Three Organizations then state that yelloweye rockfish rebuilding is lagging behind the current Council-adopted schedule, citing a Scientific and Statistical Committee report from March 2006. Based on their belief that the yelloweye rebuilding rate is lagging behind the current schedule, they state that the yelloweye rockfish OY should be lower than current catch levels, and conclude that the ramp-down rebuilding strategy does not rebuild yelloweye rockfish as quickly as possible.

Response: Table 4–5 of the FEIS, which provides catch estimates for 2003 incorrectly does not not include recreational yelloweye rockfish catch. The 8.1 mt figure is only for commercial and tribal fisheries. Recreational fisheries add another 11 mt to the estimate (based on Pacific States Marine Fisheries Commission's Recreational Fisheries Information Network estimates available at: *http://www.recfin.org/forms/est.html*, as calculated on November 24, 2006.)

The Three Organizations' assertion that the yelloweye stock is rebuilding behind schedule is a misinterpretation of the stock assessment. The 2006 stock assessment shows that the yelloweye population is rebuilding, but that the population is less resilient than thought in previous assessments. An estimation that the yelloweye population is less resilient than previously thought means that the new stock assessment has new information about the status and biology of the stock that indicates that prior assessments were overly optimistic about both the stock's productivity and the rate at which it could rebuild. Therefore, the old rebuilding schedule is also overly optimistic, when taking into account the biology of the yelloweye rockfish stock. In response to the new information on yelloweye biology, the new yelloweye rebuilding plan would set the OY at 23 mt in 2007, reduce it to 20 mt in 2008, and then reduce again in 2009 and 2010, until it is at a level that is approximately one-half of the 2006 OY of 27 mt. As

discussed in the preamble to the proposed rule for this action and in the response to Comment 5, above, NMFS intends to achieve these reductions based on research to be conducted on more precisely designed YRCAs.

Comment 8: The Three Organizations note that the C-shaped and South Washington Coast YRCAs prohibit recreational fishing for groundfish and halibut, but rely on voluntary avoidance to exclude commercial fishing. They believe that a voluntary avoidance system does not provide meaningful yelloweye rockfish protection; and, they request that NMFS explain its basis for relying on this measure for protecting yelloweye rockfish and to make this prohibition mandatory for all fishing.

Response: As explained in the preamble to the proposed rule for this action, and in the preambles to proposed and final rules on past actions to implement groundfish specifications and management measures, area closures and other fishing restrictions to protect overfished species have been designed to best minimize overfished species bycatch using the mechanisms most appropriate to the fishery managed. As a result, the fishery management regime for recreational fisheries is different than that implemented for commercial fisheries. The fishery management regimes for trawl and non-trawl commercial fisheries also differ, to take into account the operational differences between the gear types.

Yelloweye rockfish are not commonly caught in trawl fisheries; therefore, management measures to minimize incidental catch of yelloweye focus most strongly on constraining the recreational and non-trawl commercial fisheries. Off the northern Washington coast, the non-trawl commercial groundfish fisheries have been prohibited from fishing in waters between the shoreline and a boundary line approximating the 100 fm (183 m) depth contour since January 1, 2003 (See NMFS RCA Archives website for RCA boundary history: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Groundfish-Closed-Areas/RCA-Archives.cfm.*) This closure keeps non-trawl commercial groundfish vessels from operating over the continental shelf, reducing incidental catch of northern overfished shelf rockfish, such as yelloweye and canary rockfish. Adult yelloweye rockfish most commonly occur in waters shoreward of the 100 fm (183 m) depth contour. For 2007–2008, NMFS is implementing an additional YRCA for commercial non-trawl fisheries, closing a deeper area that has historically been open to commercial fishing, but where yelloweye rockfish may be encountered. Both the new North Coast Commercial YRCA and the non-trawl RCA overlap with the traditional recreational C-shaped YRCA. The Three Organizations depict NMFS as relying on a voluntary commercial area closure to rebuild yelloweye rockfish; rather, NMFS relies on the mandatory measures for commercial and recreational fisheries described in this response and implemented via this final rule. A map depicting the overlapping closed areas that affect the non-trawl commercial and recreational groundfish fisheries is available online at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Groundfish-Closed-Areas/Index.cfm#CP_JUMP_30276.*

Recreational fishery participants usually work from smaller vessels than those used in the commercial fishery, and are less likely to take multi-day fishing trips. As a result, most recreational fisheries operations occur within the 0–100 fm (0–183 m) closure for the non-trawl commercial fisheries. If that same area were closed to recreational fishing, the recreational fishery in this area would be essentially closed, which would have dramatic negative effects on northern Washington coastal communities. Some recreational fishing trips, particularly the charter operations from more remote Washington ports, will venture farther offshore in search of larger-sized Pacific halibut, the largest of the West Coast flatfishes. Pacific halibut commonly co-occur with yelloweye rockfish. NMFS first implemented a recreational fishery closed off northern Washington when the halibut Catch Sharing Plan went into effect in 1995. At that time, the intent of the closure was to slow the pace of the recreational halibut fishery, by closing an area of known high halibut abundance. When yelloweye rockfish were declared overfished in 2002, the Council looked at the strong co-occurrence of halibut with yelloweye rockfish and recommended prohibiting recreational groundfish fishing within that same area traditionally closed to halibut fishing. In 2003, NMFS and the Council expanded the traditional closed area for recreational halibut fisheries to the current C-shaped YRCA (68 FR 10989, March 7, 2003.) Today, the C-shaped YRCA applies to recreational fisheries for both halibut and groundfish, and continues to have the dual role of prohibiting recreational fishing where some yelloweye rockfish are known to occur, and prohibiting recreational fishing for a species that strongly co-occurs with yelloweye, Pacific halibut. Although the historic commercial RCA and the new commercial YRCA are more closely linked to areas and depths where yelloweye rockfish are thought to commonly occur, the C-shaped YRCA is more appropriate for the recreational fisheries, with their higher allowable halibut harvest and tendency to only operate farther offshore when targeting particular big game fish. Future refinements may need to be made to all of the species-specific YRCAs, as new information becomes available on particular geographic areas favored by yelloweye rockfish.

Comment 9: The Three Organizations support a complete closure of traditional commercial sablefish fishing grounds for vessels that homeport off the northern Washington Coast and in Puget Sound. They believe that such a closure would protect the sablefish resource and would allow NMFS to implement a lower yelloweye rockfish OY than 12.6 mt and rebuild yelloweye rockfish at a faster rate.

Response: NMFS does not agree that a complete closure of traditional commercial sablefish fishing grounds is necessary or appropriate to protect sablefish. The sablefish stock is estimated to be at 34 percent of its estimated unfished biomass level, or B_{34}. The sablefish OYs for 2007 and 2008, implemented via this action, are based on the FMP's harvest policy that species with abundance levels within the precautionary zone (between B_{25} and B_{40}) have OYs reduced from their ABCs by ever greater percentages the closer the stock is estimated to be to B_{25}, the overfished threshold. (See FMP at section 4.5.1.) This policy protects stocks that are below their BMSY level, acting as a default rebuilding policy that both prevents those stocks from dipping below the overfished threshold and rebuilds them back to their B_{MSY} (B_{40}) levels. If the traditional northern Washington sablefish fishing groundfish were closed, the entire sablefish OY would still be available to the remaining open areas along the West Coast; therefore, closing a particular area to sablefish fishing would have no effect on the sablefish resource, other than to intensify sablefish fishing effort within the remaining open fishing areas.

The FEIS for this action estimates at Table 4–18 that 1.1 mt of yelloweye rockfish were taken in the 2004 fixed gear (longline and pot) sablefish fisheries north of 40°10′ N. lat. (approximately Cape Mendocino, California,) at a ratio of approximately 8.9 lb (4.04 kg) of yelloweye per 1,000 lb (454 kg) of sablefish. [Note: this

bycatch ratio applies only to sablefish taken with longline gear; pot gear is estimated to have zero yelloweye catch.] At Table 7–22, the FEIS estimates that the limited entry fixed gear sablefish landings in Washington generated approximately $2,753,000 in ex-vessel revenue. This is important income for vessels operating from some of the most economically groundfish-dependent and vulnerable fishing communities, such as Ilwaco and Neah Bay, Washington, and coastal counties, such as Pacific and Grays Harbor Counties.

Comment 10: The Three Organizations believe that the yelloweye rockfish OY ramp-down strategy increases the likelihood that old and fecund female rockfish will be removed from the population. The Three Organizations cite black rockfish papers by Berkeley *et al.* (2004) and by Bobko and Berkeley (2004), and state that they believe that larvae born from older rockfish have an increased rate of growth and survival than larvae born from younger rockfish, which they believe may affect recruitment success and rebuilding. They state that old rockfish are critical to the reproductive success of the stock, and that management should focus not only on biomass size, but also on increasing the proportion of older fish in the population. They then conclude that the ramp-down rebuilding strategy should not be adopted because they believe that it does not increase the proportion of older fish in the yelloweye rockfish population.

In addition to this specific comment on older female rockfish in the yelloweye population, The Three Organizations make a more general comment on the benefits of older females within all rockfish species' populations. They state that they believe that management measures and the determination of OYs must incorporate scientific findings that the larvae produced by older rockfish have an increased probability of survival over those produced by younger rockfish, that older rockfish have greater larval outputs than younger rockfish, and that having older female rockfish in a population increases the chance that some fish will release their larvae at the best time for food supply. They also believe that management measures should promote multiple productive stocks with a mix of old and young females over a broad spatial area. To use the best available science, they believe that NMFS should explore and implement strategies to avoid mortality of mega-spawners and immature fish and modifying the OY models to account and plan for the age structure of the fishery. They then conclude that lower groundfish OYs better preserve mega-spawners, which they believe guards against collapse.

Response: The scientific papers cited by the Three Organizations specifically discuss research on black rockfish, not yelloweye rockfish, although an additional 2004 paper from Berkeley, et. al, "Fisheries Sustainability via Protection of Age Structure and Spatial Distribution of Fish Populations," draws more general conclusions about the effects of age and spatial distribution on population health and abundance on a variety of Pacific rockfish species. Most rockfish species are long-lived and slow-growing, with individuals of some species living as long as, or longer than 100 years. This rockfish life history strategy is useful in a physical environment, such as with the narrow continental shelf off the North American West Coast, where optimal spawning conditions may occur infrequently over time. Different rockfish species benefit from different environmental conditions in terms of which years and geographic areas are likely to feature successful spawning classes. Many of the West Coast overfished rockfish stock assessments have noted that rockfish stocks will require several particularly successful recruitment years before they recover above BMSY. For example, the recent increase in bocaccio abundance was made possible by two particularly successful year classes from 1999 and 2000. Lingcod, by contrast, is more consistent in its year-to-year spawning success, and its rebuilding primarily benefitted from fishery closures in times and areas when its recruitment success was most vulnerable - during the winter spawning and nest-guarding period.

The Three Organizations note that the 2004 Berkeley, et. al paper has demonstrated that older female black rockfish produce larvae with faster growth rates and greater larval survival than younger fish, with age being a more significant predictor than size alone. Similarly, Bobko and Berkeley (2004) demonstrated that older females spawn earlier in the year than younger females, with potential implications on sustainability and reproductive success associated with the timing of parturition and the short term variability in ocean conditions. The Berkeley *et al.* paper on fisheries sutainability, mentioned above, speaks on the implications of these results to rockfish more generally, but this review does not conclusively demonstrate comparable impacts on other *Sebastes* species. In other words, the authors of these papers have, in keeping with sound science practices, provided quantified conclusions on black rockfish that may be considered for use in future black rockfish stock assessments, but only qualitative conclusions for other rockfish species. NMFS notes that comparable research in the North Atlantic has led to estimable impacts of productivity for commercially important species. For example, Trippel *et al.* (1997) review evidence that demonstrates that first and second time spawning Atlantic cod breed for shorter periods of time, produce fewer egg batches, and produce smaller size eggs with lower fertilization and hatching rates. When such considerations were incorporated into stock assessments, overfishing thresholds for those were considerably lower (Murawski *et al.* 2001). These studies are part of a growing area of research that indicate substantial variability in the reproductive abilities of younger and older individuals of many species, the inference being that a broad distribution of age structure is beneficial to the recruitment and productivity of many stocks. Consequently, this issue remains an area of intensive research, within both the agency and private research institutions.

Currently, ongoing studies by NMFS and academic researchers are attempting to compare potential maternal effects in a suite of West Coast rockfish species, including blue, olive, gopher, yellowtail, kelp, chilipepper and widow rockfish relative to what was found previously in black rockfish. Comparable investigations are ongoing for waters off Alaska, such as for POP. Without such comparative studies, generalizations from the black rockfish study are difficult to extrapolate to other *Sebastes* species. This issue is widely recognized by researchers and assessment scientists as important in evaluating the productivity and sustainability of West Coast groundfish fisheries, and insight gained from ongoing research will be incorporated into scientific assessments and management advice as it becomes available. Such considerations can potentially be addressed in new stock assessment models by modifying the shape of fecundity curves to represent relative maternal reproductive success in estimating effective spawning output. Alternatively, the potential implications of these effects may lead to new insights on future optimal management regimes, such as spatial management measures, that explicitly recognize the significance of age structure in population sustainability.

Although NMFS has some habitat information for yelloweye rockfish, the agency does not have information on where older female yelloweye rockfish

are particularly found. This lack of sex- and age-specific habitat data is not unique to yelloweye rockfish. The Berkeley, et. al. paper on fisheries sustainability, mentioned above, recognizes this lack of information on sex- and age-specific habitat by suggesting that age diversity in rockfish populations could be supported through implementing a network of marine protected areas. NMFS has already implemented a coastwide network of marine protected areas, some of which were designed to protect essential groundfish habitat, and some of which were designed to limit the incidental catch of adult life stage overfished species, including yelloweye rockfish. In addition to the RCAs, which were designed to prevent incidental catch of several overfished species within the same areas (bocaccio, canary, darkblotched, Pacific ocean perch, widow, and yelloweye rockfish), NMFS has implemented YRCAs specifically intended to minimize yelloweye rockfish bycatch. This action implements four additional YRCAs beyond those that continue to be in place from prior years. As discussed above, in the response to Comment 4, the yelloweye OY ramp-down strategy allows NMFS and its partner managing agencies to collect more information on yelloweye habitat, so as to determine whether the boundaries of current YRCAs need to be modified, or new YRCAs created, to provide yelloweye with improved protection from incidental catch. Yelloweye rockfish rebuilding measures prohibit yelloweye retention, removing any incentive that fishers may have to particularly target large-size fish.

One unintended artifact of managing the coastwide West Coast groundfish fishery with an overarching goal of rebuilding overfished stocks is that both the rebuilding stocks themselves and healthier under-harvested co-occurring stocks have relatively high proportions of younger-aged fish within their populations. In other words, the restrictive groundfish management in the 2000–2006 period has resulted in an abundance of groundfish from the 2000–2006 year classes. As mentioned above, initial conclusions from the scientists addressing this question of the fecundity of older-age female rockfish indicate that these authors believe that marine protected areas would help either improve population age diversity, improve the survivability of older-age fish, or both. As also discussed above, the current network of groundfish marine protected areas meets several Magnuson-Stevens Act mandates by focusing on protecting essential fish habitat and minimizing bycatch of overfished species. NMFS does not have any information on the specific modifications that would need to be made to its network of West Coast marine protected areas to better promote rockfish population age diversity.

Comment 11: The senders of the form emails urge NMFS to adopt an ecosystem approach to fisheries management and to incorporate ecosystem considerations into the groundfish FMP. The Three Organizations comment that they see a need for developing an ecosystem-based fisheries management approach to Pacific fisheries management, including overarching ecosystem goals and objectives to guide fisheries management decisions. They express a belief that the current management program is focused on achieving maximum sustainable yield for market valued species, on a species-by-species basis, and a belief that such a program threatens the health of the California Current ecosystem.

Response: NMFS agrees that ecosystem needs and effects are critical elements in managing West Coast fisheries. However, NMFS disagrees with the comment that the current management framework focuses only on achieving maximum sustainable yield for market value species. Under Section 304(e) of the Magnuson-Stevens Act, rebuilding times for overfished species must be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, and the interaction of overfished stocks within the marine ecosystem. The FEIS for this action complies with that requirement. Section 3.1.6 of the FEIS discusses the role of overfished species in the West Coast marine ecosystem, and section 3.2 discusses the direct and indirect effects of 2007–2008 management measures on West Coast essential fish habitat and the marine ecosystem. Additionally, both NMFS's Northwest and Southwest Fisheries Science Centers are actively engaged in research efforts that are focused on modeling predator-prey and ecosystem dynamics, incorporating environmental indices into stock assessments, and evaluating the consequences of fishing on other elements of the ecosystem. However, as reported in section 3.3.3 of the FEIS, "the data necessary to develop and adequately parameterize multispecies models are lacking for most ecosystems, including the California Current. Even with adequate data, the ability of multispecies models to make meaningful predictions regarding the consequences of decisions is limited."

NMFS also disagrees with the comment that the 2007–2008 management program is designed to maximize market value of the fishery on a species-by-species basis. As discussed in the preamble to the proposed rule for this action, the Council process and EIS for this action took a new analytical approach to asking the question for each overfished species, "What is the shortest time possible to rebuild this species, taking into account the status and biology of this stock and its co-occurring overfished species, and the needs of fishing communities that depend on fisheries that have historically taken this stock either directly or incidentally?" The new and more holistic analytical approach that NMFS, the Council, and the public took in answering this question looks at the relative biological attributes of each overfished groundfish species, their relative levels of depletion and vulnerability, the interaction of those species with various fishing sectors, and the impact those species have on West Coast fishing communities. When establishing the Amendment 16–4 rebuilding parameters and the 2007–2008 OYs for overfished species, the status and biology of the stocks were taken into account by considering the shortest possible rebuilding periods within different packages of management measures that placed an emphasis on providing the greatest protection for the most sensitive and least productive overfished species. Careful consideration was given to: the differences between the biological characteristics of each overfished species; the varying possible rebuilding schedules; the depletion rates of each overfished species; the relative sensitivity of each overfished species to changes in the management regime; and, the need for research data to ensure the availability of information to assess the status and biology of overfished species and other fish stocks.

Taking the needs of fishing communities into account as part of the development of new Amendment 16–4 rebuilding plans meant conducting new socio-economic analyses. The court noted the multi-species nature of the groundfish fisheries, stating that the Magnuson-Stevens Act allows NMFS to "set limited quotas [for rebuilding species] 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." Careful

analytical consideration was given to the needs of the fishing communities, particularly: the vulnerability of different fishing communities to reductions in available harvest; 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 need for management flexibility to address uncertainty in preseason catch predictions of overfished species such that the OYs are not exceeded or that fishing communities are not subject to the disastrous immediate consequences from inseason adjustments.

Comment 12: The letter received from the marine scientific researcher with the University of California, Santa Barbara, believes that NMFS does not have enough information to revise the size and shape of the Western Cowcod Conservation Areas (CCA). The multiple form emails received state that the Eastern and Western CCAs are important conservation tools that have been successful at reducing cowcod bycatch, and urge NMFS to maintain the existing CCA boundary lines. The letter received from The Three Organizations states that altering the CCA boundary lines will increase cowcod bycatch and undermine cowcod rebuilding objectives. The Three Organizations also state that changing the CCA boundaries will compromise the monitoring and enforcement of fishing activities, and will undermine observation and data collection efforts.

Response: NMFS has disapproved the Council's recommendation to revise the boundaries of the Western CCA. NMFS is disapproving the Council's recommendation for several reasons, including: (1) cowcod have a fairly sedentary life history and closed areas are one of the few rebuilding tools that NMFS expects will have a measurable effect on increasing the cowcod biomass; (2) there is relatively sparse data on cowcod stock abundance, which creates greater uncertainty regarding the cowcod stock status; (3) there is an unquantified potential for effort shifts that could result from this change; and (4) there is uncertainty in the estimates of increased impacts to cowcod, bocaccio, and non-overfished species within the CCA boundaries. By disapproving this Council recommendation, NMFS is continuing its precautionary approach to management of the CCAs and cowcod, an overfished rockfish species, without constraining existing fisheries. Maintaining the current CCA boundaries does not alter the OYs of healthy Southern California groundfish species available for harvest outside of the CCAs.

Comment 13: The sender of the individualized email is a California angler who catches rockfish and other fish species. He states that when fishing for groundfish, the prohibited rockfish species are inevitably caught and must then be discarded. He notes that few of the discarded rockfish survive the catch-and-release process, and often become food for the waiting terns and gulls. He wonders if there is a dichotomy in this scenario.

Response: Federal groundfish regulations prohibit the retention of overfished species in recreational fisheries in order to discourage the directed targeting of those species. RCAs are used to lower the frequency of incidental catch of overfished species taken in fisheries targeting more abundant co-occurring groundfish stocks. Allowing the retention of a particular species in sport fisheries tends to increase the total catch (landed catch + discard) of that species; therefore, allowing the retention of overfished species in recreational fisheries, particularly for more vulnerable stocks, is counter to NMFS' rebuilding program. NMFS is aware that continental shelf rockfish species taken in recreational fisheries are unlikely to survive the catch-and-release process. That mortality is accounted for as the recreational fisheries' portion of each overfished species OY. Rockfish, both overfished and healthy species, are common in the diets of a variety of seabirds; NMFS is not surprised that terns and gulls are eating discarded fish.

Changes from the Proposed Rule

At its September 11–15 meeting in Foster City, CA, the Council reviewed its June recommendations for the 2007–2008 fishery specifications and management measures. The Council provided NMFS with comments on its June recommendations, asking that NMFS make a few refinements to the 2007–2008 specifications and management measures that the agency had published as proposed in the **Federal Register**. On October 3, 2006, Council staff transmitted the Council's recommended refinements in a letter to NMFS. That letter did not detail the Council's rationale for the recommended refinements, referring instead to public discussions held at the September 2006 Council meeting. Thus, the Council's September 2006 recommendations are discussed in this section on changes from the proposed rule, rather than above in responses to comments received during the comment period.

As part of the 2007–2008 groundfish management measures, the Council considered implementing the Ocean Salmon Conservation Zone (OSCZ), an area shoreward of a boundary line approximating the 100 fm (183 m) depth contour, as a potential inseason management tool for the whiting fishery. The OSCZ was evaluated in the DEIS, and at the June 2006 Council meeting the GMT recommended that this measure be adopted as part of the Council's management measures recommendations to NMFS. However, the Council's final management recommendations to NMFS had inadvertently not included the OSCZ requirement. NMFS and Council staff discovered this oversight following the June 2006 Council meeting. Because the OSCZ had 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 included the OSCZ as part of the proposed action. The Council took final action on this issue at its September 2006 meeting, and recommended adopting the OSCZ for 2007 and beyond to give NMFS the authority to implement a nearshore closure for all sectors of the Pacific Coast whiting fishery if Chinook take is anticipated to exceed acceptable levels. The Council recommended a flexible approach of applying this mitigation measure in response to conditions in the fishery, rather than having the OSCZ in effect throughout the whiting season, which could possibly shift effort offshore and increase catch rates of canary and darkblotched rockfish. This flexibility allows industry and NMFS to monitor whiting fishing activities and modify fishery restrictions inseason to appropriately respond to environmental factors that influence varying bycatch rates for salmon bycatch and depleted rockfish species. The incidental take level for Chinook salmon may be changed through the Endangered Species Act consultation process, if needed. NMFS concurs with this recommendation and acknowledges the Council's endorsement of the use of the OSCZ as management tool for the 2007 through 2008 Pacific Coast whiting fishery.

At the June 2006 Council meeting, the Council had recommended a 2007 petrale sole acceptable biological catch (ABC) of 2,917 mt. Subsequent to that decision, NMFS and Council staff discovered that the 2007 ABC had been incorrectly calculated from its stock assessment, resulting in a mathematically incorrect petrale sole ABC being adopted. The ABC adopted

in June 2006 was the sum of the northern 40–10 adjusted OY of 1,289 mt and the southern ABC of 1,628 mt. Instead, the Council should have specified a 2007 petrale sole 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. Therefore, at its September 2006 meeting, the Council recommended a technical correction to the 2007 petrale sole ABC from 2,917 mt to 3,025 mt. The 2008 ABC value of 2,919 mt recommended by the Council at the June 2006 meeting was calculated correctly and does not need to be changed. NMFS concurs with this recommendation and has made the technical correction to the 2007 petrale sole ABC in Table 1a of this action.

At its November 12–17 meeting in Del Mar, CA, the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended the following changes to 2007–2008 management measures based on the most recent information: (1) Decrease limited entry trawl trip limits for petrale sole in Periods 1 (January–February) and 6 (November–December), and (2) decrease open access trip limits for sablefish.

Catch of petrale sole was higher than expected in 2006. If the higher than expected petrale sole catches in 2006 are repeated in 2007, there is the potential for early attainment of the petrale sole OY. The 2007 petrale sole OY of 2,499 mt is 263 mt less than the 2006 ABC/OY of 2,762 mt. The Period 1 and 6 cumulative limits for petrale sole in 2007 as stated in the proposed rule (71 FR 57764, September 29, 2006) are 80,000 lb (36,287 kg) per 2 months, which are higher than the 2006 limits. The 2006 petrale sole trip limits were 30,000 lb (13, 608 kg) per month in Period 1 and 70,000 lb (31, 752 kg) per 2 months in Period 6. To reduce the potential for early attainment of the 2007 OY, the Council recommended that trip limits for Periods 1 and 6 be reduced to 50,000 lb (22,680 kg) per 2 months beginning January 1, 2007. Pacific Coast groundfish landings will be monitored throughout the year and further adjustments to trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding, optimum yields (OYs).

Therefore, for 2007 and 2008, the Council recommended and NMFS is implementing trip limit adjustments for the limited entry trawl fishery in Periods 1 (January–February) and 6 (November–December) as follows: (1) North of 40°10′ N. lat., decrease petrale sole trip limits from 80,000 lb (36,287 kg) per 2 months to 50,000 lb (22,680 kg) per 2 months for large and small footrope trawl gear; and (2) south of 40°10′ N. lat., decrease petrale sole trip limits from 80,000 lb (36,287 kg) per 2 months to 50,000 lb (22,680 kg) per 2 months.

Catch of sablefish in the open access (OA) daily trip limit (DTL) fishery north of 36° N. lat. was higher in 2006 than in previous years, in part due to reduced salmon fishing opportunities. In 2006, the OA sablefish DTL fishery experienced a large influx of fishing effort from vessels unable to participate in the highly restricted salmon fishery. To slow the catch of sablefish in 2006, the OA sablefish DTL fishery north of 36° N. lat. was decreased from May through September (71 FR 24601, April 26, 2006) and then closed from October through December due to early attainment of the OA sablefish allocation (71 FR 58289, October 3, 2006). Reducing the cumulative limit was intended to provide for a longer season in 2006, which was thought to most benefit fishers who have historically participated in the year-round fishery. Based on anticipated salmon fishing opportunities in 2007, effort in the OA sablefish DTL fishery is expected to be equivalent to or higher than effort in the 2006 fishery. The Council recommended decreasing trip limits in the OA sablefish DTL fishery north of 36° N. lat. to increase the likelihood that the OA sablefish DTL fishery can be prosecuted as a year-round fishery. In 2006, when trip limits for the OA sablefish DTL fishery north of 36° N. lat. were closed and trip limits south of 36° N. lat. were increased, effort shifted into the OA sablefish DTL fishery south of 36° N. lat. The Council recommended that the daily and weekly trip limits for the OA sablefish DTL fishery south of 36° N. lat. be aligned with the OA sablefish DTL fishery limits north of 36° N. lat. to limit the incentive for additional vessels to fish south of 36° N. lat. and to prevent early attainment of the sablefish harvest guidelines north and south of 36° N. lat.

Therefore, for 2007 and 2008, the Council recommended and NMFS is implementing the following: (1) A reduction in the trip limits for the OA sablefish DTL fishery north of 36° N. lat. to the U.S./Canada border for January through December from "300 lb (136 kg) per day, or 1 landing per week of up to 1,000 lb (454 kg), not to exceed 3,000 lb (1,361 kg) per 2 months" to "300 lb (136 kg) per day, or 1 landing per week of up to 700 lb (318 kg), not to exceed 2,100 lb (953 kg) per 2 months," and (2) a reduction in the trip limits for the OA sablefish DTL fishery south of 36° N. lat. to the U.S./Mexico border for January through December from "350 lb (159 kg) per day, or 1 landing per week of up to 1,050 lb (476 kg)" to "300 lb (136 kg) per day, or 1 landing per week of up to 700 lb (318 kg)."

In addition, NMFS is revising the regulations in the proposed rule (71 FR 57764, September 29, 2006) to include an exemption from closed areas and seasons for recreational divers spearfishing for groundfish species off California in 2007 and 2008. At the Council's June 11–16, 2006, meeting in Foster City, CA, the Council made final recommendations on the 2007–2008 groundfish specifications and management measures. In Agenda item F.6.e, CDFG supplemental motion in writing, June 2006, the Council recommended an exemption from recreational closed areas and seasons for divers and shore-based anglers that was contingent on the California Fish and Game Commission adopting it. The California Fish and Game Commission adopted this measure at their November 3, 2006, meeting. In addition, this exemption was analyzed in the 2007–2008 groundfish EIS. This exemption was listed in Agenda item F.6.e as "status quo" management measures, meaning that it was in place in state regulation in 2005 and 2006. However, it has not previously been in Federal regulation. While the shore-based angler exemption is not necessary in Federal regulation because it occurs entirely in state waters, the diver exemption would apply to recreational spearfishing in Federal waters.

Therefore, for 2007 and 2008, the Council recommended and NMFS is implementing an exemption from closed areas and seasons for recreational spearfishing consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. This exemption applies to all federally-managed groundfish (except lingcod during January, February, March, and December), as well as the following California state-managed species: ocean whitefish, California sheephead, and all greenlings of the genus Hexagrammos (kelp greenling is the only federally-managed greenling).

NMFS is disapproving the Council's recommendation to revise the boundaries of the Western CCA as discussed above in the response to Comment 12. As a result of this disapproval, the following are changes from the proposed rule: Removed language on 15-minute VMS reporting rates from 660.303(d)(5)(i); removed language referring to the 175–fm CCA

from 660.382 (c), limited entry fixed gear fishery management measures, and from 660.383 (c), open access fishery management measures; and removed language with western 175–fm CCA coordinates from 660.390(k)–(o), groundfish conservation areas.

NMFS is adding language to all commercial and recreational YRCAs to clarify that vessels may transit through the YRCAs with groundfish on board and that vessels fishing within the YRCA may not be in possession of groundfish. The language added to the YRCAs mirrors existing language from the RCAs. NMFS added clarifying language to the YRCAs in the following sections: 660.382(c)(2); 660.383(c)(2) and (4); 660.384(c)(1)(i)(A) and (B), and (c)(2)(i)(A); and 660.405(c).

NMFS is also making technical corrections to the latitude and longitude coordinates that are used to define Groundfish Conservation Areas, including coordinates approximating depth contours used for defining Rockfish Conservation Area (RCA) boundaries (See §§ 660.390 through 660.394). The purpose of these corrections is to revise the lines so that they better approximate the depth contours they are intended to reflect.

Finally, the following changes were made to ABC/OY Tables 1a–2c and the footnotes for these tables: the coastwide range of ABCs and OYs for Pacific whiting were added to table 1a; the cowcod area was revised in tables 1a and 2a from the area north of 36° N. lat. to the area from 36° to 40°30′ N. lat.; the minor rockfish north and south areas in the Tables 1a, 1b, 2a and 2b were revised to indicate that the areas were north and south of 40°10′ N. lat.; in footnote h/ of tables 1a and 2a, the percent of unfished biomass for cabezon north of 34°27′ N. lat. and south of 34°27′ N. lat. were reversed. Due to a revisions in table formatting from previous years, several minor non-substantive changes were made including: footnote renumbering for "other species", replacement of missing table cell boundaries, revised table titles and column headers.

Classification

The Administrator, Northwest Region, NMFS, has determined that Amendment 16–4 and the 2007–2008 groundfish harvest specifications and management measures, which this final rule would implement, are necessary for the conservation and management of the Pacific Coast groundfish fishery and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an FEIS in support of this action. The FEIS was filed with the Environmental Protection Agency on October 13, 2006. A notice of availability for this FEIS was published on October 20, 2006 (71 FR 61967). In approving Amendment 16–4, on November 30, 2006, NMFS issued a Record of Decision (ROD) identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

Amendment 16–4 and the 2007–2008 groundfish specifications and management measures are intended to rebuild overfished stocks as quickly as possible, taking into account the status and biology of the stocks and the needs of fishing communities. NMFS has been ordered in *NRDC* v. *NMFS* to implement this action by January 1, 2007. If these measures are not effective on January 1, 2007, the management measures from January 1, 2006 will remain in effect. Management measures from January 2006 were based on the best scientific information available at that time. The 2006 management measures are not tailored to the 2007–2008 harvest levels and, for some species, are not conservative enough to meet the Council's rebuilding goals for 2007–2008. Leaving the 2006 specifications and management measures in place could cause harm to some stocks. For example, the OYs for several overfished species, which constrain operations in all of the coastwide groundfish fisheries, are lower in 2007 and 2008 than they were in 2006. The yelloweye rockfish OY is lower in 2007 and 2008, and constrains commercial and recreational hook-and-line fisheries north of Cape Mendocio, California, particularly for halibut. The canary rockfish OY is lower in 2007 and 2008, and constrains commercial and recreational fisheries coastwide, particularly for co-occurring continental shelf species. The POP OY is lower in 2007 and 008, and constrains commercial trawl fisheries north of Cape Mendocino, California, particularly for co-occurring continental slope species. The bocaccio and cowcod OYs are lower in 2007 and 2008, and constrain commercial and recreational fisheries south of Cape Mendocino, California, particularly for co-occurring continental shelf species. Although the darkblotched and widow rockfish OYs are higher in 2007 and 2008 than in 2006, they are smaller proportions of their respective ABCs than in 2006; therefore, the darkblotched rockfish OY may be expected to constrain commercial trawl fisheries for co-occurring continental slope species north of Pt. Reyes, California, and the widow rockfish OY may be expected to constrain commercial fisheries for co-occurring continental shelf species and for Pacific whiting, coastwide. The commercial fishery is managed with two-month cumulative limits, so even a short delay in effectiveness could allow the fleets to harvest the entire two-month limit before the 2007 measures are effective. Delaying the effectiveness of this rule would also be confusing to the public, since it would result in a change in trip limits in the midst of the two-month January–February cumulative trip limit period. Finally, delay in publishing these measures could also require unnecessarily restrictive measures, including possible fishery closures, later in the year to make up for excessive harvest that would be caused by late implementation of these regulations. Thus, a delay in effectiveness could ultimately cause economic harm to the fishing industry and associated fishing communities. These reasons constitute good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication.

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

NMFS prepared a final regulatory flexibility analysis (FRFA) as part of the regulatory impact review. The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows: Amendment 16–4 and the 2007–2008 harvest specifications and management measures are intended to respond to court orders in *NRDC* v. *NMFS* and to implement a groundfish management scheme for the 2007 and 2008 groundfish fisheries. During the comment period on the proposed rule, NMFS received two letters of comment and 1,446 e-mails of comment, but none of the comments received addressed the IRFA, although one letter directly or indirectly addressed the economic effects of the rule, as discussed above in the response to Comments 1 and 2.

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.

This action, taken from the final Council-preferred alternative in the FEIS, represents the Council's efforts to address directions provided by the court in *NRDC* v. *NMFS* 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/FRFA, the inclusion of the yelloweye rockfish "ramp-down" strategy and creation of additional YRCAs is a means of trying to mitigate the adverse impacts of this rule on small entities.

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 for the next four years of the rebuilding period. 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 12.6 mt OY, 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 commercial 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 non-trawl 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 immediate 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.

Lower Columbia River coho (70 FR 37160, June 28, 2005) and the Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the Council's Groundfish FMP. After reviewing the available information, NMFS concluded that, in keeping with Section 7(a)(2) of the ESA, allowing the fishery to continue under this action FMP would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Pursuant to Executive Order 13175, this action 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 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 final 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 final rule.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: December 14, 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 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" introductory text, "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 "BMSY," "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_{MSY} 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) of this definition 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 or 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 § 660.306, 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.

* * * * *

(a) * * *

(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.

* * * * *

(c) * * *

(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.

* * * * *

(f) * * *

(1) * * *

(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).

* * * * *

(g) * * *

(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.

* * * * *

(h) * * *

(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).

* * * * *

■ 4. 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.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(A) * * *

(*1*) * * *

(*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.

* * * * *

■ 5. 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.

■ 6. In § 660.322, paragraph (e) is revised to read as follows:

§ 660.322 Sablefish allocations.

* * * * *

(e) *Ratios between tiers for sablefish-endorsed 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.

■ 7. 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), 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.

■ 8. 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.

* * * * *

■ 9. 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_{MSY} 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_{MSY} 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_{MSY} 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_{MSY} 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_{MSY} 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_{MSY} 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_{MSY} 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.

■ 10. 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.

■ 11. In § 660.372, paragraphs (b)(1) and (b)(3)(i) are 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-endorsed 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).

* * * * *

■ 12. In § 660.373, paragraphs (a), (b)(1)(iii) introductory text, (b)(2), (b)(3) introductory text, (b)(4), (c)(1) and (c)(2), and (d) 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) *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).

* * * * *

■ 13. 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.

■ 14. 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. Limited entry fixed gear vessels may transit through the North Coast Commercial YRCA with or without groundfish on board.

(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.

(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 specific latitude and longitude 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.

■ 15. 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)(5) 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 GCAs 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 taken with open access gear within the North Coast Commercial YRCA. Open access vessels may transit through the North Coast Commercial YRCA with or without groundfish on board.

(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 taken with salmon troll gear within the Salmon Troll YRCA. Open access vessels may transit through the Salmon Troll YRCA with or without fish on board.

(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.

(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;

* * * * *

■ 16. 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 taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing in the North Coast Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the North Coast Recreational YRCA with or without groundfish on board. 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 taken with recreational gear within the South Coast Recreational YRCA. A vessel fishing in the South Coast Recreational YRCA may not be in possession of any groundfish. Recreational vessels may transit through the South Coast Recreational YRCA with or without groundfish on board. 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 taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not be in possession of any groundfish. Recreational vessels may transit through the Stonewall Bank YRCA with or without groundfish on board. 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 (c)(3)(i) of this section. Recreational spearfishing for all federally-managed groundfish, except lingcod during January, February, March, and December, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. 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.

* * * * *

■ 17. 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.

■ 18. 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.;

(9) 38°00.00′ N. lat., 123°23.08′ 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.

■ 19. 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.; and
(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°49.26′ N. lat., 121°52.53′ W. long.;
(137) 36°49.22′ N. lat., 121°49.85′ W. long.;
(138) 36°47.87′ N. lat., 121°50.15′ W. long.;
(139) 36°48.07′ N. lat., 121°48.21′ W. long.;
(140) 36°45.93′ N. lat., 121°52.11′ W. long.;
(141) 36°40.55′ N. lat., 121°52.59′ W. long.;
(142) 36°38.93′ N. lat., 121°58.17′ W. long.;
(143) 36°36.54′ N. lat., 122°00.18′ W. long.;
(144) 36°32.96′ N. lat., 121°58.84′ W. long.;
(145) 36°33.14′ N. lat., 121°57.56′ W. long.;
(146) 36°31.81′ N. lat., 121°55.86′ W. long.;
(147) 36°31.53′ N. lat., 121°58.09′ W. long.;
(148) 36°23.28′ N. lat., 121°56.10′ W. long.;
(149) 36°17.52′ N. lat., 121°57.33′ W. long.;
(150) 36°15.90′ N. lat., 121°57.00′ W. long.;
(151) 36°11.06′ N. lat., 121°43.10′ W. long.;
(152) 36°02.85′ N. lat., 121°36.21′ W. long.;
(153) 36°01.22′ N. lat., 121°36.36′ W. long.;
(154) 36°00.00′ N. lat., 121°34.73′ W. long.;
(155) 35°58.67′ N. lat., 121°30.68′ W. long.;
(156) 35°54.16′ N. lat., 121°30.21′ W. long.;
(157) 35°46.98′ N. lat., 121°24.02′ W. long.;
(158) 35°40.75′ N. lat., 121°21.89′ W. long.;
(159) 35°34.36′ N. lat., 121°11.07′ W. long.;
(160) 35°29.30′ N. lat., 121°05.74′ W. long.;
(161) 35°22.15′ N. lat., 120°56.15′ W. long.;
(162) 35°14.93′ N. lat., 120°56.37′ W. long.;
(163) 35°04.06′ N. lat., 120°46.35′ W. long.;
(164) 34°45.85′ N. lat., 120°43.96′ W. long.;
(165) 34°37.80′ N. lat., 120°44.44′ W. long.;
(166) 34°32.82′ N. lat., 120°42.08′ W. long.;
(167) 34°27.00′ N. lat., 120°31.27′ W. long.;
(168) 34°24.25′ N. lat., 120°23.33′ W. long.;
(169) 34°26.48′ N. lat., 120°13.93′ W. long.;
(170) 34°25.12′ N. lat., 120°03.46′ W. long.;
(171) 34°17.58′ N. lat., 119°31.62′ W. long.;
(172) 34°11.49′ N. lat., 119°27.30′ W. long.;
(173) 34°05.59′ N. lat., 119°15.52′ W. long.;
(174) 34°08.60′ N. lat., 119°12.93′ W. long.;

(175) 34°04.81′ N. lat., 119°13.44′ W. long.;
(176) 34°04.26′ N. lat., 119°12.39′ W. long.;
(177) 34°03.89′ N. lat., 119°07.06′ W. long.;
(178) 34°05.14′ N. lat., 119°05.55′ W. long.;
(179) 34°01.27′ N. lat., 118°59.62′ W. long.;
(180) 33°59.56′ N. lat., 118°48.21′ W. long.;
(181) 33°59.30′ N. lat., 118°35.43′ W. long.;
(182) 33°55.14′ N. lat., 118°32.16′ W. long.;
(183) 33°52.95′ N. lat., 118°34.49′ W. long.;
(184) 33°51.07′ N. lat., 118°31.50′ W. long.;
(185) 33°52.45′ N. lat., 118°28.54′ W. long.;
(186) 33°49.86′ N. lat., 118°24.10′ W. long.;
(187) 33°47.14′ N. lat., 118°28.38′ W. long.;
(188) 33°44.14′ N. lat., 118°25.18′ W. long.;
(189) 33°41.54′ N. lat., 118°19.63′ W. long.;
(190) 33°37.86′ N. lat., 118°15.06′ W. long.;
(191) 33°36.58′ N. lat., 118°15.97′ W. long.;
(192) 33°34.78′ N. lat., 118°12.60′ W. long.;
(193) 33°34.46′ N. lat., 118°08.77′ W. long.;
(194) 33°35.92′ N. lat., 118°07.04′ W. long.;
(195) 33°36.06′ N. lat., 118°03.96′ W. long.;
(196) 33°34.98′ N. lat., 118°02.74′ W. long.;
(197) 33°34.03′ N. lat., 117°59.37′ W. long.;
(198) 33°35.46′ N. lat., 117°55.61′ W. long.;
(199) 33°34.97′ N. lat., 117°53.33′ W. long.;
(200) 33°31.20′ N. lat., 117°47.40′ W. long.;
(201) 33°27.26′ N. lat., 117°44.34′ W. long.;
(202) 33°24.84′ N. lat., 117°40.75′ W. long.;
(203) 33°11.45′ N. lat., 117°26.84′ W. long.;
(204) 33°07.59′ N. lat., 117°21.46′ W. long.;
(205) 33°01.74′ N. lat., 117°19.23′ W. long.;
(206) 32°56.44′ N. lat., 117°18.08′ W. long.;
(207) 32°54.63′ N. lat., 117°16.94′ W. long.;
(208) 32°51.67′ N. lat., 117°16.21′ W. long.;
(209) 32°52.16′ N. lat., 117°19.41′ W. long.;
(210) 32°46.91′ N. lat., 117°20.43′ W. long.;
(211) 32°43.49′ N. lat., 117°18.12′ W. long.; and
(212) 32°33.00′ N. lat., 117°16.39′ W. long.

* * * * *

■ 20. In § 660.392, paragraphs (a), (b), (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°10.00′ N. lat., 124°19.97′ W. long.;
(84) 40°09.20′ N. lat., 124°15.81′ W. long.;
(85) 40°07.51′ N. lat., 124°15.29′ W. long.;
(86) 40°05.22′ N. lat., 124°10.06′ W. long.;
(87) 40°06.51′ N. lat., 124°08.01′ W. long.;
(88) 40°00.72′ N. lat., 124°08.45′ W. long.;
(89) 39°56.60′ N. lat., 124°07.12′ W. long.;
(90) 39°52.58′ N. lat., 124°03.57′ W. long.;
(91) 39°50.65′ N. lat., 123°57.98′ W. long.;
(92) 39°40.16′ N. lat., 123°52.41′ W. long.;
(93) 39°30.12′ N. lat., 123°52.92′ W. long.;
(94) 39°24.53′ N. lat., 123°55.16′ W. long.;
(95) 39°11.58′ N. lat., 123°50.93′ W. long.;
(96) 38°57.50′ N. lat., 123°51.10′ W. long.;
(97) 38°55.13′ N. lat., 123°51.14′ W. long.;
(98) 38°28.58′ N. lat., 123°22.84′ W. long.;
(99) 38°14.60′ N. lat., 123°09.92′ W. long.;
(100) 38°01.84′ N. lat., 123°09.75′ W. long.;
(101) 38°00.00′ N. lat., 123°09.25′ W. long.;
(102) 37°55.24′ N. lat., 123°08.30′ W. long.;
(103) 37°52.06′ N. lat., 123°09.19′ W. long.;
(104) 37°50.21′ N. lat., 123°14.90′ W. long.;
(105) 37°35.67′ N. lat., 122°55.43′ W. long.;
(106) 37°11.00′ N. lat., 122°31.67′ W. long.;
(107) 37°07.00′ N. lat., 122°28.00′ W. long.;
(108) 37°03.06′ N. lat., 122°24.22′ W. long.;
(109) 36°50.20′ N. lat., 122°03.58′ W. long.;
(110) 36°51.46′ N. lat., 121°57.54′ W. long.;
(111) 36°48.53′ N. lat., 121°57.84′ W. long.;
(112) 36°48.91′ N. lat., 121°49.92′ W. long.;
(113) 36°36.82′ N. lat., 122°00.66′ W. long.;
(114) 36°32.89′ N. lat., 121°58.85′ W. long.;
(115) 36°33.10′ N. lat., 121°57.56′ W. long.;
(116) 36°31.82′ N. lat., 121°55.96′ W. long.;
(117) 36°31.57′ N. lat., 121°58.15′ W. long.;
(118) 36°23.15′ N. lat., 121°57.12′ W. long.;
(119) 36°17.10′ N. lat., 122°00.53′ W. long.;
(120) 36°10.41′ N. lat., 121°42.92′ W. long.;
(121) 36°02.56′ N. lat., 121°36.37′ W. long.;
(122) 36°01.11′ N. lat., 121°36.39′ W. long.;
(123) 36°00.00′ N. lat., 121°35.15′ W. long.;
(124) 35°58.26′ N. lat., 121°32.88′ W. long.;
(125) 35°40.38′ N. lat., 121°22.59′ W. long.;
(126) 35°24.35′ N. lat., 121°02.53′ W. long.;
(127) 35°01.43′ N. lat., 120°48.01′ W. long.;
(128) 34°39.52′ N. lat., 120°48.72′ W. long.;
(129) 34°31.26′ N. lat., 120°44.12′ W. long.;
(130) 34°27.00′ N. lat., 120°33.31′ W. long.;
(131) 34°23.47′ N. lat., 120°24.76′ W. long.;
(132) 34°25.78′ N. lat., 120°16.82′ W. long.;
(133) 34°24.65′ N. lat., 120°04.83′ W. long.;
(134) 34°23.18′ N. lat., 119°56.18′ W. long.;
(135) 34°19.20′ N. lat., 119°41.64′ W. long.;
(136) 34°16.82′ N. lat., 119°35.32′ W. long.;
(137) 34°13.43′ N. lat., 119°32.29′ W. long.;
(138) 34°05.39′ N. lat., 119°15.13′ W. long.;
(139) 34°08.22′ N. lat., 119°13.64′ W. long.;
(140) 34°07.64′ N. lat., 119°13.10′ W. long.;
(141) 34°04.56′ N. lat., 119°13.73′ W. long.;
(142) 34°03.90′ N. lat., 119°12.66′ W. long.;
(143) 34°03.66′ N. lat., 119°06.82′ W. long.;
(144) 34°04.58′ N. lat., 119°04.91′ W. long.;
(145) 34°01.28′ N. lat., 119°00.21′ W. long.;
(146) 34°00.19′ N. lat., 119°03.14′ W. long.;
(147) 33°59.66′ N. lat., 119°03.10′ W. long.;
(148) 33°59.54′ N. lat., 119°00.88′ W. long.;
(149) 34°00.82′ N. lat., 118°59.03′ W. long.;
(150) 33°59.11′ N. lat., 118°47.52′ W. long.;
(151) 33°59.07′ N. lat., 118°36.33′ W. long.;
(152) 33°55.06′ N. lat., 118°32.86′ W. long.;
(153) 33°53.56′ N. lat., 118°37.75′ W. long.;
(154) 33°51.22′ N. lat., 118°36.14′ W. long.;
(155) 33°50.48′ N. lat., 118°32.16′ W. long.;
(156) 33°51.86′ N. lat., 118°28.71′ W. long.;
(157) 33°50.09′ N. lat., 118°27.88′ W. long.;
(158) 33°49.95′ N. lat., 118°26.38′ W. long.;
(159) 33°50.73′ N. lat., 118°26.17′ W. long.;
(160) 33°49.86′ N. lat., 118°24.25′ W. long.;
(161) 33°48.10′ N. lat., 118°26.87′ W. long.;
(162) 33°47.54′ N. lat., 118°29.66′ W. long.;
(163) 33°44.10′ N. lat., 118°25.25′ W. long.;
(164) 33°41.78′ N. lat., 118°20.28′ W. long.;
(165) 33°38.18′ N. lat., 118°15.69′ W. long.;

(166) 33°37.50′ N. lat., 118°16.71′ W. long.;
(167) 33°35.98′ N. lat., 118°16.54′ W. long.;
(168) 33°34.15′ N. lat., 118°11.22′ W. long.;
(169) 33°34.29′ N. lat., 118°08.35′ W. long.;
(170) 33°35.85′ N. lat., 118°07.00′ W. long.;
(171) 33°36.12′ N. lat., 118°04.15′ W. long.;
(172) 33°34.97′ N. lat., 118°02.91′ W. long.;
(173) 33°34.00′ N. lat., 117°59.53′ W. long.;
(174) 33°35.44′ N. lat., 117°55.67′ W. long.;
(175) 33°35.15′ N. lat., 117°53.55′ W. long.;
(176) 33°31.12′ N. lat., 117°47.40′ W. long.;
(177) 33°27.99′ N. lat., 117°45.19′ W. long.;
(178) 33°26.93′ N. lat., 117°43.98′ W. long.;
(179) 33°25.44′ N. lat., 117°41.63′ W. long.;
(180) 33°19.50′ N. lat., 117°36.08′ W. long.;
(181) 33°12.74′ N. lat., 117°28.53′ W. long.;
(182) 33°10.29′ N. lat., 117°25.68′ W. long.;
(183) 33°07.50′ N. lat., 117°21.52′ W. long.;
(184) 32°59.77′ N. lat., 117°18.83′ W. long.;
(185) 32°56.10′ N. lat., 117°18.37′ W. long.;
(186) 32°54.43′ N. lat., 117°16.93′ W. long.;
(187) 32°51.89′ N. lat., 117°16.42′ W. long.;
(188) 32°52.24′ N. lat., 117°19.36′ W. long.;
(189) 32°47.06′ N. lat., 117°21.92′ W. long.;
(190) 32°45.09′ N. lat., 117°20.68′ W. long.;
(191) 32°43.62′ N. lat., 117°18.68′ W. long.; and
(192) 32°33.43′ N. lat., 117°17.00′ W. long.

(b) The 50–fm (91–m) depth contour between the U.S. border with Canada and the Swiftsure Bank is defined by straight lines connecting all of the following points in the order stated:
(1) 48°30.15′ N. lat., 124°56.12′ W. long.;
(2) 48°28.29′ N. lat., 124°56.30′ W. long.;
(3) 48°29.23′ N. lat., 124°53.63′ W. long.;
(4) 48°30.31′ N. lat., 124°51.73′ W. long.; and
(5) 48°30.15′ N. lat., 124°56.12′ 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.;
(69) 42°00.00′ N. lat., 124°28.00′ W. long.;
(70) 41°54.87′ N. lat., 124°28.50′ W. long.;
(71) 41°45.80′ N. lat., 124°23.89′ W. long.;
(72) 41°34.40′ N. lat., 124°24.03′ W. long.;
(73) 41°28.33′ N. lat., 124°25.46′ W. long.;
(74) 41°15.80′ N. lat., 124°18.90′ W. long.;
(75) 41°09.77′ N. lat., 124°17.99′ W. long.;
(76) 41°02.26′ N. lat., 124°18.71′ W. long.;
(77) 40°53.54′ N. lat., 124°21.18′ W. long.;
(78) 40°49.93′ N. lat., 124°23.02′ W. long.;
(79) 40°43.15′ N. lat., 124°28.74′ W. long.;
(80) 40°40.19′ N. lat., 124°29.07′ W. long.;
(81) 40°36.77′ N. lat., 124°27.61′ W. long.;
(82) 40°34.13′ N. lat., 124°29.39′ W. long.;
(83) 40°33.15′ N. lat., 124°33.46′ W. long.;
(84) 40°30.00′ N. lat., 124°35.84′ W. long.;
(85) 40°24.72′ N. lat., 124°33.06′ W. long.;
(86) 40°23.91′ N. lat., 124°31.28′ W. long.;
(87) 40°23.67′ N. lat., 124°28.35′ W. long.;
(88) 40°22.53′ N. lat., 124°24.72′ W. long.;
(89) 40°21.51′ N. lat., 124°24.86′ W. long.;
(90) 40°21.02′ N. lat., 124°27.70′ W. long.;
(91) 40°19.75′ N. lat., 124°27.06′ W. long.;
(92) 40°18.23′ N. lat., 124°25.30′ W. long.;
(93) 40°18.60′ N. lat., 124°22.86′ W. long.;
(94) 40°15.43′ N. lat., 124°25.37′ W. long.;
(95) 40°15.55′ N. lat., 124°28.16′ W. long.;
(96) 40°11.27′ N. lat., 124°22.56′ W. long.;
(97) 40°10.00′ N. lat., 124°19.97′ W. long.;
(98) 40°09.20′ N. lat., 124°15.81′ W. long.;
(99) 40°07.51′ N. lat., 124°15.29′ W. long.;
(100) 40°05.22′ N. lat., 124°10.06′ W. long.;
(101) 40°06.51′ N. lat., 124°08.01′ W. long.;
(102) 40°00.72′ N. lat., 124°08.45′ W. long.;
(103) 39°56.60′ N. lat., 124°07.12′ W. long.;
(104) 39°52.58′ N. lat., 124°03.57′ W. long.;
(105) 39°50.65′ N. lat., 123°57.98′ W. long.;
(106) 39°40.16′ N. lat., 123°52.41′ W. long.;
(107) 39°30.12′ N. lat., 123°52.92′ W. long.;
(108) 39°24.53′ N. lat., 123°55.16′ W. long.;
(109) 39°11.58′ N. lat., 123°50.93′ W. long.;
(110) 38°57.50′ N. lat., 123°51.14′ W. long.;
(111) 38°55.13′ N. lat., 123°51.14′ W. long.;
(112) 38°28.58′ N. lat., 123°22.84′ W. long.;
(113) 38°08.57′ N. lat., 123°14.74′ W. long.;
(114) 38°00.00′ N. lat., 123°15.61′ W. long.;
(115) 37°56.98′ N. lat., 123°21.82′ W. long.;
(116) 37°49.65′ N. lat., 123°17.48′ W. long.;
(117) 37°36.41′ N. lat., 122°58.09′ W. long.;
(118) 37°11.00′ N. lat., 122°40.22′ W. long.;
(119) 37°07.00′ N. lat., 122°37.64′ W. long.;
(120) 37°02.08′ N. lat., 122°25.49′ W. long.;
(121) 36°48.20′ N. lat., 122°03.32′ W. long.;
(122) 36°51.46′ N. lat., 121°57.54′ W. long.;
(123) 36°48.13′ N. lat., 121°58.16′ W. long.;
(124) 36°48.84′ N. lat., 121°50.06′ W. long.;
(125) 36°45.38′ N. lat., 121°53.56′ W. long.;
(126) 36°45.13′ N. lat., 121°57.06′ W. long.;
(127) 36°36.86′ N. lat., 122°00.81′ W. long.;
(128) 36°32.77′ N. lat., 121°58.90′ W. long.;
(129) 36°33.03′ N. lat., 121°57.63′ W. long.;
(130) 36°31.87′ N. lat., 121°56.10′ W. long.;
(131) 36°31.59′ N. lat., 121°58.27′ W. long.;
(132) 36°23.26′ N. lat., 121°57.70′ W. long.;
(133) 36°17.30′ N. lat., 122°01.55′ W. long.;
(134) 36°10.42′ N. lat., 121°42.90′ W. long.;
(135) 36°02.55′ N. lat., 121°36.35′ W. long.;
(136) 36°01.09′ N. lat., 121°36.41′ W. long.;
(137) 36°00.00′ N. lat., 121°35.15′ W. long.;
(138) 35°58.25′ N. lat., 121°32.88′ W. long.;
(139) 35°40.38′ N. lat., 121°22.59′ W. long.;
(140) 35°24.35′ N. lat., 121°02.53′ W. long.;
(141) 35°01.36′ N. lat., 120°49.02′ W. long.;
(142) 34°39.52′ N. lat., 120°48.72′ W. long.;
(143) 34°31.26′ N. lat., 120°44.12′ W. long.;
(144) 34°27.00′ N. lat., 120°36.00′ W. long.;
(145) 34°23.00′ N. lat., 120°25.32′ W. long.;
(146) 34°25.65′ N. lat., 120°17.20′ W. long.;
(147) 34°23.18′ N. lat., 119°56.17′ W. long.;
(148) 34°18.73′ N. lat., 119°41.89′ W. long.;
(149) 34°11.18′ N. lat., 119°31.21′ W. long.;
(150) 34°10.01′ N. lat., 119°25.84′ W. long.;
(151) 34°03.88′ N. lat., 119°12.46′ W. long.;
(152) 34°03.58′ N. lat., 119°06.71′ W. long.;
(153) 34°04.52′ N. lat., 119°04.89′ W. long.;
(154) 34°01.28′ N. lat., 119°00.27′ W. long.;
(155) 34°00.20′ N. lat., 119°03.18′ W. long.;
(156) 33°59.60′ N. lat., 119°03.14′ W. long.;
(157) 33°59.45′ N. lat., 119°00.87′ W. long.;
(158) 34°00.71′ N. lat., 118°59.07′ W. long.;
(159) 33°59.05′ N. lat., 118°47.34′ W. long.;
(160) 33°59.06′ N. lat., 118°36.30′ W. long.;
(161) 33°55.05′ N. lat., 118°32.85′ W. long.;
(162) 33°53.56′ N. lat., 118°37.73′ W. long.;
(163) 33°51.22′ N. lat., 118°36.13′ W. long.;
(164) 33°50.19′ N. lat., 118°32.19′ W. long.;
(165) 33°51.28′ N. lat., 118°29.12′ W. long.;
(166) 33°49.89′ N. lat., 118°28.04′ W. long.;
(167) 33°49.95′ N. lat., 118°26.38′ W. long.;
(168) 33°50.73′ N. lat., 118°26.16′ W. long.;
(169) 33°49.87′ N. lat., 118°24.37′ W. long.;
(170) 33°47.54′ N. lat., 118°29.65′ W. long.;
(171) 33°44.10′ N. lat., 118°25.25′ W. long.;
(172) 33°41.77′ N. lat., 118°20.32′ W. long.;

(173) 33°38.17′ N. lat., 118°15.69′ W. long.;
(174) 33°37.48′ N. lat., 118°16.72′ W. long.;
(175) 33°35.98′ N. lat., 118°16.54′ W. long.;
(176) 33°34.15′ N. lat., 118°11.22′ W. long.;
(177) 33°34.09′ N. lat., 118°08.15′ W. long.;
(178) 33°35.73′ N. lat., 118°05.01′ W. long.;
(179) 33°33.75′ N. lat., 117°59.82′ W. long.;
(180) 33°35.44′ N. lat., 117°55.65′ W. long.;
(181) 33°35.15′ N. lat., 117°53.54′ W. long.;
(182) 33°31.12′ N. lat., 117°47.39′ W. long.;
(183) 33°27.49′ N. lat., 117°44.85′ W. long.;
(184) 33°16.42′ N. lat., 117°32.92′ W. long.;
(185) 33°06.66′ N. lat., 117°21.59′ W. long.;
(186) 33°00.08′ N. lat., 117°19.02′ W. long.;
(187) 32°56.11′ N. lat., 117°18.41′ W. long.;
(188) 32°54.43′ N. lat., 117°16.93′ W. long.;
(189) 32°51.89′ N. lat., 117°16.42′ W. long.;
(190) 32°52.61′ N. lat., 117°19.50′ W. long.;
(191) 32°46.96′ N. lat., 117°22.69′ W. long.;
(192) 32°44.98′ N. lat., 117°21.87′ W. long.;
(193) 32°43.52′ N. lat., 117°19.32′ W. long.; and
(194) 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°06.25′ N. lat., 125°06.40′ 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°43.89′ W. long.;
(147) 37°07.00′ N. lat., 122°41.06′ 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°24.33′ N. lat., 121°02.53′ 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.

* * * * *

■ 21. 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°01.08′ N. lat., 124°59.22′ 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°18.40′ N. lat., 124°37.70′ W. long.;
(83) 46°18.03′ N. lat., 124°35.46′ 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) 41°47.04′ N. lat., 124°27.64′ W. long.;
(143) 41°32.92′ N. lat., 124°28.79′ W. long.;

(144) 41°24.17′ N. lat., 124°28.46′ W. long.;
(145) 41°10.12′ N. lat., 124°20.50′ W. long.;
(146) 40°51.41′ N. lat., 124°24.38′ W. long.;
(147) 40°43.71′ N. lat., 124°29.89′ W. long.;
(148) 40°40.14′ N. lat., 124°30.90′ W. long.;
(149) 40°37.35′ N. lat., 124°29.05′ W. long.;
(150) 40°34.76′ N. lat., 124°29.82′ W. long.;
(151) 40°36.78′ N. lat., 124°37.06′ W. long.;
(152) 40°32.44′ N. lat., 124°39.58′ W. long.;
(153) 40°30.00′ N. lat., 124°38.13′ W. long.;
(154) 40°24.82′ N. lat., 124°35.12′ W. long.;
(155) 40°23.30′ N. lat., 124°31.60′ W. long.;
(156) 40°23.52′ N. lat., 124°28.78′ W. long.;
(157) 40°22.43′ N. lat., 124°25.00′ W. long.;
(158) 40°21.72′ N. lat., 124°24.94′ W. long.;
(159) 40°21.87′ N. lat., 124°27.96′ W. long.;
(160) 40°21.40′ N. lat., 124°28.74′ W. long.;
(161) 40°19.68′ N. lat., 124°28.49′ W. long.;
(162) 40°17.73′ N. lat., 124°25.43′ W. long.;
(163) 40°18.37′ N. lat., 124°23.35′ W. long.;
(164) 40°15.75′ N. lat., 124°26.05′ W. long.;
(165) 40°16.75′ N. lat., 124°33.71′ W. long.;
(166) 40°16.29′ N. lat., 124°34.36′ W. long.;
(167) 40°10.00′ N. lat., 124°21.12′ W. long.;
(168) 40°07.70′ N. lat., 124°18.44′ W. long.;
(169) 40°08.84′ N. lat., 124°15.86′ W. long.;
(170) 40°06.53′ N. lat., 124°17.39′ W. long.;
(171) 40°03.15′ N. lat., 124°14.43′ W. long.;
(172) 40°02.19′ N. lat., 124°12.85′ W. long.;
(173) 40°02.89′ N. lat., 124°11.78′ W. long.;
(174) 40°02.78′ N. lat., 124°10.70′ W. long.;
(175) 40°04.57′ N. lat., 124°10.08′ W. long.;
(176) 40°06.06′ N. lat., 124°08.30′ W. long.;
(177) 40°04.05′ N. lat., 124°08.93′ W. long.;
(178) 40°01.17′ N. lat., 124°08.80′ W. long.;
(179) 40°01.03′ N. lat., 124°10.06′ W. long.;
(180) 39°58.07′ N. lat., 124°11.89′ W. long.;
(181) 39°56.39′ N. lat., 124°08.71′ W. long.;
(182) 39°54.64′ N. lat., 124°07.30′ W. long.;
(183) 39°53.86′ N. lat., 124°07.95′ W. long.;
(184) 39°51.95′ N. lat., 124°07.63′ W. long.;
(185) 39°48.78′ N. lat., 124°03.29′ W. long.;
(186) 39°47.36′ N. lat., 124°03.31′ W. long.;
(187) 39°40.08′ N. lat., 123°58.37′ W. long.;
(188) 39°36.16′ N. lat., 123°56.90′ W. long.;
(189) 39°30.75′ N. lat., 123°55.86′ W. long.;
(190) 39°31.62′ N. lat., 123°57.33′ W. long.;
(191) 39°30.91′ N. lat., 123°57.88′ W. long.;
(192) 39°01.79′ N. lat., 123°56.59′ W. long.;
(193) 38°59.42′ N. lat., 123°55.67′ W. long.;
(194) 38°58.89′ N. lat., 123°56.28′ W. long.;
(195) 38°57.50′ N. lat., 123°56.28′ W. long.;
(196) 38°54.72′ N. lat., 123°55.68′ W. long.;
(197) 38°48.95′ N. lat., 123°51.85′ W. long.;
(198) 38°36.67′ N. lat., 123°40.20′ W. long.;
(199) 38°33.82′ N. lat., 123°39.23′ W. long.;
(200) 38°29.02′ N. lat., 123°33.52′ W. long.;
(201) 38°18.88′ N. lat., 123°25.93′ W. long.;
(202) 38°14.12′ N. lat., 123°23.26′ W. long.;
(203) 38°11.07′ N. lat., 123°22.07′ W. long.;
(204) 38°03.18′ N. lat., 123°20.77′ W. long.;
(205) 38°00.00′ N. lat., 123°23.08′ W. long.;
(206) 37°55.07′ N. lat., 123°26.81′ W. long.;
(207) 37°50.66′ N. lat., 123°23.06′ W. long.;
(208) 37°45.18′ N. lat., 123°11.88′ W. long.;
(209) 37°35.67′ N. lat., 123°01.20′ W. long.;
(210) 37°15.58′ N. lat., 122°48.36′ W. long.;
(211) 37°11.00′ N. lat., 122°44.50′ W. long.;
(212) 37°07.00′ N. lat., 122°41.25′ W. long.;
(213) 37°03.18′ N. lat., 122°38.15′ W. long.;
(214) 37°00.48′ N. lat., 122°33.93′ W. long.;
(215) 36°58.70′ N. lat., 122°27.22′ W. long.;
(216) 37°00.85′ N. lat., 122°24.70′ W. long.;
(217) 36°58.00′ N. lat., 122°24.14′ W. long.;
(218) 36°58.74′ N. lat., 122°21.51′ W. long.;
(219) 36°56.97′ N. lat., 122°21.32′ W. long.;
(220) 36°51.52′ N. lat., 122°10.68′ W. long.;
(221) 36°48.39′ N. lat., 122°07.60′ W. long.;
(222) 36°47.43′ N. lat., 122°03.22′ W. long.;
(223) 36°50.95′ N. lat., 121°58.03′ W. long.;
(224) 36°49.92′ N. lat., 121°58.01′ W. long.;
(225) 36°48.88′ N. lat., 121°58.90′ W. long.;
(226) 36°47.70′ N. lat., 121°58.75′ W. long.;
(227) 36°48.37′ N. lat., 121°51.14′ W. long.;
(228) 36°45.74′ N. lat., 121°54.17′ W. long.;
(229) 36°45.51′ N. lat., 121°57.72′ W. long.;
(230) 36°38.84′ N. lat., 122°01.32′ W. long.;
(231) 36°35.62′ N. lat., 122°00.98′ W. long.;
(232) 36°32.46′ N. lat., 121°59.15′ W. long.;
(233) 36°32.79′ N. lat., 121°57.67′ W. long.;
(234) 36°31.98′ N. lat., 121°56.55′ W. long.;
(235) 36°31.79′ N. lat., 121°58.40′ W. long.;
(236) 36°30.73′ N. lat., 121°59.70′ W. long.;
(237) 36°30.31′ N. lat., 122°00.22′ W. long.;
(238) 36°29.35′ N. lat., 122°00.36′ W. long.;
(239) 36°27.66′ N. lat., 121°59.80′ W. long.;
(240) 36°26.22′ N. lat., 121°58.35′ W. long.;
(241) 36°21.20′ N. lat., 122°00.72′ W. long.;
(242) 36°20.47′ N. lat., 122°02.92′ W. long.;
(243) 36°18.46′ N. lat., 122°04.51′ W. long.;
(244) 36°15.92′ N. lat., 122°01.33′ W. long.;
(245) 36°13.76′ N. lat., 121°57.27′ W. long.;
(246) 36°14.43′ N. lat., 121°55.43′ W. long.;
(247) 36°10.24′ N. lat., 121°43.08′ W. long.;
(248) 36°07.66′ N. lat., 121°40.91′ W. long.;

(249) 36°02.49′ N. lat., 121°36.51′ W. long.;
(250) 36°01.08′ N. lat., 121°36.63′ W. long.;
(251) 36°00.00′ N. lat., 121°35.15′ W. long.;
(252) 35°57.84′ N. lat., 121°33.10′ W. long.;
(253) 35°50.36′ N. lat., 121°29.32′ W. long.;
(254) 35°39.03′ N. lat., 121°22.86′ W. long.;
(255) 35°24.30′ N. lat., 121°02.56′ W. long.;
(256) 35°16.53′ N. lat., 121°00.39′ W. long.;
(257) 35°04.82′ N. lat., 120°53.96′ W. long.;
(258) 34°52.51′ N. lat., 120°51.62′ W. long.;
(259) 34°43.36′ N. lat., 120°52.12′ W. long.;
(260) 34°37.64′ N. lat., 120°49.99′ W. long.;
(261) 34°30.80′ N. lat., 120°45.02′ W. long.;
(262) 34°27.00′ N. lat., 120°39.00′ W. long.;
(263) 34°21.90′ N. lat., 120°25.25′ W. long.;
(264) 34°24.86′ N. lat., 120°16.81′ W. long.;
(265) 34°22.80′ N. lat., 119°57.06′ W. long.;
(266) 34°18.59′ N. lat., 119°44.84′ W. long.;
(267) 34°15.04′ N. lat., 119°40.34′ W. long.;
(268) 34°14.40′ N. lat., 119°45.39′ W. long.;
(269) 34°12.32′ N. lat., 119°42.41′ W. long.;
(270) 34°09.71′ N. lat., 119°28.85′ W. long.;
(271) 34°04.70′ N. lat., 119°15.38′ W. long.;
(272) 34°03.33′ N. lat., 119°12.93′ W. long.;
(273) 34°02.72′ N. lat., 119°07.01′ W. long.;
(274) 34°03.90′ N. lat., 119°04.64′ W. long.;
(275) 34°01.80′ N. lat., 119°03.23′ W. long.;
(276) 33°59.32′ N. lat., 119°03.50′ W. long.;
(277) 33°59.00′ N. lat., 118°59.55′ W. long.;
(278) 33°59.51′ N. lat., 118°57.25′ W. long.;
(279) 33°58.82′ N. lat., 118°52.47′ W. long.;
(280) 33°58.54′ N. lat., 118°41.86′ W. long.;
(281) 33°55.07′ N. lat., 118°34.25′ W. long.;
(282) 33°54.28′ N. lat., 118°38.68′ W. long.;
(283) 33°51.00′ N. lat., 118°36.66′ W. long.;
(284) 33°39.77′ N. lat., 118°18.41′ W. long.;
(285) 33°35.50′ N. lat., 118°16.85′ W. long.;
(286) 33°32.68′ N. lat., 118°09.82′ W. long.;
(287) 33°34.09′ N. lat., 117°54.06′ W. long.;
(288) 33°31.60′ N. lat., 117°49.28′ W. long.;
(289) 33°16.07′ N. lat., 117°34.74′ W. long.;
(290) 33°07.06′ N. lat., 117°22.71′ W. long.;
(291) 32°59.28′ N. lat., 117°19.69′ W. long.;
(292) 32°55.36′ N. lat., 117°19.54′ W. long.;
(293) 32°53.35′ N. lat., 117°17.05′ W. long.;
(294) 32°53.34′ N. lat., 117°19.13′ W. long.;
(295) 32°46.39′ N. lat., 117°23.45′ W. long.;
(296) 32°42.79′ N. lat., 117°21.16′ W. long.; and
(297) 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°29.88′ N. lat., 124°38.09′ 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°01.04′ N. lat., 121°36.68′ W. long.;
(279) 36°00.00′ N. lat., 121°35.15′ W. long.;
(280) 35°57.84′ N. lat., 121°33.10′ W. long.;
(281) 35°45.57′ N. lat., 121°27.26′ W. long.;
(282) 35°39.02′ N. lat., 121°22.86′ W. long.;
(283) 35°25.92′ N. lat., 121°05.52′ W. long.;
(284) 35°16.26′ N. lat., 121°01.50′ W. long.;
(285) 35°07.60′ N. lat., 120°56.49′ W. long.;
(286) 34°57.77′ N. lat., 120°53.87′ W. long.;
(287) 34°42.30′ N. lat., 120°53.42′ W. long.;
(288) 34°37.69′ N. lat., 120°50.04′ W. long.;
(289) 34°30.13′ N. lat., 120°44.45′ W. long.;
(290) 34°27.00′ N. lat., 120°39.24′ W. long.;
(291) 34°24.71′ N. lat., 120°35.37′ W. long.;
(292) 34°21.63′ N. lat., 120°24.86′ W. long.;
(293) 34°24.39′ N. lat., 120°16.65′ W. long.;
(294) 34°22.48′ N. lat., 119°56.42′ W. long.;
(295) 34°18.54′ N. lat., 119°46.26′ W. long.;
(296) 34°16.37′ N. lat., 119°45.12′ W. long.;
(297) 34°15.91′ N. lat., 119°47.29′ W. long.;
(298) 34°13.80′ N. lat., 119°45.40′ W. long.;
(299) 34°11.69′ N. lat., 119°41.80′ W. long.;
(300) 34°09.98′ N. lat., 119°31.87′ W. long.;
(301) 34°08.12′ N. lat., 119°27.71′ W. long.;
(302) 34°06.35′ N. lat., 119°32.65′ W. long.;
(303) 34°06.80′ N. lat., 119°40.08′ W. long.;
(304) 34°07.48′ N. lat., 119°47.54′ W. long.;
(305) 34°08.21′ N. lat., 119°54.90′ W. long.;
(306) 34°06.85′ N. lat., 120°05.60′ W. long.;
(307) 34°06.99′ N. lat., 120°10.37′ W. long.;
(308) 34°08.53′ N. lat., 120°17.89′ W. long.;
(309) 34°10.00′ N. lat., 120°23.05′ W. long.;
(310) 34°12.53′ N. lat., 120°29.82′ W. long.;
(311) 34°09.02′ N. lat., 120°37.47′ W. long.;
(312) 34°01.01′ N. lat., 120°31.17′ W. long.;
(313) 33°58 07′ N. lat., 120°28.33′ W. long.;
(314) 33°53.37′ N. lat., 120°14.43′ W. long.;
(315) 33°50.53′ N. lat., 120°07.20′ W. long.;
(316) 33°45.88′ N. lat., 120°04.26′ W. long.;
(317) 33°38.19′ N. lat., 119°57.85′ W. long.;
(318) 33°38.19′ N. lat., 119°50.42′ W. long.;
(319) 33°42.36′ N. lat., 119°49.60′ W. long.;
(320) 33°53.95′ N. lat., 119°53.81′ W. long.;
(321) 33°55.99′ N. lat., 119°41.40′ W. long.;
(322) 33°58.48′ N. lat., 119°27.90′ W. long.;
(323) 33°59.94′ N. lat., 119°19.57′ W. long.;
(324) 34°04.48′ N. lat., 119°15.32′ W. long.;
(325) 34°02.80′ N. lat., 119°12.95′ W. long.;
(326) 34°02.39′ N. lat., 119°07.17′ W. long.;
(327) 34°03.75′ N. lat., 119°04.72′ W. long.;
(328) 34°01.82′ N. lat., 119°03.24′ W. long.;
(329) 33°59.33′ N. lat., 119°03.49′ W. long.;
(330) 33°59.01′ N. lat., 118°59.56′ W. long.;
(331) 33°59.51′ N. lat., 118°57.25′ W. long.;
(332) 33°58.83′ N. lat., 118°52.50′ W. long.;
(333) 33°58.55′ N. lat., 118°41.86′ W. long.;
(334) 33°55.10′ N. lat., 118°34.25′ W. long.;
(335) 33°54.30′ N. lat., 118°38.71′ W. long.;
(336) 33°50.88′ N. lat., 118°37.02′ W. long.;
(337) 33°39.78′ N. lat., 118°18.40′ W. long.;
(338) 33°35.50′ N. lat., 118°16.85′ W. long.;
(339) 33°32.46′ N. lat., 118°10.90′ W. long.;
(340) 33°34.11′ N. lat., 117°54.07′ W. long.;
(341) 33°31.61′ N. lat., 117°49.30′ W. long.;
(342) 33°16.36′ N. lat., 117°35.48′ W. long.;
(343) 33°06.81′ N. lat., 117°22.93′ W. long.;
(344) 32°59.28′ N. lat., 117°19.69′ W. long.;
(345) 32°55.37′ N. lat., 117°19.55′ W. long.;
(346) 32°53.35′ N. lat., 117°17.05′ W. long.;
(347) 32°53.36′ N. lat., 117°19.12′ W. long.;
(348) 32°46.42′ N. lat., 117°23.45′ W. long.;
(349) 32°42.71′ N. lat., 117°21.45′ W. long.; and
(350) 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°01.01′ N. lat., 121°36.69′ 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°55.88′ N. lat., 119°41.05′ W. long.;
(271) 33°59.94′ N. lat., 119°19.57′ W. long.;
(272) 34°03.12′ N. lat., 119°15.51′ W. long.;
(273) 34°01.97′ N. lat., 119°07.28′ W. long.;
(274) 34°03.60′ N. lat., 119°04.71′ W. long.;
(275) 33°59.30′ N. lat., 119°03.73′ W. long.;
(276) 33°58.87′ N. lat., 118°59.37′ W. long.;
(277) 33°58.08′ N. lat., 118°41.14′ W. long.;
(278) 33°50.93′ N. lat., 118°37.65′ W. long.;
(279) 33°39.54′ N. lat., 118°18.70′ W. long.;
(280) 33°35.42′ N. lat., 118°17.14′ W. long.;
(281) 33°32.15′ N. lat., 118°10.84′ W. long.;
(282) 33°33.71′ N. lat., 117°53.72′ W. long.;
(283) 33°31.17′ N. lat., 117°49.11′ W. long.;
(284) 33°16.53′ N. lat., 117°36.13′ W. long.;
(285) 33°06.77′ N. lat., 117°22.92′ W. long.;
(286) 32°58.94′ N. lat., 117°20.05′ W. long.;
(287) 32°55.83′ N. lat., 117°20.15′ W. long.;
(288) 32°46.29′ N. lat., 117°23.89′ W. long.;
(289) 32°42.00′ N. lat., 117°22.16′ W. long.;
(290) 32°39.47′ N. lat., 117°27.78′ W. long.; and
(291) 32°34.83′ N. lat., 117°24.69′ W. long.

* * * * *

■ 22. In § 660.394, paragraphs (f) through (m) are redesignated as (g) through (n), paragraph (a) and newly redesignated paragraphs (g), (l), (m), are revised, and new paragraphs (f), (n), (o), (p), (q), and (r) are added 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.; and
(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°02.04 N. lat., 125°22.90 W. long.;
(18) 48°03.60 N. lat., 125°21.84 W. long.;
(19) 48°03.98 N. lat., 125°20.65 W. long.;

(20) 48°03.26 N. lat., 125°19.76 W. long.;
(21) 48°01.50 N. lat., 125°18.80 W. long.;
(22) 48°01.03 N. lat., 125°20.12 W. long.;
(23) 48°00.04 N. lat., 125°20.26 W. long.;
(24) 47°58.10 N. lat., 125°18.91 W. long.;
(25) 47°58.17 N. lat., 125°17.50 W. long.;
(26) 47°52.33 N. lat., 125°15.78 W. long.;
(27) 47°49.20 N. lat., 125°10.67 W. long.;
(28) 47°48.27 N. lat., 125°07.38 W. long.;
(29) 47°47.24 N. lat., 125°05.38 W. long.;
(30) 47°45.95 N. lat., 125°04.61 W. long.;
(31) 47°44.58 N. lat., 125°07.12 W. long.;
(32) 47°42.24 N. lat., 125°05.15 W. long.;
(33) 47°38.54 N. lat., 125°06.76 W. long.;
(34) 47°35.03 N. lat., 125°04.28 W. long.;
(35) 47°28.82 N. lat., 124°56.24 W. long.;
(36) 47°29.15 N. lat., 124°54.10 W. long.;
(37) 47°28.43 N. lat., 124°51.58 W. long.;
(38) 47°24.13 N. lat., 124°47.50 W. long.;
(39) 47°18.31 N. lat., 124°46.17 W. long.;
(40) 47°19.57 N. lat., 124°51.00 W. long.;
(41) 47°18.12 N. lat., 124°53.66 W. long.;
(42) 47°17.60 N. lat., 124°52.94 W. long.;
(43) 47°17.71 N. lat., 124°51.63 W. long.;
(44) 47°16.90 N. lat., 124°51.23 W. long.;
(45) 47°16.10 N. lat., 124°53.67 W. long.;
(46) 47°14.24 N. lat., 124°53.02 W. long.;
(47) 47°12.16 N. lat., 124°56.77 W. long.;
(48) 47°13.35 N. lat., 124°58.70 W. long.;
(49) 47°09.53 N. lat., 124°58.32 W. long.;
(50) 47°09.54 N. lat., 124°59.50 W. long.;
(51) 47°05.87 N. lat., 124°59.30 W. long.;
(52) 47°03.65 N. lat., 124°56.26 W. long.;
(53) 47°00.87 N. lat., 124°59.52 W. long.;
(54) 46°56.80 N. lat., 125°00.00 W. long.;
(55) 46°51.55 N. lat., 125°00.00 W. long.;
(56) 46°50.07 N. lat., 124°53.90 W. long.;
(57) 46°44.88 N. lat., 124°51.97 W. long.;
(58) 46°33.45 N. lat., 124°36.11 W. long.;
(59) 46°33.20 N. lat., 124°30.64 W. long.;
(60) 46°27.85 N. lat., 124°31.95 W. long.;
(61) 46°18.27 N. lat., 124°39.28 W. long.;
(62) 46°16.00 N. lat., 124°24.88 W. long.;
(63) 46°14.22 N. lat., 124°26.29 W. long.;
(64) 46°11.53 N. lat., 124°39.58 W. long.;
(65) 46°08.77 N. lat., 124°41.71 W. long.;
(66) 46°05.86 N. lat., 124°42.26 W. long.;
(67) 46°03.85 N. lat., 124°48.20 W. long.;
(68) 46°02.33 N. lat., 124°48.51 W. long.;
(69) 45°58.99 N. lat., 124°44.42 W. long.;
(70) 45°46.90 N. lat., 124°43.50 W. long.;
(71) 45°46.00 N. lat., 124°44.27 W. long.;
(72) 45°44.98 N. lat., 124°44.93 W. long.;
(73) 45°43.46 N. lat., 124°44.93 W. long.;
(74) 45°34.88 N. lat., 124°32.59 W. long.;
(75) 45°20.25 N. lat., 124°25.47 W. long.;
(76) 45°13.06 N. lat., 124°22.25 W. long.;
(77) 45°03.83 N. lat., 124°27.13 W. long.;
(78) 45°00.17 N. lat., 124°29.29 W. long.;
(79) 44°55.60 N. lat., 124°32.36 W. long.;
(80) 44°48.25 N. lat., 124°40.61 W. long.;
(81) 44°42.24 N. lat., 124°48.05 W. long.;
(82) 44°41.35 N. lat., 124°48.03 W. long.;
(83) 44°40.27 N. lat., 124°49.11 W. long.;
(84) 44°38.52 N. lat., 124°49.11 W. long.;
(85) 44°23.30 N. lat., 124°50.17 W. long.;
(86) 44°13.19 N. lat., 124°58.66 W. long.;
(87) 44°08.30 N. lat., 124°58.50 W. long.;
(88) 43°57.89 N. lat., 124°58.13 W. long.;
(89) 43°50.59 N. lat., 124°52.80 W. long.;
(90) 43°50.10 N. lat., 124°40.27 W. long.;
(91) 43°39.05 N. lat., 124°38.56 W. long.;
(92) 43°28.85 N. lat., 124°40.00 W. long.;
(93) 43°20.83 N. lat., 124°42.84 W. long.;
(94) 43°20.22 N. lat., 124°43.05 W. long.;
(95) 43°13.29 N. lat., 124°47.00 W. long.;
(96) 43°13.15 N. lat., 124°52.61 W. long.;
(97) 43°04.60 N. lat., 124°53.01 W. long.;
(98) 42°57.56 N. lat., 124°54.10 W. long.;
(99) 42°53.82 N. lat., 124°55.76 W. long.;
(100) 42°53.41 N. lat., 124°54.35 W. long.;
(101) 42°49.52 N. lat., 124°53.16 W. long.;
(102) 42°47.47 N. lat., 124°50.24 W. long.;
(103) 42°47.57 N. lat., 124°48.13 W. long.;
(104) 42°46.19 N. lat., 124°44.52 W. long.;
(105) 42°41.75 N. lat., 124°44.69 W. long.;
(106) 42°40.50 N. lat., 124°44.02 W. long.;
(107) 42°38.81 N. lat., 124°43.09 W. long.;
(108) 42°31.82 N. lat., 124°46.24 W. long.;
(109) 42°31.96 N. lat., 124°44.32 W. long.;
(110) 42°30.95 N. lat., 124°44.50 W. long.;
(111) 42°28.39 N. lat., 124°49.56 W. long.;
(112) 42°23.34 N. lat., 124°44.91 W. long.;
(113) 42°19.72 N. lat., 124°41.60 W. long.;
(114) 42°15.12 N. lat., 124°38.34 W. long.;
(115) 42°13.67 N. lat., 124°38.22 W. long.;
(116) 42°12.35 N. lat., 124°38.09 W. long.;
(117) 42°04.35 N. lat., 124°37.23 W. long.;
(118) 42°00.00 N. lat., 124°36.80 W. long.;
(119) 41°47.84 N. lat., 124°30.48 W. long.;
(120) 41°43.33 N. lat., 124°29.96 W. long.;
(121) 41°23.46 N. lat., 124°30.36 W. long.;
(122) 41°21.29 N. lat., 124°29.43 W. long.;
(123) 41°13.52 N. lat., 124°24.48 W. long.;
(124) 41°06.71 N. lat., 124°23.37 W. long.;

(125) 40°54.66 N. lat., 124°28.20 W. long.;
(126) 40°51.52 N. lat., 124°27.47 W. long.;
(127) 40°40.62 N. lat., 124°32.75 W. long.;
(128) 40°36.08 N. lat., 124°40.18 W. long.;
(129) 40°32.90 N. lat., 124°41.90 W. long.;
(130) 40°31.30 N. lat., 124°41.00 W. long.;
(131) 40°30.00 N. lat., 124°38.15 W. long.;
(132) 40°27.29 N. lat., 124°37.34 W. long.;
(133) 40°24.98 N. lat., 124°36.44 W. long.;
(134) 40°22.22 N. lat., 124°31.85 W. long.;
(135) 40°16.94 N. lat., 124°32.00 W. long.;
(136) 40°17.58 N. lat., 124°45.30 W. long.;
(137) 40°13.24 N. lat., 124°32.43 W. long.;
(138) 40°10.00 N. lat., 124°24.64 W. long.;
(139) 40°06.43 N. lat., 124°19.26 W. long.;
(140) 40°07.06 N. lat., 124°17.82 W. long.;
(141) 40°04.70 N. lat., 124°18.17 W. long.;
(142) 40°02.34 N. lat., 124°16.64 W. long.;
(143) 40°01.52 N. lat., 124°09.89 W. long.;
(144) 39°58.27 N. lat., 124°13.58 W. long.;
(145) 39°56.59 N. lat., 124°12.09 W. long.;
(146) 39°55.19 N. lat., 124°08.03 W. long.;
(147) 39°52.54 N. lat., 124°09.47 W. long.;
(148) 39°42.67 N. lat., 124°02.59 W. long.;
(149) 39°35.95 N. lat., 123°59.56 W. long.;
(150) 39°34.61 N. lat., 123°59.66 W. long.;
(151) 39°33.77 N. lat., 123°56.89 W. long.;
(152) 39°33.01 N. lat., 123°57.14 W. long.;
(153) 39°32.20 N. lat., 123°59.20 W. long.;
(154) 39°07.84 N. lat., 123°59.14 W. long.;
(155) 39°01.11 N. lat., 123°57.97 W. long.;
(156) 39°00.51 N. lat., 123°56.96 W. long.;
(157) 38°57.50 N. lat., 123°57.57 W. long.;
(158) 38°56.57 N. lat., 123°57.80 W. long.;
(159) 38°56.39 N. lat., 123°59.48 W. long.;
(160) 38°50.22 N. lat., 123°55.55 W. long.;
(161) 38°46.76 N. lat., 123°51.56 W. long.;
(162) 38°45.27 N. lat., 123°51.63 W. long.;
(163) 38°42.76 N. lat., 123°49.83 W. long.;
(164) 38°41.53 N. lat., 123°47.83 W. long.;
(165) 38°40.97 N. lat., 123°48.14 W. long.;
(166) 38°38.02 N. lat., 123°45.85 W. long.;
(167) 38°37.19 N. lat., 123°44.08 W. long.;
(168) 38°33.43 N. lat., 123°41.82 W. long.;
(169) 38°29.44 N. lat., 123°38.49 W. long.;
(170) 38°28.08 N. lat., 123°38.33 W. long.;
(171) 38°23.68 N. lat., 123°35.47 W. long.;
(172) 38°19.63 N. lat., 123°34.05 W. long.;
(173) 38°16.23 N. lat., 123°31.90 W. long.;
(174) 38°14.79 N. lat., 123°29.98 W. long.;
(175) 38°14.12 N. lat., 123°26.36 W. long.;
(176) 38°10.85 N. lat., 123°25.84 W. long.;
(177) 38°13.15 N. lat., 123°28.25 W. long.;
(178) 38°12.28 N. lat., 123°29.88 W. long.;
(179) 38°10.19 N. lat., 123°29.11 W. long.;
(180) 38°07.94 N. lat., 123°28.52 W. long.;
(181) 38°06.51 N. lat., 123°30.96 W. long.;
(182) 38°04.21 N. lat., 123°32.03 W. long.;
(183) 38°02.07 N. lat., 123°31.37 W. long.;
(184) 38°00.00 N. lat., 123°29.62 W. long.;
(185) 37°58.13 N. lat., 123°27.28 W. long.;
(186) 37°55.01 N. lat., 123°27.53 W. long.;
(187) 37°51.40°N. lat., 123°25.25 W. long.;
(188) 37°43.97 N. lat., 123°11.56 W. long.;
(189) 37°35.67 N. lat., 123°02.32 W. long.;
(190) 37°13.65 N. lat., 122°54.25 W. long.;
(191) 37°11.00 N. lat., 122°50.97 W. long.;
(192) 37°07.00 N. lat., 122°45.90 W. long.;
(193) 37°00.66 N. lat., 122°37.91 W. long.;
(194) 36°57.40°N. lat., 122°28.32 W. long.;
(195) 36°59.25 N. lat., 122°25.61 W. long.;
(196) 36°56.88 N. lat., 122°25.49 W. long.;
(197) 36°57.40°N. lat., 122°22.69 W. long.;
(198) 36°55.43 N. lat., 122°22.49 W. long.;
(199) 36°52.29 N. lat., 122°13.25 W. long.;
(200) 36°47.12 N. lat., 122°07.62 W. long.;
(201) 36°47.10 N. lat., 122°02.17 W. long.;
(202) 36°43.76 N. lat., 121°59.17 W. long.;
(203) 36°38.85 N. lat., 122°02.26 W. long.;
(204) 36°23.41 N. lat., 122°00.17 W. long.;
(205) 36°19.68 N. lat., 122°06.99 W. long.;
(206) 36°14.75 N. lat., 122°01.57 W. long.;
(207) 36°09.74 N. lat., 121°45.06 W. long.;
(208) 36°06.75 N. lat., 121°40.79 W. long.;
(209) 36°00.00 N. lat., 121°35.98 W. long.;
(210) 35°58.18 N. lat., 121°34.69 W. long.;
(211) 35°52.31 N. lat., 121°32.51 W. long.;
(212) 35°51.21 N. lat., 121°30.97 W. long.;
(213) 35°46.32 N. lat., 121°30.36 W. long.;
(214) 35°33.74 N. lat., 121°20.16 W. long.;
(215) 35°31.37 N. lat., 121°15.29 W. long.;
(216) 35°23.32 N. lat., 121°11.50 W. long.;
(217) 35°15.28 N. lat., 121°04.51 W. long.;
(218) 35°07.08 N. lat., 121°00.36 W. long.;
(219) 34°57.46 N. lat., 120°58.29 W. long.;
(220) 34°44.25 N. lat., 120°58.35 W. long.;
(221) 34°32.30 N. lat., 120°50.28 W. long.;
(222) 34°27.00 N. lat., 120°42.61 W. long.;
(223) 34°19.08 N. lat., 120°31.27 W. long.;
(224) 34°17.72 N. lat., 120°19.32 W. long.;
(225) 34°22.45 N. lat., 120°12.87 W. long.;
(226) 34°21.36 N. lat., 119°54.94 W. long.;
(227) 34°09.95 N. lat., 119°46.24 W. long.;
(228) 34°09.08 N. lat., 119°57.59 W. long.;
(229) 34°07.53 N. lat., 120°06.41 W. long.;

(230) 34°10.54 N. lat., 120°19.13 W. long.;
(231) 34°14.68 N. lat., 120°29.54 W. long.;
(232) 34°09.51 N. lat., 120°38.38 W. long.;
(233) 34°03.06 N. lat., 120°35.60 W. long.;
(234) 33°56.39 N. lat., 120°28.53 W. long.;
(235) 33°50.25 N. lat., 120°09.49 W. long.;
(236) 33°37.96 N. lat., 120°00.14 W. long.;
(237) 33°34.52 N. lat., 119°51.90 W. long.;
(238) 33°35.51 N. lat., 119°48.55 W. long.;
(239) 33°42.76 N. lat., 119°47.83 W. long.;
(240) 33°53.62 N. lat., 119°53.34 W. long.;
(241) 33°57.61 N. lat., 119°31.32 W. long.;
(242) 33°56.34 N. lat., 119°26.46 W. long.;
(243) 33°57.79 N. lat., 119°26.91 W. long.;
(244) 33°58.88 N. lat., 119°20.12 W. long.;
(245) 34°02.65 N. lat., 119°15.17 W. long.;
(246) 33°59.02 N. lat., 119°03.05 W. long.;
(247) 33°57.61 N. lat., 118°42.13 W. long.;
(248) 33°50.76 N. lat., 118°38.03 W. long.;
(249) 33°39.41 N. lat., 118°18.74 W. long.;
(250) 33°35.51 N. lat., 118°18.08 W. long.;
(251) 33°30.68 N. lat., 118°10.40 W. long.;
(252) 33°32.49 N. lat., 117°51.90 W. long.;
(253) 32°58.87 N. lat., 117°20.41 W. long.; and
(254) 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°02.04′ N. lat., 125°22.90′ W. long.;
(15) 48°03.60′ N. lat., 125°21.84′ W. long.;
(16) 48°03.98′ N. lat., 125°20.65′ W. long.;
(17) 48°03.26′ N. lat., 125°19.76′ W. long.;
(18) 48°01.50′ N. lat., 125°18.80′ W. long.;
(19) 48°01.03′ N. lat., 125°20.12′ W. long.;
(20) 48°00.04′ N. lat., 125°20.26′ W. long.;
(21) 47°58.10′ N. lat., 125°18.91′ W. long.;
(22) 47°58.17′ N. lat., 125°17.50′ W. long.;
(23) 47°52.33′ N. lat., 125°15.78′ W. long.;
(24) 47°49.20′ N. lat., 125°10.67′ W. long.;
(25) 47°48.27′ N. lat., 125°07.38′ W. long.;
(26) 47°47.24′ N. lat., 125°05.38′ W. long.;
(27) 47°45.95′ N. lat., 125°04.61′ W. long.;
(28) 47°44.58′ N. lat., 125°07.12′ W. long.;
(29) 47°42.24′ N. lat., 125°05.15′ W. long.;
(30) 47°38.54′ N. lat., 125°06.76′ W. long.;
(31) 47°35.03′ N. lat., 125°04.28′ W. long.;
(32) 47°28.82′ N. lat., 124 56.24′ W. long.;
(33) 47°29.15′ N. lat., 124 54.10′ W. long.;
(34) 47°28.43′ N. lat., 124 51.58′ W. long.;
(35) 47°24.13′ N. lat., 124 47.50′ W. long.;
(36) 47°18.31′ N. lat., 124 46.17′ W. long.;
(37) 47°19.57′ N. lat., 124 51.00′ W. long.;
(38) 47°18.12′ N. lat., 124 53.66′ W. long.;
(39) 47°17.60′ N. lat., 124 52.94′ W. long.;
(40) 47°17.71′ N. lat., 124 51.63′ W. long.;
(41) 47°16.90′ N. lat., 124 51.23′ W. long.;
(42) 47°16.10′ N. lat., 124 53.67′ W. long.;
(43) 47°14.24′ N. lat., 124 53.02′ W. long.;
(44) 47°12.16′ N. lat., 124 56.77′ W. long.;
(45) 47°13.35′ N. lat., 124 58.70′ W. long.;
(46) 47°09.53′ N. lat., 124 58.32′ W. long.;
(47) 47°09.54′ N. lat., 124 59.50′ W. long.;
(48) 47°05.87′ N. lat., 124 59.30′ W. long.;
(49) 47°03.65′ N. lat., 124 56.26′ W. long.;
(50) 47°00.87′ N. lat., 124 59.52′ W. long.;
(51) 46°56.80′ N. lat., 125°00.00′ W. long.;
(52) 46°51.55′ N. lat., 125°00.00′ W. long.;
(53) 46°50.07′ N. lat., 124°53.90′ W. long.;
(54) 46°44.88′ N. lat., 124°51.97′ W. long.;
(55) 46°33.45′ N. lat., 124°36.11′ W. long.;
(56) 46°33.20′ N. lat., 124°30.64′ W. long.;
(57) 46°27.85′ N. lat., 124°31.95′ W. long.;
(58) 46°18.27′ N. lat., 124°39.28′ W. long.;
(59) 46°16.00′ N. lat., 124°24.88′ W. long.
(60) 46°14.22′ N. lat., 124°26.28′ W. long.;
(61) 46°11.53′ N. lat., 124°39.58′ W. long.;
(62) 46°08.77′ N. lat., 124°41.71′ W. long.;
(63) 46°05.86′ N. lat., 124°42.27′ W. long.;
(64) 46°03.85′ N. lat., 124°48.20′ W. long.;
(65) 46°02.34′ N. lat., 124°48.51′ W. long.;
(66) 45°58.99′ N. lat., 124°44.42′ W. long.;
(67) 45°49.68′ N. lat., 124°42.37′ W. long.;
(68) 45°49.74′ N. lat., 124°43.69′ W. long.;
(69) 45°46.00′ N. lat., 124°41.82′ W. long.;
(70) 45°40.83′ N. lat., 124°40.90′ W. long.;
(71) 45°34.88′ N. lat., 124°32.58′ W. long.;
(72) 45°20.25′ N. lat., 124°25.47′ W. long.;
(73) 45°13.04′ N. lat., 124°21.92′ W. long.;
(74) 45°03.83′ N. lat., 124°27.13′ W. long.;
(75) 45°00.17′ N. lat., 124°29.28′ W. long.;

(76) 44°50.99′ N. lat., 124°35.40′ W. long.;
(77) 44°46.87′ N. lat., 124°38.20′ W. long.;
(78) 44°48.25′ N. lat., 124°40.62′ W. long.;
(79) 44°41.34′ N. lat., 124°49.20′ W. long.;
(80) 44°23.30′ N. lat., 124°50.17′ W. long.;
(81) 44°13.19′ N. lat., 124°58.66′ W. long.;
(82) 44°08.30′ N. lat., 124°58.72′ W. long.;
(83) 43°57.37′ N. lat., 124°58.71′ W. long.;
(84) 43°52.32′ N. lat., 124°49.43′ W. long.;
(85) 43°51.35′ N. lat., 124°37.94′ W. long.;
(86) 43°49.73′ N. lat., 124°40.26′ W. long.;
(87) 43°39.06′ N. lat., 124°38.55′ W. long.;
(88) 43°28.85′ N. lat., 124°39.99′ W. long.;
(89) 43°20.83′ N. lat., 124°42.89′ W. long.;
(90) 43°20.22′ N. lat., 124°43.05′ W. long.;
(91) 43°13.29′ N. lat., 124°47.00′ W. long.;
(92) 43°10.64′ N. lat., 124°49.95′ W. long.;
(93) 43°04.26′ N. lat., 124°53.05′ W. long.;
(94) 42°53.93′ N. lat., 124°54.60′ W. long.;
(95) 42°50.00′ N. lat., 124°50.60′ W. long.;
(96) 42°47.57′ N. lat., 124°48.12′ W. long.;
(97) 42°46.19′ N. lat., 124°44.52′ W. long.;
(98) 42°41.75′ N. lat., 124°44.69′ W. long.;
(99) 42°40.50′ N. lat., 124°44.02′ W. long.;
(100) 42°38.81′ N. lat., 124°43.09′ W. long.;
(101) 42°31.83′ N. lat., 124°46.23′ W. long.;
(102) 42°32.08′ N. lat., 124°43.58′ W. long.;
(103) 42°30.96′ N. lat., 124°43.84′ W. long.;
(104) 42°28.41′ N. lat., 124°49.17′ W. long.;
(105) 42°24.80′ N. lat., 124°45.93′ W. long.;
(106) 42°19.71′ N. lat., 124°41.60′ W. long.;
(107) 42°15.12′ N. lat., 124°38.34′ W. long.;
(108) 42°13.67′ N. lat., 124°38.28′ W. long.;
(109) 42°12.35′ N. lat., 124°38.09′ W. long.;
(110) 42°00.00′ N. lat., 124°36.83′ W. long.;
(111) 41°47.78′ N. lat., 124°29.55′ W. long.;
(112) 41°21.15′ N. lat., 124°29.04′ W. long.;
(113) 41°13.50′ N. lat., 124°24.40′ W. long.;
(114) 41°11.00′ N. lat., 124°22.99′ W. long.;
(115) 41°06.69′ N. lat., 124°23.30′ W. long.;
(116) 40°54.73′ N. lat., 124°28.15′ W. long.;
(117) 40°53.94′ N. lat., 124°26.11′ W. long.;
(118) 40°50.31′ N. lat., 124°26.15′ W. long.;
(119) 40°44.49′ N. lat., 124°30.89′ W. long.;
(120) 40°40.62′ N. lat., 124°32.16′ W. long.;
(121) 40°38.87′ N. lat., 124°29.79′ W. long.;
(122) 40°35.67′ N. lat., 124°30.43′ W. long.;
(123) 40°37.41′ N. lat., 124°37.06′ W. long.;
(124) 40°36.09′ N. lat., 124°40.11′ W. long.;
(125) 40°31.33′ N. lat., 124°41.01′ W. long.;
(126) 40°30.00′ N. lat., 124°38.15′ W. long.;
(127) 40°27.34′ N. lat., 124°37.28′ W. long.;
(128) 40°25.01′ N. lat., 124°36.36′ W. long.;
(129) 40°22.28′ N. lat., 124°31.35′ W. long.;
(130) 40°14.00′ N. lat., 124°33.02′ W. long.;
(131) 40°10.00′ N. lat., 124°24.55′ W. long.;
(132) 40°06.45′ N. lat., 124°19.24′ W. long.;
(133) 40°07.08′ N. lat., 124°17.80′ W. long.;
(134) 40°05.55′ N. lat., 124°18.11′ W. long.;
(135) 40°04.74′ N. lat., 124°18.11′ W. long.;
(136) 40°02.35′ N. lat., 124°16.54′ W. long.;
(137) 40°01.51′ N. lat., 124°09.89′ W. long.;
(138) 39°58.54′ N. lat., 124°12.43′ W. long.;
(139) 39°55.72′ N. lat., 124°07.45′ W. long.;
(140) 39°42.64′ N. lat., 124°02.52′ W. long.;
(141) 39°35.96′ N. lat., 123°59.47′ W. long.;
(142) 39°34.61′ N. lat., 123°59.59′ W. long.;
(143) 39°33.79′ N. lat., 123°56.77′ W. long.;
(144) 39°33.03′ N. lat., 123°57.06′ W. long.;
(145) 39°32.21′ N. lat., 123°59.12′ W. long.;
(146) 39°07.81′ N. lat., 123°59.06′ W. long.;
(147) 38°57.50′ N. lat., 123°57.32′ W. long.;
(148) 38°52.26′ N. lat., 123°56.18′ W. long.;
(149) 38°50.21′ N. lat., 123°55.48′ W. long.;
(150) 38°46.81′ N. lat., 123°51.49′ W. long.;
(151) 38°45.29′ N. lat., 123°51.55′ W. long.;
(152) 38°42.76′ N. lat., 123°49.73′ W. long.;
(153) 38°41.42′ N. lat., 123°47.45′ W. long.;
(154) 38°35.74′ N. lat., 123°43.82′ W. long.;
(155) 38°34.92′ N. lat., 123°42.53′ W. long.;
(156) 38°19.65′ N. lat., 123°31.95′ W. long.;
(157) 38°14.38′ N. lat., 123°25.51′ W. long.;
(158) 38°09.39′ N. lat., 123°24.40′ W. long.;
(159) 38°10.06′ N. lat., 123°26.84′ W. long.;
(160) 38°04.58′ N. lat., 123°31.91′ W. long.;
(161) 38°02.06′ N. lat., 123°31.26′ W. long.;
(162) 38°00.00′ N. lat., 123°29.56′ W. long.;
(163) 37°58.07′ N. lat., 123°27.21′ W. long.;
(164) 37°50.77′ N. lat., 123°24.52′ W. long.;
(165) 37°43.94′ N. lat., 123°11.49′ W. long.;
(166) 37°35.67′ N. lat., 123°02.23′ W. long.;
(167) 37°23.48′ N. lat., 122°57.77′ W. long.;
(168) 37°23.23′ N. lat., 122°53.85′ W. long.;
(169) 37°13.96′ N. lat., 122°49.97′ W. long.;
(170) 37°11.00′ N. lat., 122°45.68′ W. long.;
(171) 37°07.00′ N. lat., 122°43.37′ W. long.;
(172) 37°01.04′ N. lat., 122°37.94′ W. long.;
(173) 36°57.40′ N. lat., 122°28.36′ W. long.;
(174) 36°59.21′ N. lat., 122°25.64′ W. long.;
(175) 36°56.90′ N. lat., 122°25.42′ W. long.;
(176) 36°57.60′ N. lat., 122°21.95′ W. long.;
(177) 36°55.92′ N. lat., 122°21.71′ W. long.;
(178) 36°55.06′ N. lat., 122°17.07′ W. long.;
(179) 36°52.27′ N. lat., 122°13.17′ W. long.;
(180) 36°47.38′ N. lat., 122°07.62′ W. long.;

(181) 36°47.27′ N. lat., 122°03.77′ W. long.;
(182) 36°24.12′ N. lat., 121 59.74′ W. long.;
(183) 36°21.99′ N. lat., 122°01.01′ W. long.;
(184) 36°19.56′ N. lat., 122°05.88′ W. long.;
(185) 36°14.63′ N. lat., 122°01.10′ W. long.;
(186) 36°09.74′ N. lat., 121°45.01′ W. long.;
(187) 36°06.69′ N. lat., 121°40.77′ W. long.;
(188) 36°00.00′ N. lat., 121°36.01′ W. long.;
(189) 35°56.54′ N. lat., 121°33.27′ W. long.;
(190) 35°52.21′ N. lat., 121°32.46′ W. long.;
(191) 35°51.21′ N. lat., 121°30.94′ W. long.;
(192) 35°46.28′ N. lat., 121°30.29′ W. long.;
(193) 35°33.68′ N. lat., 121°20.09′ W. long.;
(194) 35°31.33′ N. lat., 121°15.22′ W. long.;
(195) 35°23.29′ N. lat., 121°11.41′ W. long.;
(196) 35°15.26′ N. lat., 121°04.49′ W. long.;
(197) 35°07.05′ N. lat., 121°00.26′ W. long.;
(198) 35°07.46′ N. lat., 120°57.10′ W. long.;
(199) 34°44.29′ N. lat., 120°54.28′ W. long.;
(200) 34°44.24′ N. lat., 120°57.69′ W. long.;
(201) 34°39.06′ N. lat., 120°55.01′ W. long.;
(202) 34°19.08′ N. lat., 120°31.21′ W. long.;
(203) 34°17.72′ N. lat., 120°19.26′ W. long.;
(204) 34°22.45′ N. lat., 120°12.81′ W. long.;
(205) 34°21.36′ N. lat., 119°54.88′ W. long.;
(206) 34°09.95′ N. lat., 119°46.18′ W. long.;
(207) 34°09.08′ N. lat., 119°57.53′ W. long.;
(208) 34°07.53′ N. lat., 120°06.35′ W. long.;
(209) 34°10.37′ N. lat., 120°18.40′ W. long.;
(210) 34°12.50′ N. lat., 120°18.40′ W. long.;
(211) 34°12.50′ N. lat., 120°24.96′ W. long.;
(212) 34°14.68′ N. lat., 120°29.48′ W. long.;
(213) 34°09.51′ N. lat., 120°38.32′ W. long.;
(214) 34°04.66′ N. lat., 120°36.29′ W. long.;
(215) 34°02.21′ N. lat., 120°36.29′ W. long.;
(216) 34°02.21′ N. lat., 120°34.65′ W. long.;
(217) 33°56.39′ N. lat., 120°28.47′ W. long.;
(218) 33°50.40′ N. lat., 120°10.00′ W. long.;
(219) 33°37.96′ N. lat., 120°00.08′ W. long.;
(220) 33°34.52′ N. lat., 119°51.84′ W. long.;
(221) 33°35.51′ N. lat., 119°48.49′ W. long.;
(222) 33°42.76′ N. lat., 119°47.77′ W. long.;
(223) 33°51.63′ N. lat., 119°53.00′ W. long.;
(224) 33°51.62′ N. lat., 119°48.00′ W. long.;
(225) 33°54.59′ N. lat., 119°48.00′ W. long.;
(226) 33°57.69′ N. lat., 119°31.00′ W. long.;
(227) 33°54.11′ N. lat., 119°31.00′ W. long.;
(228) 33°54.11′ N. lat., 119°26.00′ W. long.;
(229) 33°57.94′ N. lat., 119°26.00′ W. long.;
(230) 33°58.88′ N. lat., 119°20.06′ W. long.;
(231) 34°02.65′ N. lat., 119°15.11′ W. long.;
(232) 33°59.02′ N. lat., 119°02.99′ W. long.;
(233) 33°57.61′ N. lat., 118°42.07′ W. long.;
(234) 33°50.76′ N. lat., 118°37.98′ W. long.;
(235) 33°39.17′ N. lat., 118°18.47′ W. long.;
(236) 33°37.14′ N. lat., 118°18.39′ W. long.;
(237) 33°35.51′ N. lat., 118°18.03′ W. long.;
(238) 33°30.68′ N. lat., 118°10.35′ W. long.;
(239) 33°32.49′ N. lat., 117°51.85′ W. long.;
(240) 32°58.87′ N. lat., 117°20.36′ W. long.; and
(241) 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.

■ 23. 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) BY MANAGEMENT AREA

(weights in metric tons).

Species	ABC Specifications							HG b/	
	ABC Contributions by Area					ABC	OY b/	Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
ROUNDFISH:									
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/	6,210					6,210	5,934	5,362	
Cabezon h/ south of 42° N. lat.	d/		71		23	94	69	27	
FLATFISH:									
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		
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		

TABLE 1A. TO PART 660, SUBPART G - 2007 SPECIFICATIONS OF ACCEPTABLE BIOLOGICAL CATCH (ABC), OPTIMUM YIELDS (OYS), HARVEST GUIDELINES (HGS) BY MANAGEMENT AREA—Continued

(weights in metric tons).

Species	ABC Specifications							HG b/	
	ABC Contributions by Area					ABC	OY b/	Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
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/ 36° to 40° 30' 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/ north of 40°10' N. lat.	3,680	2,270	89	2,181	2,000	91.7	181	8.3	
Minor Rockfish south ee/ south of 40°10' N. lat.	--			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					
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 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/ north of 40°10' N. lat.	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
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 (HGs) 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 40 percent of its unfished biomass north of 34° 27' N. lat. and 28 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 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 "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, 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 comercial 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 continues 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 ABCS, OYS, AND HGS, BY MANAGEMENT AREA

(weights in metric tons).

Species	ABC Specifications						OY b/	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
ROUNDFISH:									
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.	d/		71		23	94	69	27	
FLATFISH:									
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		
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/	d/			2,700		2,700	2,000		
Bocaccio t/	d/			618		618	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/ 36° to 40° 30' N. lat.	d/			19	--	19	4	3.1	0.3
south of 36° N. lat.	d/			--	17	17			

TABLE 2A. TO PART 660, SUBPART G - 2008, AND BEYOND, SPECIFICATIONS OF ABCS, OYS, AND HGS, BY MANAGEMENT AREA—Continued

(weights in metric tons).

Species	ABC Specifications						OY b/	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreational
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
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 dd/ north of 40°10' N. lat.	3,680			--		3,680	2,270	2,181	89
Minor Rockfish ee/ south of 40°10' N. lat.	--			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					
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. 2008, AND BEYOND, HARVEST GUIDELINES 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				

TABLE 2B. 2008, AND BEYOND, HARVEST GUIDELINES FOR MINOR ROCKFISH BY DEPTH SUB-GROUPS (WEIGHTS IN METRIC TONS).—Continued

Species	Total Catch ABC	Total Catch OY	Recreational HG	Commercial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
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. 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
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 (HGs) 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 Cabazon stock was estimated to be at 40 percent of its unfished biomass north of 34° 27' N. lat. and 28 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 F40%. 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, 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 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/ 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 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 comercial 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 continues 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, ratfish, 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.

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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 112006

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]: North of 40°10' N. lat.	75 fm - modified 250 fm [7/]	75 fm - 250 fm	75 fm - 200 fm	100 fm - 200 fm	75 fm - 200 fm	75 fm - modified 250 fm [7/]
	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[2/] & 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 [8/]	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 [8/]	3,000 lb/ 2 months					
12	Shortspine thornyhead						
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 [8/]	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 [8/]	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 [8/]	90,000 lb/ 2 months					

TABLE 3 (North)

Table 3 (North). Continued

28	**Flatfish** (except Dover sole) *(con't)*				
29	Other flatfish [3/], English sole, starry flounder, & Petrale sole				
30	large & small footrope gear for Other flatfish[3/], 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.		110,000 lb/ 2 months
31	large & small footrope gear for Petrale sole	50,000 lb/ 2 months			50,000 lb/ 2 months
32	selective flatfish trawl gear for Other flatfish[3/], 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.		90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.
33	selective flatfish trawl gear for Petrale sole				
34	multiple bottom trawl gear [8/]	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.		90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole.
35	**Minor shelf rockfish[1/], Shortbelly, Widow & Yelloweye rockfish**				
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 [8/]	300 lb/ month	300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month
40	**Canary rockfish**				
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 [8/]	CLOSED			
44	**Yellowtail**				
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 [8/]	300 lb/ 2 months			
49	**Minor nearshore rockfish & Black rockfish**				
50	large & small footrope gear	CLOSED			
51	selective flatfish trawl gear	300 lb/ month			
52	multiple bottom trawl gear [8/]	CLOSED			
53	**Lingcod**[4/]				
54	large & small footrope gear	1,200 lb/ 2 months			
55	selective flatfish trawl gear				
56	multiple bottom trawl gear [8/]				
57	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
58	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
59	**Other Fish** [5/]	Not limited			

TABLE 3 (North) con't

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, 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. 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 112006

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	40°10' - 38° N. lat.	100 fm - modified 200 fm [7/]	100 fm - 150 fm				100 fm - modified 200 fm [7/]
	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 § 660.381for 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[2/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
3	South of 38° N. lat.	40,000 lb/ 2 months					
4	**Splitnose**						
5	40°10' - 38° N. lat.	15,000 lb/ 2 months			10,000 lb/ 2 months		15,000 lb/ 2 months
6	South of 38° N. lat.	40,000 lb/ 2 months					
7	**DTS complex**						
8	Sablefish	14,000 lb/ 2 months					
9	Longspine thornyhead	22,000 lb/ 2 months					
10	Shortspine thornyhead	7,500 lb/ 2 months					
11	Dover sole	70,000 lb/ 2 months					
12	**Flatfish** (except Dover sole)						
13	Other flatfish[3/], English sole, & starry flounder						
14	40°10' - 38° N. lat.	110,000 lb/ 2 months	Other flatfish, English sole, starry flounder & Petrale sole: 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole.				110,000 lb/ 2 months
15	South of 38° N. lat.						
16	Petrale sole	50,000 lb/ 2 months					50,000 lb/ 2 months
17	Arrowtooth flounder						
18	40°10' - 38° N. lat.	10,000 lb/ 2 months					
19	South of 38° N. lat.						
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.					

TABLE 3 (South)

Table 3 (South). Continued

23	**Minor shelf rockfish[1/], 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	**Bocaccio**				
30	large footrope or midwater trawl	300 lb/ 2 months			
31	small footrope trawl	CLOSED			
32	**Canary rockfish**				
33	large footrope or midwater trawl	CLOSED			
34	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month	
35	**Cowcod**	CLOSED			
36	**Minor nearshore rockfish & Black rockfish**				
37	large footrope or midwater trawl	CLOSED			
38	small footrope trawl	300 lb/ month			
39	**Lingcod[4/]**				
40	large footrope or midwater trawl	1,200 lb/ 2 months			
41	small footrope trawl				
42	**Pacific cod**	30,000 lb/ 2 months	70,000 lb/ 2 months		30,000 lb/ 2 months
43	**Spiny dogfish**	200,000 lb/ 2 months	150,000 lb/ 2 months	100,000 lb/ 2 months	
44	**Other Fish[5/] & Cabezon**	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

TABLE 4 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	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 [2/] & 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 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.					
7	**Arrowtooth flounder**						
8	**Petrale sole**						
9	**English sole**						
10	**Starry flounder**						
11	**Other flatfish[1/]**						
12	**Whiting**	10,000 lb/ trip					
13	**Minor shelf rockfish[2/], 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 [3/]					
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 [3/]					
19	**Lingcod[4/]**	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[5/]**	Not limited					

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin 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
	Rockfish Conservation Area (RCA)[5/]:						
	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[2/] & 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[1/]**						
14	**Whiting**	10,000 lb/ trip					
15	**Minor shelf rockfish[2/], 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[3/]**	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[4/] & Cabezon**	Not limited					

TABLE 4 (South)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin 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 112006

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	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 § 660.383 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).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[1/] & 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 700 lb, not to exceed 2,100 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 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.					
6	**Arrowtooth flounder**						
7	**Petrale sole**						
8	**English sole**						
9	**Starry flounder**						
10	**Other flatfish[2/]**						
11	**Whiting**	300 lb/ month					
12	**Minor shelf rockfish[1/], 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[3/]					
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[3/]					
18	**Lingcod[4/]**	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[5/]**	Not limited					
22	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
23	North	**Effective April 1 - October 31:** 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.					
24	**SALMON TROLL**						
25	North	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.					

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, curlfin 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, 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 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 112006

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
	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 § 660.383 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).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[1/] & Darkblotched rockfish**						
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	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 700 lb, not to exceed 2,100 lb/ 2 months					
7	South of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 700 lb					
8	**Thornyheads**						
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	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. 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.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[2/]**						
17	**Whiting**	300 lb/ month					
18	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
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	**Canary rockfish**	CLOSED					
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bocaccio**						
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	**Minor nearshore rockfish & Black rockfish**						
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	**Lingcod[3/]**	CLOSED		400 lb/ month			CLOSED
34	**Pacific cod**	1,000 lb/ 2 months					
35	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
36	**Other Fish[4/] & Cabezon**	Not limited					

TABLE 5 (South)

Table 5 (South). Continued

37	RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL			
38	NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:			
39	40°10' - 38° N. lat.	100 fm - modified 200 fm 6/	100 fm - 150 fm	100 fm - modified 200 fm 6/
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, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).		
43	PINK SHRIMP NON-GROUNDFISH TRAWL GEAR *(not subject to RCAs)*			
44	South	**Effective April 1 - October 31:** 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) con't

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, curlfin 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, 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.
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.

* * * * *

■ 24. 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 taken with salmon troll gear within the Salmon Troll YRCA. Vessels may transit through the Salmon Troll YRCA with or without fish on board. 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. 06–9856 Filed 12–28–06; 8:45 am]
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Federal Register

Friday,
December 29, 2006

Part VI

The President

Proclamation 8092—National Mentoring Month, 2007

Federal Register
Vol. 71, No. 250
Friday, December 29, 2006

Presidential Documents

Title 3—

The President

Proclamation 8092 of December 22, 2006

National Mentoring Month, 2007

By the President of the United States of America

A Proclamation

During National Mentoring Month, we honor the caring individuals across our Nation who are committed to helping the next generation of Americans reach their full potential.

Mentors help teach important skills that are necessary for a healthy, successful life and help shape the character of our young people. They instill compassion and responsibility in our children and help motivate them to do their best in school. By providing leadership and guidance, mentors can inspire young people to set high goals and help them achieve a bright future.

My Administration is committed to helping the next generation realize the promise of our Nation. Through the USA Freedom Corps, we are providing opportunities for mentors to connect with children in schools, after-school programs, and community groups. The Helping America's Youth initiative, led by First Lady Laura Bush, raises awareness about the challenges facing our youth and encourages adults to connect with youth in three key areas: family, school, and community. The initiative also supports community partnerships that develop opportunities for mentoring and positive youth development.

I appreciate the contributions of all those who serve as mentors, and I encourage all Americans to get involved in mentoring programs. To learn about mentoring opportunities, citizens can visit the USA Freedom Corps website at volunteer.gov. By joining teachers, coaches, religious leaders, relatives, and other mentors, individuals can use their talents and experiences to enrich the lives of young people and demonstrate the compassionate spirit of America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2007 as National Mentoring Month. I call upon the people of the United States to recognize the importance of mentoring, to look for opportunities to serve as mentors in their communities, and to observe this month with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of December, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

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S. 4042/P.L. 109–464

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S. 4092/P.L. 109–466

To clarify certain land use in Jefferson County, Colorado. (Dec. 22, 2006; 120 Stat. 3484)

S. 4093/P.L. 109–467
To amend the Farm Security and Rural Investment Act of 2002 to extend a suspension of limitation on the period for which certain borrowers are eligible for guaranteed assistance. (Dec. 22, 2006; 120 Stat. 3485)

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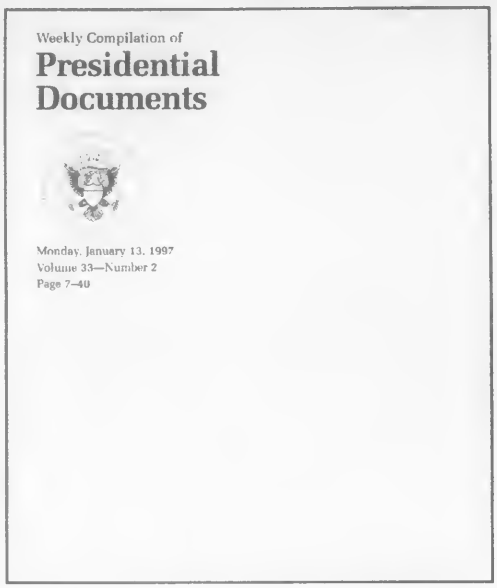

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